



# **CITY OF MESA, ARIZONA**

## **GENERAL CONDITIONS**

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## **SECTION 1 – SCOPE OF THESE GENERAL CONDITIONS**

These General Conditions encompass provisions that apply and are incorporated into all construction contracts entered into by the City of Mesa, unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form, including without limitation, Fixed Price, Construction Manager at Risk (CMAR), Guaranteed Maximum Price (GMP) Cost-Based, and Job Order Contracts (JOC). Unless otherwise specified in the Contract, the additional provisions in Section 15 apply solely to Guaranteed Maximum Price or GMP and Cost Based Contracts; the additional provisions in Section 16 apply solely to Job Order Contracts or “JOCs,” and the additional provisions in Section 17 apply solely to contracts involving Pre-Construction Services. Section 18, attached hereto, is incorporated herein.

## **SECTION 2 – GENERAL DEFINITIONS**

**Note: Additional definitions of terms that only have application to Guaranteed Maximum Price (GMP) and Cost-Based Contracts, Change Orders and Job Orders are found in Section 15.1 below; and additional definitions of terms that only have application to Job Order Contracts (JOCs) are found in Section 16.1 below; and additional definitions of terms that only have application to contracts involving Pre-Construction Services are found in Sections 17.1 below.**

Allowance –

A specific amount for a specific item of Work, if any, that City agrees has not been sufficiently designed, detailed, or selected (including design changes from 90% to 100% as authorized by and at the discretion of the City) at the time the Contract Price is agreed to for Contractor to provide a definitive price. Allowances shall be treated in accordance with Section 15.3 of these General Conditions.

Alternate Systems Evaluations or Alternative Analysis –

Alternatives for design, means and methods or other scope considerations that are evaluated using value analysis principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Buyout –

The process for the Contractor to negotiate and execute subcontracts after a construction contract is executed. In GMP contracts, if the sum of all the subcontract buyouts results in a net savings, these savings are retained by the City.

Change Order –

A written instrument issued after execution of the Contract Documents signed by City and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

City (Owner or OWNER) –

City of Mesa, a municipal corporation, with whom Contractor has entered into the Contract and for whom the Services and/or Work are to be provided pursuant to the Contract(s).

Construction Budget –

The City's budget for construction of the Project.

Construction Documents –

The plan, specifications, and drawings prepared and issued by the Design Professional and approved by City for construction, meaning the documents are sealed by the Design Professional (as required), acceptable for permitting and incorporated into the Contract by reference. All amendments and modifications to the Construction Documents must be approved in writing by City prior to incorporation into the Contract.

Consultant –

Entity that provides professional services.

Contingent Bid Items –

This is a minor bid item which is likely, but not certain, to occur during the course of work. If the Engineer determines that this work is required, the Contractor will accomplish the work and payment will be made based on the contingent unit bid price included in the proposal. Since the quantity listed in the proposal is primarily for bid comparison, the amount of work required by the Engineer may vary materially from this.

Contract –

The written agreement executed between City and Contractor, including all of the Contract Documents.

Contract Documents –

The documents which together form the Contract between City and Contractor, as identified in Article 2 of the Contract, or are otherwise incorporated into the Contract, including the Contract, the exhibits thereto, these General Conditions, any Notice to Proceed, and any Job Order (if applicable), the Plans and Specifications, Project Schedule, written and properly executed Change Orders, MAG Specifications and City's amendments thereto, and any other documents so designated in the Contract.

Contract Price –

The agreed-upon price to be paid to Contractor for full, timely, and acceptable completion of the Services or Work under the terms of the Contract.

Contract Time(s) –

The number of calendar days or the dates related to the applicable phase, Substantial Completion, and/or Final Acceptance as stated in Contract Documents. Contract Time starts with the Notice to Proceed (NTP) and ends with Final Acceptance. The Contract Time is set forth in the Contract and is based upon the Project Schedule agreed to by City in writing.

Contractor –

The entity with whom City has entered into an agreement for construction-related work or services in relation to the Project at issue. As used in these General Conditions, the term Contractor includes CMAR and JOC under contract with City to provide pre-construction and/or construction services.

Contractor Payment Request –

The form that is accepted by City and used by Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or City.

Contractor Price Proposal (GMP Summary) –

Includes Cost of the Work (Direct Costs and General Conditions Costs), Fee (General and Administrative Costs and Profit), Insurance and Bond, and Tax.

Cost of the Work –

The term Cost of the Work shall mean costs necessarily incurred by Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of City. See Appendix 9.

Critical Path Method (CPM) –

A scheduling technique which identifies the logical sequence of the activities occurring in a Construction Project, the anticipated time required to complete each activity in the Project, and the activities that must be completed on schedule to finish the Project within the anticipated time. Typically, activities are arranged in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified. See Sections 6.2.8 and 17.3.1.

Critical Path –

Critical path is the sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of City.

Day –

Calendar day(s) unless otherwise specifically stated in the Contract Documents.

Design Professional –

The qualified, licensed entity who furnishes design and construction administration services. The person, firm, or corporation must hold a license in the State of Arizona in the appropriate discipline required under the Contract Documents. These services may include but are not limited to development of Construction Drawings and Documents, review of Contractor Submittal(s), review of and response to Requests for Information, approval and certification of progress payment applications, construction administration, and construction contract close out.

Differing Site Conditions –

Concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Contract Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work at the general area of the Site. Caliche, rock, hard-digging or sandy/silty soil encountered on a project is not considered a "Differing Site Condition."

Drawings (Plans) –

Documents, which visually represent the scope, extent and/or character of the Work to be furnished and performed by Contractor during the construction phase and which have been prepared or approved by the Design Professional and City. These documents include Drawings that have reached a sufficient state of completion and released by Design Professional solely for the purposes of review and/or use in performing constructability or bid-ability reviews by Contractor and in preparing cost estimates (e.g. Master Planning and Programming, Schematic Design, Design Development, and Construction Drawings), but *"not for construction."* Shop Drawings are not Drawings as so defined.

Final Acceptance –

The City's acceptance of the facility or project from the Contractor after all Work is completed, tested, and inspected in accordance with the contract requirements. Final Acceptance results in a Letter of Acceptance (LOA).

Fixed Price –

A fixed price or amount for a Contract Price, scope of work, materials, or other item under a Contract, Change Order, Job Order, or other agreement, which City agrees, in writing, to pay instead of the actual cost. See, e.g. Sections 7.1 and 7.4.1.

Float –

The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to City.

Laws, Regulations, or Legal Requirements –

Any and all applicable laws, rules, regulations, ordinances, codes and orders applicable to the Project of any and all governmental bodies, agencies, authorities and courts having jurisdiction and any applicable provisions of the Development Agreement for the Project (if any), including, without limitation, those provisions relating to the design and construction of the Project.

Line Item –

The individual elements of Work identified on a bid or other schedule and associated with a price or a unit price and quantity particular to that individual element of the Work. Also refers to individual items of work within the Schedule of Values.

Liquidated Damages –

Designated damages for the City to collect as compensation upon a specific breach (example: late delivery).

Long-Lead Item –

Long-lead item refers to the equipment, product, or system that is identified at the earliest stage of a project to have a delivery time long enough to affect directly the Critical Path/the overall lead time of the project.

MAG –

The Maricopa Association of Governments.

MAG Specifications –

The most current version of the Uniform Standard Specifications for Public Works Construction published by MAG.

MAG Standard Details –

The most current version of the Uniform Standard Details as published by MAG.

Minor change –

A change in the Work having no impact on cost or time or the City-approved design intent, as determined by City.

Notice to Proceed (NTP) –

A written notice given by City to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Contract.

Project –

The Project specified in the Contract (including a Job Order).

Project Manager –

The Project Manager designated in Article 1 of the Contract, or any successor thereto designated by City. The Project Manager has the authority to act on behalf of City, as delineated and limited by the Contract Documents and applicable law. And City shall communicate with Contractor through the Project Manager. However, the Project Manager has no authority to bind City or City Council in contravention of any City code, State or Federal statute or regulation, or these General Conditions.

Project Schedule –

The schedule for the completion of the Project agreed to and/or required by City.

Project Specific Provisions –

Additional provisions which apply to the specific Project and/or Scope of Work which are set forth in Exhibit D of the Contract.

Project Team –

The Project Team consists of the Design Professional, Contractor, Project Manager, and such others as City may designate.

Punch List –

The list initially prepared by Contractor pursuant to the Contract Documents, reviewed and supplemented by the Project Manager (and at the sole option of the Project Manager, the Design Professional) and approved by City containing items of incomplete work not impacting Substantial Completion, if allowed for under the Contract, and to be completed or corrected by Contractor after Substantial Completion and before Final Acceptance in accordance with the Contract Documents.

Quality Assurance (QA) Testing –

Testing performed to verify the accuracy and applicability of the QC testing results and to ascertain that the materials installed meet the specified levels of quality in accordance with the contract documents.

Quality Control (QC) Testing –

Testing performed to assure that the materials installed comply with the requirements in the Contract Documents.

Requests for Information (RFIs) –

Formal written request from Contractor to City and/or Design Professional for the Project seeking clarification or additional information needed for Contractor to properly complete the Work and/or Services under the Contract. City may require RFI's to be submitted on a specific form or in a specified format.

Schedule of Values (SOV) –

The specified document prepared by Contractor, and approved and accepted by City, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

Scope of Work –

The scope of work agreed to and/or required by City and incorporated into the Contract as Exhibit A.

Shop Drawings –

All drawings, diagrams, schedules and other data specifically prepared for the Work by Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

Site –

The land or premises on which the Project is located.

Specifications –

The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto. Where specified, the Project shall be constructed using the current Uniform Standard Specifications and Details for Public Works Construction as furnished by the Maricopa Association of Governments, as amended by City.

Subconsultant –

An entity having a Contract with Consultant/Contractor to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor –

An entity having a direct Contract with Contractor or any other individual or firm having a Contract with the aforesaid contractors at any tier, who undertakes to perform a part of pre-construction services or construction phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor selection process described in the Contract Documents, if any.

Substantial Completion –

The date when the City determines that the Work (or separable units of Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents such that the Project is ready for use by the City for its intended purpose, opening to the general public, full occupancy or use by City (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories, and similar elements are installed in the proper manner and in operating condition, inspected, and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air conditioning, vertical transportation, and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion.

Superintendent –

The Contractor's authorized representative in responsible charge of the Work.

Supplier –

A manufacturer, fabricator, distributor, or vendor having a direct Contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by Contractor or any Subcontractor.

Time and Materials –

An approach to construction costs requested by the City to be used for elements of projects with uncertain or evolving scopes, which provides the flexibility for both the City and Contractor to capture the actual costs of labor and materials plus a Fee based on tracked hours and receipts for materials and noted and approved by City inspection staff.

Total Float –

Number of Days by which pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent Contract Time or schedule milestone in the Project Schedule.

Work –

The entire completion of construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources, and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

Writing –

Typing, printing, photography, and other modes of representing or reproducing words in a visible form, including email, and expressions.

**SECTION 3 – STANDARD SPECIFICATIONS AND DETAILS**

- 3.1 Current MAG Specifications and Standard Details and City's amendments thereto are incorporated into the Contract.
- 3.2 Copies of the MAG Specifications and MAG Standard Details are available at the Maricopa Association of Governments office, 302 N. 1<sup>st</sup> Avenue, Suite 300, Phoenix, Arizona. They may also be downloaded at their Web site: <https://azmag.gov/> under "Publications."

**SECTION 4 – CONTRACTOR'S RESPONSIBILITIES FOR CONSTRUCTION SERVICES**

**4.1 GENERAL**

- 4.1.1 Contractor shall construct the Work in accordance with the Contract Documents and as outlined in Exhibit A of the Contract to the satisfaction of City, exercising the degree of professional care, skill, diligence, quality and judgment that a professional construction manager engaged, experienced and specializing in the construction management of construction and/or facilities of similar scope, function, size, quality, complexity and detail in urban areas throughout the United States comparable to Mesa, Arizona would exercise at such time, under similar conditions. Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.
- 4.1.2 Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license laws, including all requirements with respect to being duly registered and licensed.

#### **4.2 CONTRACTOR'S PRE-CONTRACT AND PRE-WORK DELIVERABLES**

- 4.2.1 Prior to award of the Contract, Contractor must provide to City's Engineering Department its Contractor's License classification and number and its Federal Tax I.D. number.
- 4.2.2 Before beginning any Work under the Contract, Contractor shall execute the Contract and deliver to City the items listed in Sections 4.2.3 below, and the Contract must be executed by City. Failure to do so will be a material breach of the Contract entitling City to terminate the Contract for Cause.
- 4.2.3 When Contractor delivers the executed Contract to City, Contractor shall also deliver to City such bonds and certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by City) required under Section 11 of these General Conditions, and as the Contract requires.
- 4.2.4 **Video-Recording Requirement**  
Prior to performing any Work, Contractor shall document the existing conditions of the Site, all other areas where Work will occur and all adjacent areas that may be impacted by the Work. Contractor shall video-record all areas, features, buildings and other public and private improvements that could potentially be impacted by the Work. Contractor shall coordinate video-recording with City Inspector and City of Mesa Engineering Public Relations Representative (480-644-3800). When video-recording private property, Contractor shall also coordinate the video-recording with the private property owner, if possible. Contractor shall provide City Inspector with a copy of all recordings prior to performing any work as a Submittal.
- 4.2.5 **Government Approvals and Permits**  
Contractor shall obtain all necessary permits for the Work and pay all applicable fees, unless otherwise noted on the plans and in the specifications. For bidding purposes, an allowance for all permit fees is included in the bid schedule under the item "allowance for permit fees." The Contractor shall be paid for the actual cost of the permit fees upon submitting a receipt showing the fee Contractor has paid. Excluded from the above allowance are items such as all costs incurred by the Contractor in securing the permit except for the actual permit fee established by the agency, cost for all shut downs or outages, cost for pole bracing, cost of permits for construction water, cost of construction water, cost for any additional insurance requirements, cost for any licenses, and other similar type costs. Contractor is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental and regulatory permit notices.

Copies of all permits and the associated notices must be provided to City prior to starting the permitted activity.

#### **4.3 PRE-CONSTRUCTION CONFERENCE**

- 4.3.1 Prior to the commencement of any Work, City will schedule a Pre-Construction Conference.
- 4.3.2 The purpose of this Conference is to establish a working relationship between Contractor, the utility firms, and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.
- 4.3.3 Prior to the Pre-Construction Conference, Contractor shall provide the Project Team with a Schedule of Values in a form specified by City reflecting the subcontracts and other categories that will be used to submit Pay Applications for the Work. The total amount of the Schedule of Values shall not be greater than the Contract Price. Once accepted by City in writing, the Schedule of Values for the Project will not be changed without the prior written approval of City.

4.3.4 Following the Pre-Construction Conference, Contractor shall submit a list of key personnel and contact information of the following: (1) Representative who is authorized to execute and sign documents on behalf of the firm, (2) Project Manager, (3) on-site Superintendent, (4) Safety Officer, and (5) 24-hour Emergency Contact, or other employee responsible for safety.

#### **4.4 PERFORMANCE OF THE WORK (INCLUDING FIELD MEASUREMENTS, SUBCONTRACTORS, AND SUPPLIERS)**

4.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate Contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.

4.4.2 Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, safety, sequences and techniques of construction.

4.4.3 Contractor's Superintendent or designee shall be present at the Site at all times any Work under this Contract is taking place. City reserves the option to specify when a Superintendent is required, as determined by the City Project Manager.

4.4.3.1 All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the work.

4.4.3.2 In the event of any noncompliance with this Section 4, City may require Contractor to stop or suspend the Work in whole or in part.

4.4.4 Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

4.4.5 Before starting the Work, Contractor shall carefully study and compare the various plans, drawings, other Contract Documents, and Specifications relative to that portion of the Work, as well as the information furnished by City, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. The exactness of grades, elevations, dimensions, or locations given on any Drawings, or the work installed by other contractors, is not guaranteed by City.

4.4.6 Before ordering materials or doing work, Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.

4.4.7 If Contractor observes error, discrepancies or omissions in the Contract Documents, it shall promptly notify the Design Professional and City and request clarification. If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission or difference and fails to report it to City, and if Contractor proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, it does so at its own risk and shall be liable to City for damages resulting from proceeding without clarification.

4.4.8 In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review shall be reported promptly to City.

- 4.4.9 Contractor shall establish and maintain all construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona.
- 4.4.10 Contractor shall be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 4.4.11 Contractor shall coordinate the activities of all Subcontractors. Contractor shall coordinate performance of the Work with City Engineering Department and other departments or agencies within City. The Design Professional and other contractors or parties involved in the Project. If City performs other work on the Project or at the Site with separate contractors under City's control, Contractor agrees to cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 4.4.12 Contractor shall insure that all employees performing any Work for which Contractor is responsible have a legal right to live and work in the United States. Upon request by City of Mesa, a copy of the Birth Certificate, Immigration and Naturalization Card, or Special Entry Permit shall be provided to the City Engineer. In addition, all compensation of any such employee shall meet all applicable requirements of the Fair Labor Standards Act (FLSA) and Federal Minimum Wage laws.
- 4.4.13 Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of City. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier. If a Subcontract/Supplier selection plan has been approved by City, Contractor will follow that plan unless otherwise approved by City in writing.
- 4.4.14 Contractor shall not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to City, and receiving prior written approval of the change from City, which approval will not be unreasonably withheld.
- 4.4.15 Contractor shall Work only with Subcontractors who are properly licensed and bonded with the State of Arizona, Registrar of Contractors.
- 4.4.16 MAG Specification § 108.2(E), requiring a minimum amount of self-performance by Contractor for certain scopes of work, does not apply.
- 4.4.17 Design Professionals and Contractors shall use the City's required project management information system as specified by the City for submission of design documents, daily reports, change orders, project submittals, project closeout, and any other project documents required by the City. No other system will be authorized.

#### **4.5 CONTROL OF THE PROJECT SITE**

- 4.5.1 Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.

- 4.5.2 Contractor shall take whatever steps, procedures or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of City and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations.
- 4.5.3 Contractor shall maintain Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities, including without limitation compliance with the 2010 regulations governing implementation of the ADA to the extent applicable. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, areas of refuge, and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to residents and the public.
- 4.5.4 Only materials and equipment used directly in the Work shall be brought to and stored on the Site by Contractor. When equipment is no longer required for Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.
- 4.5.5 Contractor agrees all persons working on the Site will act at all times in the best interest of the Project and will comply with all applicable rules and regulations reasonably set forth by City related to the Site. Notwithstanding the foregoing or anything in this Agreement to the contrary, City may remove from the Site any individual who City deems in their reasonable discretion to be creating a disturbance or causing any problem on the Site.
- 4.5.6 Contractor shall be responsible to City for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions.
- 4.5.7 City may conduct criminal, drive history, and all other requested background checks of Contractor and/or Subcontractor personnel performing Work or who have access to City's information, data, or facilities in accordance with City's current background check policies, and/or the provisions of the Project Specific Provisions. Any officer, employee or agent that fails to background check must be replaced immediately.
- 4.5.8 City shall have a final authority, based upon security reasons: (i) to determine when security clearance of Contractor's and/or Subcontractor's personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting personnel; and (iii) to determine whether or not any individual or entity may provide Services or perform Work under the Contract.
- 4.5.9 If City objects to any personnel for any reasonable cause, then Contractor shall, upon notice from City, remove such individual from the Project.

#### **4.6 PROJECT SAFETY**

- 4.6.1 The Project and all Work performed in relation thereto is governed by applicable provisions of the federal laws, including but not limited to, the latest amendments of the following:
  - a. Williams-Steiger Occupational Safety & Health Act of 1970, Public Law, 91-596.
  - b. Part 1019 and Part 1926 – Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations.
  - c. Part 1518 – Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

- 4.6.2 Contractor is responsible for safety of the job site for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at the site. City has established a written policy for Contract Construction Safety. Contractor shall comply with this policy which is Appendix 1 to these General Conditions.
- 4.6.3 Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work and stored On-Site or Off-Site; and (iii) all other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and (iv) the owners or tenants of adjacent property and their patrons, employees and invitees.
- 4.6.4 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 4.6.5 Contractor shall provide a "competent person" as required by O.S.H.A regulations. The "competent person" shall be identified at the Pre-Construction Conference with City advised in writing of any changes.
- 4.6.6 The "competent person" shall make regular inspections of the Site and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.
- 4.6.7 Contractor and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any City specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable legal and regulatory requirements.
- 4.6.8 Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Project Manager and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 4.6.9 Contractor's responsibility for safety under this Section 4 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- 4.6.10 As between City and Contractor, Contractor is responsible to City for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards. Contractor's responsibility for review, monitoring, and coordination of the Subcontractor's safety programs shall not extend to direct control over execution of the Subcontractors' safety programs. Notwithstanding Contractor's safety obligations to City, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of other's work in areas designated to be controlled by such Subcontractor for purposes of workers compensation insurance coverage.
- 4.6.11 Nothing in this agreement shall relieve Contractor of his responsibility to maintain traffic, structures, etc., as noted on the Plans, Specifications, and Project Specific Provisions. Contractor is responsible to provide all necessary shoring, bracing and trench support as is necessary to maintain traffic structures, etc., as stipulated in the Plans, Specifications, and Special Provisions.

If the stability of adjoining building, walls, roadways, etc., is endangered by Contractor's excavation, shoring, bracing, or under pinning shall be provided as necessary to ensure project safety. Cost for shoring, bracing, underpinnings, and trench support shall be included in the appropriate items listed in the Contract Price, and no additional payment shall be made for this work.

4.6.12 For all projects that include underground excavation or other work that could impact City utilities, Contractor shall be required to complete an online Damage Prevention and Traffic Safety Training prior to taking control of the jobsite. This includes background training on the various City utility systems, current City programs for locating and protecting existing utilities, a review of hazardous conditions specific to buried utility lines such as gas, electric, water, sewer, telecommunications, etc., and provides a forum for establishing lines of communication between appropriate City and Contractor staff prior to beginning work on the project.

- a. At a minimum, the following Contractor personnel shall attend this training and complete any required follow-up activities: Job Superintendent, Foreman, and Operator(s) from Contractor, the same staff from any major Subcontractor as determined by City. Contractor is encouraged to have additional field personnel attend, if possible.
- b. Following completion of the presentation, Contractor shall provide a letter to City's Project Manager certifying compliance with this Section. This will be submitted as a Shop Drawing. To be accepted by City, Contractor Certification Letter must specifically reference the Project Name and Number, the date(s) of presentation, and the names of personnel who attended.
- c. Contractor can register at <https://www.mesaaz.gov/Utilities/Energy/Energy-Safety-Education/Damage-Prevention-Training>.
- d. Completion of this training shall take place prior to the Contractor taking control of the job site and will typically occur after the Pre-Construction Conference. Contractor may arrange to attend prior to the Pre-Construction Conference, if desired. If the required Contractor field personnel do not attend this training session in a timely manner, a stop work order may be issued until the training is satisfactorily completed, and this will not be an acceptable basis for claiming an extension of Contract Time.
- e. Nothing in this Section or City's Damage Prevention and Traffic Safety Training shall be construed as replacing or superseding OSHA Regulations, Arizona State Law, and City's established policy for Contract/Permit Construction Safety (see General Conditions Appendix 1), or other applicable regulations. Contractor shall maintain and have sole responsibility for safety on the job site.

#### **4.7 MATERIALS QUALITY, SUBSTITUTIONS, AND SHOP DRAWINGS**

4.7.1 **Quality Control and Quality Assurance Testing**

See Mesa Amendments to MAG, Section C, Subsection 106.2.

4.7.2 **Trade Names and Substitutions**

4.7.2.1 Substitutions prior to bid will only be considered if in compliance with Arizona Revised Statute §34-104. §34-104c applies regardless of whether designed by an Architect or other design professional.

4.7.2.2 Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number: Unless it is indicated in the Contract Documents that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:

4.7.2.3 The substitution shall be submitted by Contractor in writing to City.

4.7.2.4 Contractor shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

4.7.2.5 The Submittal shall state any required changes in the Contract Documents to adapt the design to the proposed substitution.

4.7.2.6 The Submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the Submittal shall include any adjustment in the Contract Time created by the substitution.

4.7.2.7 Contractor, if requested by City, shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

4.7.2.8 City will make the final decision and will notify Contractor in writing as to whether the substitution has been accepted or rejected.

4.7.2.9 If City does not respond within twenty-one (21) calendar days, Contractor shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

4.7.3 Shop Drawings

4.7.3.1 Contractor shall prepare and submit Shop Drawings which show details of all work to ensure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.

4.7.3.2 A schedule of Shop Drawing submissions shall be submitted with the Project Schedule, as specified in Section 4.4.17, for City approval that avoids bulk submissions to the extent reasonably possible. The schedule of Shop Drawing submissions shall include all of the items for which Shop Drawings are required by the Contract Documents, including the Specifications.

4.7.3.3 Shop Drawings shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- All working and erection dimensions.
- Arrangements and sectional views.
- Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
- Kinds of materials and finishes.
- Parts list and description thereof.

4.7.3.4 Each Drawing or page shall include:

- Project Name, City of Mesa Project Number and descriptions.
- Submittal date and space for revision dates.
- Identification of equipment, product or material.
- Name of Contractor and Subcontractor.
- Name of Supplier and Manufacturer.
- Relation to adjacent structure of material.
- Physical dimensions clearly identified.
- ASTM and Federal Specifications references.
- Identification of and justification for deviations from the Contract Documents.
- Contractor's stamp, initialed or signed, dated and certifying the review of submittal, certification of field measurements and compliance with Contract.
- Location at which the equipment or materials are to be installed.

4.7.3.5 Location shall mean both physical location and location relative to other connected or attached material. City will return unchecked any submittal, which does not contain complete data on the work and full information on related matters.

4.7.3.6 Stock or standard drawings will not be accepted for review unless full identification and supplementary information is shown thereon in typewritten form.

4.7.3.7 Contractor shall schedule, prepare and submit and sequence all shop drawings in accordance with a reasonable timetable that will allow both the City adequate time to review and its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the work.

4.7.3.8 If the Shop Drawings show departures from the Contract requirements, Contractor shall make specific mention thereof in the Letter of Transmittal; otherwise review of such submittals by City shall not constitute review of the departure. Review of the drawings shall constitute review of the specific subject matter for which the drawings were submitted and not of any other structure, material, equipment, or apparatus shown on the drawings.

4.7.3.9 The review of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract. No construction called for by Shop Drawings shall be initiated until such drawings have been reviewed and approved by City.

4.7.3.10 The procedure in seeking review of the Shop Drawings shall be as follows:

- Contractor shall submit complete sets of Shop Drawings and other descriptive data as specified in Section 4.4.17.
- After Contractor's submittal or resubmittal of Shop Drawings, if Contractor has submitted Shop Drawings in accordance with the City-approved submittal schedule, or upon resubmission, City shall be provided with three (3) calendar weeks for review. Should City require additional review time above and beyond the three (3) calendar weeks, Contractor may ask for a time extension and/or monetary compensation, if they can present valid, factual evidence that actual damages were incurred by Contractor. City shall determine the amount of the time extension and/or the monetary compensation to be awarded Contractor, if any, in accordance with City's Policy Statement for Calculating Delays and Damages, Appendix 2.

4.7.3.11 Contractor shall be responsible for all extra costs incurred by City or the Project caused by Contractor's failure to comply with the procedure outlined above. This may also mean costs incurred due to delays for inadequate planning of distribution of time sensitive submittals.

4.7.4 Long Lead Time Items  
Contractor shall submit Shop Drawings, as required by the Engineer, on all long lead items to be furnished and installed as part of the Project within ten (10) calendar days after execution of the Contract. In addition, Contractor shall order all long lead items to be furnished and installed as part of this Project within three (3) calendar days after receiving approved Shop Drawings. For all long lead times for which shop drawings are not required, Contractor shall order said long lead items within fifteen (15) calendar days after execution of the Contract. Within two (2) days after ordering long lead items, Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

4.7.5 Construction Water  
If Contractor uses water from City's water system for construction water, Contractor shall obtain a fire hydrant meter from the Development and Sustainability Department, and all construction water shall be obtained through the hydrant meter. Contractor shall pay all fees related to the hydrant meter and all water bills for construction water. All cost for meters and construction water shall be included in the Contract Price.

**4.8 PROJECT RECORD DOCUMENTS**

4.8.1 During the construction period, Contractor shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings for Project Record Document purposes.

4.8.2 Contractor shall mark these drawings to indicate the actual installation where the installation varies from the original Construction Documents. Contractor shall give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- a. Dimensional changes to the Drawings.
- b. Revisions to details shown on Drawings.
- c. Locations and depths of underground utilities.
- d. Revisions to routing of piping and conduits.
- e. Actual equipment locations.
- f. Changes made by Change Order or Addendum.
- g. Details not on original Contract Drawings.

4.8.3 Contractor shall mark completely and accurately Project Record Drawing sets of Construction Documents and meet with the City on progress of this set at a minimum of once a month to compare notes and changes that should be captured.

4.8.4 Contractor shall mark Project Record Drawings sets in red.

4.8.5 Contractor shall note Request for Information (RFI) Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.

4.8.6 Contractor shall submit Project Record Drawing sets and Shop Drawings to City or its representative for review and comment.

4.8.7 Upon receipt of the reviewed Project Record Drawings from City, Contractor shall correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to City prior to Final Payment.

4.8.8 Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and shall be the sole judge of acceptance of these drawings.

**4.9 WARRANTY AND CORRECTION OF DEFECTIVE WORK**

4.9.1 Contractor warrants to City that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and the plans and specifications and all other terms and conditions of the Contract Documents, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

4.9.2 If Substantial Completion applies to this contract, the Warranty period begins on the Substantial Completion date noted in the Certificate, irrespective of early completion by some Subcontractors of their work. If Substantial Completion does not apply to this contract, the Warranty period begins on the date of Acceptance noted in the Letter of Acceptance. Contractor shall furnish extended warranties for facilities placed in service before Substantial Completion and that expire no earlier than one year beyond Substantial Completion, except as otherwise required in the Contract Documents. The Warranty period begins on Substantial Completion date noted in the Certificate of Substantial Completion. Warranty and management of warranty period shall be included in Contract Price.

4.9.3 Contractor's warranty obligation shall be in accordance with MAG Specifications.

4.9.4 In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors shall provide to City all of the following written warranties that apply to the Work, in a form acceptable to City.

- a. General Warranty – One (1) year
- b. Mechanical Contractor – Two (2) years
- c. Plumbing Contractor – Two (2) years
- d. Electrical Contractor – Two (2) years
- e. Roofing Contractor – Two (2) years
- f. Roofing Manufacturer – Ten (10) years
- g. Caulking – One (1) year
- h. Steel Joists, Certificate of Manufacture
- i. Exterior Metal Wall System – Five (5) years
- j. Painting – One (1) year
- k. Termite – Five (5) years
- l. Sheet Metal – Zinc coating thickness on hot-dipped galvanized metals – One (1) year
- m. Acoustical Tile – Five (5) years
- n. Resilient Floor Covering – One (1) year

4.9.5 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides City with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide City with all manufacturers' warranties prior to Substantial Completion, if applicable, or Final Acceptance if Substantial Completion does not apply.

4.9.6 Contractor agrees that it shall be responsible to manage and administer the correction of any Work that is not in conformance with the Contract Documents during the warranty periods set forth in Section 4.9.4 above, or during any longer periods to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

4.9.7 When notified of a warranty issue, Contractor shall respond in writing within 48-hours and shall perform warranty work as soon as material for said repairs are available (as judged solely by City), and in any event Contractor shall, take immediate steps to commence and complete correction of nonconforming Work no later than the time period set forth in City's written notification in accordance with the Contract Documents. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If defects develop which are determined by City to be an emergency, City shall notify Contractor, via the most expeditious means regarding the nature and condition of the defects. In turn, Contractor shall immediately dispatch necessary forces to correct the defect or the emergency condition in accordance with Contract Documents.

4.9.8 The time periods referenced in this Section apply only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies that City may have regarding Contractor's other obligations under the Contract Documents.

4.9.9 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to City all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. City and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.9.9.

4.9.10 Contractor's warranty excludes damages or defects caused by abuse, alterations to the Work not executed by or through Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

**4.10 CITY'S PERFORMANCE OF NECESSARY WORK**

- 4.10.1 During construction of the Project, if Contractor fails to comply with a request of City to perform required Work, or is unable to comply with said request, and it is necessary for City forces to do work that is normally Contractor's responsibility, City shall be justified in billing Contractor. Each incident requiring work by City forces shall be covered by a separate billing from City to Contractor.
- 4.10.2 The amount of each billing for City performed Work shall be either \$250 or the actual accumulated charges for employees' time, materials, and equipment, whichever is greater. Employees' time will be billed at each individual's hourly rate plus the applicable City overhead rate. Any materials used will be billed at cost. Equipment rates will be based on the most recent schedule of equipment rental rates for force account work, applicable under the Contract Documents.
- 4.10.3 Contractor shall pay City for the amount billed for City performed work, or at City's option, the amounts billed may be deducted from any payments due Contractor from City.

**SECTION 5 – CITY RESPONSIBILITIES****5.1 CITY PROJECT MANAGER AND INSPECTORS**

- 5.1.1 Project Manager is responsible for providing City-supplied information and approvals in a timely manner to assist Contractor to fulfill its obligations under the Contract Documents.
- 5.1.2 Project Manager will also provide Contractor with prompt notice when it observes any failure on the part of Contractor to fulfill its contractual obligations, including any default or defect in the project or non-conformance with the drawings and specifications.
- 5.1.3 City may utilize Field Inspectors to assist Project Manager during construction in observing performance of Contractor. City's use of Inspectors is for the purpose of assisting Project Manager and such Field Inspectors are not acting in a regulatory or any other capacity.
  - 5.1.3.1 The Inspectors are authorized to inspect all Work and materials furnished. Such inspections may extend to all or part of the Work and to preparation, fabrication or manufacture of the materials to be used.
  - 5.1.3.2 The Inspectors shall have the authority to issue instructions contrary to the Construction Documents if approved and coordinated with the directions of Project Manager.
  - 5.1.3.3 The Inspectors shall have the authority to reject work or materials until any questions at issue can be decided by Project Manager.
  - 5.1.3.4 The use of Inspectors by City shall not make City responsible for or give City control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the work in accordance with Contract Documents. The Inspectors are not authorized to direct any of Contractor's activities, employees or Subcontractors.
- 5.1.3.5 Inspections, Work Hours, and Holidays  
Various City Departments may be involved in inspections of the Work:

Engineering Department Inspections:

Inspections by the City Engineering Inspector (for contract administration, compliance, and quality) are available from 6:00 a.m. and 2:30 p.m., Monday through Friday, excluding City observed holidays.

The City requires a 48-hour notice by calling the assigned Engineering Inspector.

All work performed in the Right of Way, in a City-owned building, or on a City-owned facility requires inspection. Contractor must schedule their work during hours inspections are available or may choose to pay for after-hours inspections at the current rate as published in the current [City of Mesa Schedule of Fees and Charges](#).

#### Energy Resources Department (Gas Division) Inspections:

Inspections by the Gas Division are available between the hours of 6:30 a.m. and 3:30 p.m. Monday through Thursday, excluding City holidays. If a gas inspection is required, City will perform the inspection and requires a 48-hour notice by calling the assigned Gas Inspector.

#### Development Services Department (Building Safety Division) Inspections:

Inspections by the Building Safety Division (for building permit compliance) are available between the hours of 6:30 a.m. and 3 p.m. Monday through Friday, excluding City holidays. If a building permit inspection is required, follow the directions in the Building Permit, as referenced in Project Specific Provision Section 30.

#### City Observed Holidays:

- New Year's Day
- Martin Luther King Day
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day and following day
- Christmas Eve
- Christmas Day

Inspections are not available on these dates. These holidays shall be accounted for in the project schedule.

#### After-Hours Work:

City of Mesa construction projects shall comply with the City of Mesa noise ordinance (Mesa City Code 6-12-6). Any noise generating work taking place outside of the work hours designated in the ordinance requires an After-Hours Permit that can be requested through the City's Development Services Department DIMES portal. Any request to work after-hours must be submitted to the City a minimum of one week prior to the after-hours work being performed. When after-hours work will occur within 500 feet of a residential property, Contractor shall notify the impacted property owners and residents in accordance with Section 38 of the Project Specific Provisions.

## 5.2

### **DESIGN PROFESSIONAL SERVICES**

City may contract separately with one or more Design Professionals to provide construction administration of the Project. The Design Professional's Contract, as well as other firms hired by City shall be furnished to Contractor. Contractor shall not have the right to limit or restrict or reject any Contract modifications that are mutually acceptable to City and Design Professional.

**5.3 CITY'S SEPARATE CONTRACTORS**

City is responsible for all work performed on the Project or at the Site by Separate Contractors retained by City. City shall contractually require its Separate Contractors to reasonably cooperate with, and reasonably coordinate their activities so as not to interfere with Contractor in order to enable Contractor to timely complete the Work consistent with the Contract Documents. Contractor shall immediately notify the Project Manager, and address the matter in the next monthly status report pursuant to Section 6.2.4, if any activities of such Separate Contractors are expected to interfere, or are interfering, with Contractor and such interference will or could result in any delay in Contractor's performance of the Work.

**5.4 PERMIT REVIEW AND INSPECTIONS**

- 5.4.1 If requested by Contractor, Project Manager will provide assistance and guidance in obtaining necessary reviews, permits and inspections.
- 5.4.2 The regulating agencies of City, such as Development and Sustainability, Fire and Planning Departments, enforce Legal Requirements. The enforcement activities of City are independent and separate from this Agreement.

**5.5 PLANS AND SPECIFICATIONS TO THE CONTRACTOR**

Contractor shall be provided with an electronic set of plans and specifications at no cost from City, unless otherwise specified in the Contract or bid documents.

**SECTION 6 – CONTRACT TIME****6.1 CONTRACT TIME**

- 6.1.1 The Contract Time shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth in Section 6.4 below.
- 6.1.2 Contractor shall begin to fulfill Contractor's obligations under the Contract upon Contract execution. Contractor's obligations include providing City and other agencies with any submittals required by the Project Specific Provisions, including but not limited to, Project Schedule, Traffic Control Plans, and a Stormwater Pollution Prevention Plan. Contractor shall submit all such required submittals before any physical construction work commences on the Site. NTP does not authorize construction work until all contract, insurance, bonds, and schedules are submitted to and approved by the City.
- 6.1.3 The Contract Time shall be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Acceptance within the Contract Time.
- 6.1.4 Time is of the essence for Contracts, Projects, Work, and each phase and/or designated milestone thereof.

**6.2 PROJECT SCHEDULE**

- 6.2.1 The Project Schedule shall be updated and maintained throughout the Contract Time.
- 6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by City.
- 6.2.3 An updated Project Schedule shall be submitted monthly to City as part of the Payment Request. The monthly submittal shall include one full size plot of the entire schedule and one electronic copy containing the schedule in MSProject, pdf, or in a format acceptable to City.

In addition, Contractor shall, upon request by City, provide a copy of all submitted schedule data in electronic format which shall be clearly labeled with the project description, scheduling program name and version number, and schedule print/data date.

6.2.4 Contractor shall provide City with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.

6.2.5 With each Project Schedule submittal, Contractor shall include the following:

- Description of problem tasks, referenced to field instructions or requests for information (RFI's), as appropriate.
- Current and anticipated delays including:
  - Cause of the delay.
  - Corrective action and schedule adjustments to correct the delay.
  - Known or potential impacts and their delay on other activities, milestones, and their impact on the Substantial Completion and Final Acceptance dates.
- Changes in construction sequence.
- Pending items and status thereof including; but not limited to:
  - Time Extension requests;
  - Substantial Completion date status;
  - Final Acceptance date status.
- If ahead of schedule, the number of calendar days ahead.
- If behind schedule, the number of calendar days behind.
- Other project or scheduling concerns.

6.2.6 City's review of and response to the Project Schedule is for the purpose of: (1) City planning and staffing for the Project as may be required from time to time; (2) ensuring Contractor's general conformance with the scheduling requirements of the Contract Documents and completion of the Project within the Contract Time; and (3) monitoring and evaluating the construction status for purposes of approving monthly progress payments. Acceptance of a submitted schedule by City should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of Contractor. City's review shall not relieve Contractor from compliance with the requirements of the Contract Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

6.2.7 The Project Schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished material and construction by other contractors when those activities are interrelated with Contractor activities.

6.2.8 Critical Path Method (CPM)

6.2.8.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.

6.2.8.2 The CPM diagram schedule shall be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

6.2.8.3 The CPM diagram schedule shall indicate all relationships between activities.

6.2.8.4 The activities making the Project Schedule shall contain sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluation the progress of the Work. Individual activities shall not exceed thirty (30) days in length, in most cases.

6.2.8.5 The CPM diagram schedule shall be based upon activities, which coincide with the schedule of values.

6.2.8.6 The CPM diagram schedule shall show all submittals associated with each work activity, including lead times, and the review time for each submittal.

6.2.9 **Float Time**

6.2.9.1 The total Float Time within the overall schedule is for the exclusive use of City, but City may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.

6.2.9.2 Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, tec. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.10 **City-Caused Delays.** City-caused delays on the Project, if any, may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of credit changes which result in savings of time to Contractor, etc.) In such an event, Contractor shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded and the Contract Time is also exceeded.

6.2.11 **Rain-Related Delays.** Contractor is required, in preparing the Project Schedule to take into account all relevant weather conditions, including normal rainfall and distribution. No additional compensation shall be given for any rain-related delays or impacts on the Work or the Project Schedule. No time extension will be granted in the Project Schedule unless the rainfall during the construction of Work is unusually severe, was not reasonably anticipated, and the total rainfall was significantly in excess of the normal rainfall for the Project Site location. Normal rainfall for the Project will be determined from the 5-year average rainfall intensity for the Site as measured by the National Oceanic and Atmospheric Administration or comparable source of reliable information for rainfall in Mesa, Arizona. In addition, the excessive rainfall must have actually impacted Work activities on the Critical Path and caused delay beyond any remaining Float at the time of the rain-caused delay. The burden of documenting normal rainfall, the excessive rainfall and the impact on Critical Path activities is the responsibility of the Contractor. This may include specific documentation of activities impeding project progress, along with pictures or data noting the impact to be submitted for consideration of rain delay. All other provisions in the Contract Documents relating to claims, including without limitation notice requirements, apply to any claim by Contractor for a rain delay.

6.2.12 City's "Policy Statement for Calculating Delays and Damages," Appendix 2 to these General Conditions, shall apply to all claims of delay and/or delay damages.

### **6.3 SUBSTANTIAL COMPLETION**

6.3.1 When Contractor considers that the Work, phase or a portion thereof, which City agrees to accept separately, is substantially complete, Contractor, in conjunction with the Inspector, shall prepare and submit to the Project Manager a comprehensive Punch List of items to be completed or corrected prior to Final Acceptance and Final Payment. Failure to include an item on such Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.

6.3.2 Upon receipt of Contractor's Punch List, Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. Project Manager may, at Project Manager's sole option, be assisted in such inspection by the Design Professional for the Project. If the inspection by the Project Manager discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that City can occupy or utilize the Work, phase or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Project Manager. In such case, Contractor shall then submit a request for another inspection by Project Manager to determine Substantial Completion.

6.3.3 **Certificate of Substantial Completion.**

The Project Manager shall not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by City for its intended purpose, opening to the general public, full occupancy or use by City (including, without limitation, all separate units, or rooms, facilities, access, income-generating areas, and/or all areas serving the general public, as applicable, shall be ready for full-operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion.

A minor amount of Work, as determined by and at the discretion of the Project Manager, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed as a result of weather conditions, will not delay determination of Substantial Completion. If prior written approval is obtained from City for purposes of Substantial Completion, specified areas of the entire Work or Project may be individually certified as Substantially Complete. In no event shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable) and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by City, subject only to the Punch List items.

6.3.4 If requested by City, Contractor shall complete and turn over to City the Project on a phased basis. Each phase shall have a separate inspection by the Project Manager, a Punch List generated, and then an inspection by City with final approval and acceptance only after the Project Manager's Punch List.

6.3.5 Any change to the requirements for Substantial Completion outlined above shall require City approval through the change order process.

**6.4 FINAL ACCEPTANCE**

6.4.1 Unless otherwise expressly agreed to in writing by City, Final Acceptance must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Acceptance will be a material breach of the Contract.

- 6.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, City and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not occur until all items of Work, including Punch List Items, have been completed to City's satisfaction as reflected in the written Letter of Acceptance.
- 6.4.3 Final Payment under Section 8.4 below shall not be due, owing, or paid by City until Letter of Acceptance is issued.

## **6.5 CONTINUATION OF WORK**

- 6.5.1 Permitting Contractor to continue and finish the Work or any part of it after the time fixed for its completion (whether milestone, phase, Substantial Completion or Final Acceptance) or after the date to which the time fixed for any completion may have been extended, does not operate as a waiver by City of any rights under the Contract Documents, law or equity.
- 6.5.2 Furthermore, the timely completion of the Work being of the utmost importance under this Contract, notwithstanding the existence of one or more disputes between the parties concerning the scope of the Work, the Project Schedule, Contract Time, payments or any other matter, and further notwithstanding a party's invocation of the Dispute Resolution provisions specified in Appendix 8 of these General Conditions, unless City suspends the Contract or Contractor's performance pursuant to Section 10.1 of these General Conditions, Contractor will continue to prosecute the Work, including any Change Order work or Extra Work Orders, in a diligent and timely manner and not stop, slow down or impede by action or inaction the progress of the Work, including commencing performance of and thereafter completing any additional work called out in any Change Order or Extra Work Order issued by Project Manager with the approval of City, so long as City makes payment to Contractor in accordance with Section 8 of these General Conditions.

## **SECTION 7 – CONTRACT PRICE**

### **7.1 FIXED PRICE CONTRACTS**

- 7.1.1 The Contract Price for all Fixed Price Contracts shall be the amount set forth in the Contract.
- 7.1.2 The Contract price may only be changed as set forth in Section 9 below.

### **7.2 UNIT PRICE CONTRACTS**

- 7.2.1 The Contract Price for all Unit Price Contracts shall be the amount set forth in the Contract or Change Order multiplied by the verified quantity provided.
- 7.2.2 Measurements of quantities to determine the total Contract Price shall be in accordance with MAG Specification §§ 109.1 and 109.2.
- 7.2.3 The Unit Price may only be changed as set forth in Section 9 below.

### **7.3 COST BASED CONTRACTS (GMP OR TIME AND MATERIALS)**

The Contract Price for all Contracts based upon payment of the Cost of the Work plus a Fee with a GMP or Time and Materials shall be subject to the provisions of Section 15.2 below.

### **7.4 CHANGE ORDERS**

- 7.4.1 Fixed Price Change Orders: The Change Order Price for all Fixed Price Change Orders shall be the amount agreed to in the Change Order.
- 7.4.2 Cost Plus Change Orders: The Change Order Price for all Change Orders which are agreed to based upon a Cost-Plus basis, will be determined in accordance with Section 15.2 below.

7.4.3 **Unit Price Change Orders:** The Change Order Price for all Unit Price Change Orders shall be the amount set forth in the Change Order multiplied by the verified quantity provided.

7.4.4 Measurements of quantities to determine the total Change Order Price shall be in accordance with MAG specifications §§ 109.1 and 109.2.

7.4.5 The Unit Price may only be changed as set forth in Section 9 below.

7.4.6 MAG Specification § 109.4.1 is modified as follows:

Before § 109.4.1, the following is added:

Any deduction or increase in the Contract Price must be supported by a signed, written Change Order fully executed by City, and supported by such backup as the Project Manager may require. No adjustments in any Unit Prices will be allowed.

Sections 109.4.1(A) and (B) and 109.4.2(A) are deleted in their entirety.

## **7.5 CITY SALES TAX**

Contractor is required to pay City of Mesa Sales Tax on any contracting activity done for the City of Mesa, and this cost shall be included in all Contract Prices.

## **SECTION 8 – PAYMENT**

### **8.1 PAYMENT FOR PRE-CONSTRUCTION SERVICES**

Payments for Pre-Construction Services, if any, will be made pursuant to Section 17.8 below.

### **8.2 PAYMENT FOR CONSTRUCTION SERVICES**

8.2.1 Payment for the Work will be made in accordance with MAG Standard Specification § 109 as amended below. MAG Standard Specifications Section 109.7 (A) does not apply.

8.2.2 City will make monthly progress payments during the course of the contract. The payments (estimates of work completed) will be prepared by Contractor on form provided by City, and approved by Project Manager. The payment cycle will start with the date of the Notice to Proceed. City may process payments more frequently if requested by Contractor and agreed to in writing by City. City does not make prepayments or payments for stored materials.

The Contracting Agency will retain 10 percent of all estimates as a guarantee for complete performance of the contract in accordance with Arizona Revised Statutes Section 34-221 or 34-607, unless the Contractor elects to deposit securities in accordance with Arizona Revised Statutes Section 34-221, Paragraph C.5. or 34-607, Paragraph B.5.

The payment process functions as follows: Prior to the payment cycle date, Contractor shall send a Contractor Payment Request Form to Project Manager. The payment request shall include a schedule, status report, etc. per Section 6.2. The Project Team shall review the Contractor Payment Request Form and agree upon any necessary adjustments. Contractor shall certify the final Contractor Payment Request Form by signing and returning to the Project Manager. When approved by the Project Manager, the progress payment shall be processed for payment of any approved amounts within fourteen (14) calendar days (except final payments).

8.2.3 When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-609(B)(3), subject to all of City's rights to withhold or offset payments, and/or other rights of City, under the Contract.

8.2.4 City reserves the right under A.R.S. § 34-609(B)(3) to reinstate the ten percent (10%) retention if City determines that satisfactory progress is not being made.

**8.3 PAYMENT UPON SUBSTANTIAL COMPLETION**

8.3.1 No payment will be made upon Substantial Completion, except for a regularly scheduled monthly progress payment, as allowed by section 8.2.2.

8.3.1.1 No further payments will be made to Contractor until Final Acceptance.

**8.4 FINAL PAYMENT**

8.4.1 Subject to all of City's rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after:

- (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by City;
- (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, acceptable sewer video results (if applicable), and complete "as-built" drawings (including the Building Information Model, if required by the Contract Documents) have been delivered to City, as specified in this Section 8.4;
- (iii) full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Contractor;
- (iv) all conditions and requirements imposed by City or any financing entity for the corresponding disbursement have been met; and
- (v) Contractor delivers to City a Contractor Payment Request Form requesting Final Payment.

8.4.2 Contractor shall also submit a signed copy of Contractor's Affidavit Regarding Settlement of Claims, Appendix 4 to these General Conditions, prior to Final Payment.

8.4.3 In addition, if required under the Project Specific Provisions, Contractor shall compile a complete equipment list and maintenance manual to be submitted to City as a precondition to Final Payment. The list shall include the following items for all equipment supplied under the Plumbing, Electrical, Air Conditioning, Elevator, and other Special Equipment Specifications.

- a. Name, Model and Manufacturer.
- b. Complete parts lists and drawings.
- c. Local source of supply for replacement parts along with suppliers' telephone numbers.
- d. Local service organizations serving the equipment and their telephone numbers.
- e. All tags, inspection slips, instruction packages, etc., removed from equipment shall be properly identified as to pieces of equipment from which they were taken.

8.4.4 Contractor shall also deliver to City not more than five (5) calendar days after Letter of Acceptance, one (1) digital (in the format specified by City), and if requested by City, one (1) hard copy, of any applicable Maintenance manuals. Each manual shall include all manufacturer's operation and maintenance instructions and "as-built" drawings with the list herein specified. It shall also include all other diagrams and instructions necessary to properly operate and maintain the equipment, the name, address and telephone number of Contractor and all Subcontractors involved.

**8.5 CITY'S RIGHT TO WITHHOLD PAYMENT**

City may withhold payment to such extent as may be necessary in City's opinion to protect City from loss for which Contractor is responsible, including, without limitation, if any of the following conditions exist:

8.5.1 Defective Work not remedied;

- 8.5.2 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to City is provided by Contractor;
- 8.5.3 Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- 8.5.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- 8.5.5 Damage to City or another Contractor.
- 8.5.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 8.5.7 Failure to carry out the Work in accordance with the Contract Documents; or
- 8.5.8 Failure to submit a schedule, status report, etc. per Section 6.2; or
- 8.5.9 Failure to provide adequate documentation (receipts, purchase orders, invoices, etc.) for costs incurred and required per the Contract Documents; or
- 8.5.10 Contractor is in default of any of its other obligations under the Contract Documents.

#### **8.6 JOINT/DIRECT CHECKS**

Payments to Contractor may be made by checks payable jointly to Contractor and its employees, agents, subcontractors and suppliers, or any of them, and when in the sole opinion of City it is advisable, payments may be made directly to Contractor's Subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under this Contract.

#### **8.7 PAYMENT NOT A WAIVER**

No payment (nor use or occupancy of the Project by City) shall be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of City.

#### **8.8 LIENS AND BOND CLAIMS**

Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as City may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of City, or against payments due from City to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of City, against payment due from City to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) calendar days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless City from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

**8.9 FINANCIAL RECORD KEEPING AND CITY'S AUDIT RIGHT**

8.9.1 Records for all Contracts between City and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any City representative or any outside representative engaged by City for the purpose of examining such records. City or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of five years after Final Payment or longer if required by law. City's representatives may (without limitation) conduct verifications such as counting employees at the Site, witnessing the distribution of payroll, review of purchase orders and invoicing, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

8.9.2 Contractor's "records" shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes daily diaries, superintendent reports, drawings, receipts, purchase orders, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document.

Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; timesheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to City or the Project in connection with Contractor's dealings with City or the Project (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- a. Compliance with Contract requirements for deliverables;
- b. Compliance with approved Plans and Specifications;
- c. Compliance with § 14.9 below;
- d. Compliance with Contract provisions regarding the pricing of Change Orders;
- e. Accuracy of Contractor representations regarding the pricing of invoices; and/or
- f. Accuracy of Contractor representations related to claims submitted by Contractor or any of their employees.

8.9.3 Contractor shall require all payees (examples of payees include Subcontractors, Suppliers, Insurance Carriers, etc.) to comply with the provisions of this Section by including the requirements hereof in a written Contract Agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract included in their contracts with Contractor.

8.9.4 City's authorized representative(s) (including, without limitation, Project Manager) shall have reasonable access to Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Section.

8.9.5 If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to City (of any nature) by Contractor and/or Contractor's Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of City's audit shall be reimbursed to City by Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

8.9.6 In addition to the normal paperwork documentation Contractor typically furnishes to City, Contractor agrees to furnish, upon written request from City, any of the documentation necessary for City to exercise its audit rights under this Section 8.9 in computer readable file formats (Word, Excel, or .pdf), as City may designate.

8.9.7 City, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor's records in compliance with local, state or federal policies, statutes or at City's discretion, within five (5) years of Final Acceptance of the Work.

## **SECTION 9 – CHANGES TO THE CONTRACT**

### **9.1 EXTRA WORK/CHANGES IN THE WORK**

9.1.1 City reserves the right to make such changes in the Contract Documents, including plans and specifications for the Work, as it may deem appropriate and any such change as set forth in a written Change Order shall be deemed a part of this Contract as if originally incorporated herein.

9.1.2 In the event City and Contractor cannot agree on the terms of a Change Order, or when circumstances otherwise require, the Project Manager has the authority to direct the Contractor to perform extra work, if the work in question is an item not provided for in the Contract as awarded. The Project Manager shall have the authority to determine, based upon factual evidence presented by the Contractor, whether the work in question is an item not provided for in the Contract as awarded. If the Project Manager directs the Contractor to perform extra work, the Project Manager's instructions shall include a price that the Contractor cannot exceed in charging the City for the extra work. Upon receipt of the Project Manager's directions to perform extra work, the Contractor shall promptly proceed with the extra work and document the actual cost thereof. Contractor's right to payment for extra work shall be determined under subsection 9.1.4(d) below. The Contractor is responsible to manage the extra work to ensure that the price limits set by the Project Manager are not exceeded. Contractor shall perform the extra work and submit documentation for the actual cost of the extra work to the City. A Change Order will be issued to cover this work.

9.1.3 Contractor shall not be entitled to payment for extra work unless a written Change Order, in form and content prescribed by City, has been executed by City. On all requests for Change Orders, Contractor shall specify the increased and/or decreased costs and whether it believes any extensions of time will be necessary to complete its Work as modified by the Change Order. If extra work is performed under subsection 9.1.2 above, a corresponding Change Order shall be prepared, approved and processed by City before payment can be made to Contractor.

9.1.4 In general, pricing for Change Orders shall include the same mark-up percentages that were in effect when the Contract was awarded. The cost or credit to the City resulting from a change in the Work is subject to Appendix 2 (Policy Statement for Calculating Delays and Damages) and shall be determined, based on the type of pricing for the Contract involved, as follows:

- a. by actual cost and a percentage fee covering overhead and profit, as follows:
  - (i) Contractor shall perform the extra work and be compensated for actual cost of labor, materials and equipment.
  - (ii) Contractor shall have the right to add the fee percentage applicable to the Work under the Contract, or if no such fee has been agreed to by the parties, not more than five percent (5%) to the Subcontractor's prices for authorized extra work performed solely by Subcontractors. Such percentage shall include all of Contractor's charges for overhead, profit, administration and supervision.
  - (iii) Contractor or Subcontractor shall have the right to add the fee percentage applicable to Work under the Contract for self-performed extra work, or if no such fee has been agreed to by the parties, Contractor's or Subcontractor's maximum total allowable additions for overhead, profit, administration and supervision shall not exceed ten percent (10%) of actual verifiable labor, materials and equipment for such self-performed extra work.

- b. by unit prices stated in the Contract Documents;
- c. by mutual acceptance of a lump sum properly itemized in a form acceptable to City;

## **9.2 ACCURACY OF CHANGE ORDER PRICING INFORMATION**

9.2.1 Subject to §§ 9.2.2 through 9.2.4, signature by the contracting parties shall constitute full accord and satisfaction between City and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order or other modification of the Contract agreed to in writing.

9.2.2 Accurate Change Order Pricing Information: Contractor agrees that it is responsible for submitting accurate cost and pricing data to City to support its Fixed Price, Unit Price, and/or Cost Plus Change Order Proposals or other Contract price adjustments under the Contract. Contractor further agrees to submit Change Order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of change orders. Contractor agrees that any Buyout savings on Change Orders shall accrue 100% to Owner. Buyout savings for Change Orders are any savings negotiated by the Contractor with a Subcontractor or a Material Supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the Approved Change Order work.

9.2.3 Right to Verify Change Order Pricing Information: Contractor agrees that City, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor's records (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if City determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contract Price adjustments will apply to all levels of contractors and/or Subcontractors and to all types of Change Order proposals, specifically including Fixed Price, Unit Price, and Cost Plus Change Orders.

9.2.4 Requirements for Detailed Change Order Pricing Information: Contractor agrees to provide a detailed breakdown of allowable labor and labor burden cost (i.e., base wage rate of applicable classifications of workers, payroll taxes, and insurance and benefits costs). This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. Information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor rate cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

## **9.3 EMERGENCIES**

In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract price and/or Contract Time resulting from emergency work shall be determined as provided in this Section.

## **9.4 DIFFERING SITE CONDITIONS**

If Differing Site Conditions are encountered at the Project Site, then notice by the observing party shall be given to the other party promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) calendar days after first observance of the conditions.

City will promptly investigate such conditions and, if City determines that Differing Site Conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor will be entitled to equitable adjustment in the Contract Price or Construction Schedule (and other time requirements), or both. If it is determined by City that the conditions at the Project Site are not Differing Site Conditions and no change is justified, then City shall so notify Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within fourteen (14) calendar days after City has given notice of its decision. If City and Contractor cannot agree on an adjustment in the Contract price or Construction Schedule (and other time requirements), the adjustment shall be submitted to dispute resolution as provided in these General Conditions.

## **9.5 CHANGES IN LAWS, REGULATIONS, OR LEGAL REQUIREMENTS OR TAXES**

In the event of a material change in applicable Laws, Regulations, or Legal Requirements, or taxes subsequent to the date of the Contract by the parties, Contractor may be entitled to a Change Order, in City's discretion, to the extent Contractor can document to the satisfaction of City that such change significantly increases Contractor's actual cost of performance of the Work.

## **9.6 CHANGE ORDER DEADLINES**

Contractor shall notify the City of any potential change to the contract scope, cost, schedule, etc. within 14 days of becoming aware of the potential change. A formal change order request with all required supporting documentation shall be submitted to the City within 45 days of the initial notification of the change. Any change order request that does not meet these requirements or is submitted after Final Acceptance will not be considered, unless otherwise agreed to by the City. Contractor shall comply with this in addition to the timelines outlined in General Conditions 9.4 and General Conditions Appendix 2, Section V.

# **SECTION 10 – CURE NOTICE, SUSPENSION AND TERMINATION**

## **10.1 SUSPENSION**

City may suspend the Contract and/or Contractor's performance in accordance with MAG Specification § 105.1 and 108.7.

## **10.2 TERMINATION BY THE CONTRACTOR**

If City fails to make payment of any undisputed amounts within thirty (30) calendar days after such payment is due, then following fourteen (14) calendar days' prior written notice to City during which time the outstanding and undisputed amount remains unpaid, Contractor may terminate the Contract and recover from City payment for Work actually executed and for actual, proven loss with respect to materials, equipment, tools, construction equipment and machinery, including any associated Contractor's Fee, General Conditions Costs and actual damages incurred by Contractor solely as a result of such termination and not capable of mitigation. Under no circumstances shall City have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

## **10.3 TERMINATION BY THE CITY FOR CAUSE**

10.3.1 The City may terminate the Contract if City determines, in its sole discretion, that Contractor has defaulted in any of the following manners:

- a. Failed to begin the Work under the contract within a reasonable time,
- b. Failed to perform the Work with sufficient workmen and equipment or materials to assure the prompt completion of said work,
- c. Performed the Work unsuitably or neglected or refused to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable,
- d. Discontinued the prosecution of the Work,
- e. Failed to resume Work which had been discontinued within a reasonable time after notice to do so,

- f. At any time colluded with any party or parties,
- g. Allowed any final judgment to stand against him unsatisfied for a period of 14 calendar days,
- h. Failed to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors
- i. Disregarded laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or
- j. For any reason failed to carry on the Work in an acceptable manner, including any unreasonable delay, neglect, or uncured default.

10.3.2 Where any justification for termination listed above exists, City may send Contractor a formal notice to cure specifying the deficiencies in its performance of the Contract. Contractor shall respond within 14 calendar days identifying a timeline for correction of the deficiencies, which shall be subject to review, adjustment and comment by the City Engineer or designee. The conditions to cure such deficiencies must be satisfied in the opinion of the City Engineer, or designee, to bring the Contract into compliance.

10.3.3 Where Contractor fails to comply with the conditions and deadlines set forth in a notice to cure sent pursuant to 10.3.2, City may terminate.

**10.4 TERMINATION BY CITY FOR CONVENIENCE**

City may also terminate the Contract at any time for its convenience upon seven (7) calendar days written notice to Contractor specifying the termination date. In the event of termination which is not the fault, in whole or in part, of Contractor, City shall pay to Contractor only such compensation, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from City to Contractor.

**10.5 A.R.S. § 38-511**

The Contract is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511 Cancellation of Political Subdivision and State Contracts.

**10.6 NON-APPROPRIATION**

City is a government agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If City determines that it does not have funds to meet its obligations under the Contract, City shall have the right to terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available for the Project. In the event of such termination, City agrees to provide written notice of its intent to terminate thirty (30) days prior to the slated termination date.

**10.7** Upon any termination of the Contract, no further payments shall be due from City to Contractor unless and until Contractor has delivered to City any and all documentation required to be maintained by Contractor or provided by Contractor to City and all Confidential Information related to the Project. Under no circumstances shall City have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

**SECTION 11 – INSURANCE AND BONDS**

**11.1 INSURANCE REQUIREMENTS**

11.1.1 Contractor shall obtain, maintain, and provide verification of insurance coverage set forth in Exhibit B of the Contract.

11.1.2 City will not allow an Owner Controlled Insurance Program (OCIP) for the Project.

11.1.3 City may in the Contract Documents designate additional insured(s) along with City (and their respective employees, members, representatives, agents and affiliates) on all required insurance policies, and all coverage applicable to City under this Section 11.1 and Exhibit B shall apply to such designated additional insured(s) as well.

11.1.4 **Verification of Coverage**

11.1.4.1 Contractor shall furnish City with the most recent ACORD® Certificate of Liability Insurance form with additional insured endorsements as required under Exhibit B of the Contract.

11.1.4.2 All certificates and endorsements are to be received and approved by City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the durations required in this Section. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Contract.

11.1.4.3 City Project/Contract Number and Project description shall be noted on the ACORD® Certificate of Liability Insurance form. City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

11.1.5 **Subcontractors**. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to City separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including Exhibit B of the Contract.

**11.2 BONDS AND OTHER PERFORMANCE SECURITY**

11.2.1 Prior to execution of the Contract, Contractor shall provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price.

11.2.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two (2) years prior to the execution of this Agreement. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the state of Arizona or whose principal office is maintained in this state, as by law required.

11.2.3 The bonds shall be made payable and be acceptable to City. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 34-221, *et. Seq.*, as in Appendices 6 and 7 of these General Conditions, respectively.

11.2.4 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

11.2.5 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A- or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)" published by the A.M. Best Company.

11.2.6 Personal or individual bonds are not acceptable.

**SECTION 12 – INDEMNIFICATION**

12.1 To the fullest extent permitted by law, Design Professional or Contractor, its successors, assigns, and guarantors, shall indemnify and hold harmless the City, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Design Professional, Contractor, or other persons employed or used by Design Professional or Contractor

in the performance of this Contract

**12.2** If court of law determines that this section is void under A.R.S. § 34-226 because a word, words, or phrase in this section makes this section void under A.R.S. § 34-226, then such word, words, or phrase (as applicable) shall be deemed to be stricken to the extent necessary so that this section is not void under A.R.S. § 34-226 and the remaining obligations shall remain in full force and effect; and the language of this section shall be retroactively reformed to the extent reasonably possible in such a manner so that the reformed language provides essentially the same rights and benefits to the fullest extent permitted by A.R.S. § 34-226(B).

### **SECTION 13 – DISPUTE RESOLUTION**

**13.1** All disputes arising out of or relating to the Contract, the Work or the Project, other than termination under Section 10, shall be resolved pursuant to the Dispute Resolution process set forth in Appendix 8 of these General Conditions, and not pursuant to MAG Specifications § 110.

**13.2** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations under the Contract until such dispute is resolved.

**13.3** Notwithstanding any other provision in this Contract, City has the right to immediately file in court and pursue an action for a temporary restraining order and/or injunctive relief against Contractor if City determines that such action is necessary to protect its interests under the Contract, to obtain specific performance of any provision of the Contract, to advance the completion of the Project, or to protect health, welfare and/or safety, including without limitation, an action of an order directing CMAR to continue or return to construction the Work under the Contract.

### **SECTION 14 – MISCELLANEOUS PROVISIONS**

#### **14.1 CONTRACT DOCUMENTS**

**14.1.1** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Times for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

**14.1.2** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence as follows from highest to lowest: Change Orders, Addenda, Contract/Job Order, Project Specific Provisions, Master Agreement, General Conditions, Specifications, Drawings, Mesa Amendments to MAG Standard Specifications and Mesa Standard Details, and MAG Uniform Standard Specifications and Details for Public Works Construction.

**14.1.3** On the drawings, given dimensions shall take precedence over scaled measurements and large-scale drawings over small-scale drawings.

**14.1.4** The headings used in this Agreement or any other Contract Documents, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**14.1.5** The Contract Documents form the entire agreement between City and Contractor. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

**14.1.6** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party in the form of a Change Order.

#### **14.2 COOPERATION AND FURTHER DOCUMENTATION**

Contractor agrees to provide City such other duly executed documents as shall be reasonably requested by City to implement the intent of the Contract Documents.

**14.3 ASSIGNMENT**

Neither Contractor nor City shall, without the written consent of the other assign, transfer or sublet any portion of this Agreement or part of the Work or the obligations required by the Contract Documents, any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Contract.

**14.4 SUCCESSORS**

Contractor and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**14.5 NO THIRD PARTY BENEFICIARY**

Nothing under the Contract Documents shall be construed to give any rights or benefits in the Contract Documents to anyone other than City and Contractor, and all duties and responsibilities undertaken pursuant to the Contract Documents will be for the sole and exclusive benefit of City and Contractor and not for the benefit of any other party, unless otherwise expressly set forth in the Contract Documents.

**14.6 GOVERNING LAW AND VENUE**

The Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any court action to enforce any provision of the Contract or to obtain any remedy with respect hereto shall be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

**14.7 SEVERABILITY**

If any provision of the Contract Documents or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of the affected provision, the remainder of the Contract Documents, and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

**14.8 LEGAL REQUIREMENTS**

At all times relevant to its entry into this Contract and performance of the Services and/or the Work, Contractor shall fully comply with all Laws, Regulations, or Legal Requirements applicable to City, the Project, and the Contract, including, without limitation, those set forth on Exhibit C of the Contract.

**14.9 CONFLICT OF INTEREST**

- 14.9.1 Contractor agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, existing prior to the execution of the Contract. Further, Contractor agrees to disclose any financial or economic interest with the Project property, or any property affected by the Project, if Contractor gains such interest during the course of this Contract. If Contractor gains financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract. Any decision to terminate the Contract shall be at the sole discretion of City.
- 14.9.2 Contractor shall not engage the services on this Contract of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated and/or approved billings or Contract Modifications for this Contract.
- 14.9.3 Contractor agrees that it shall not perform services on this Project for a Contractor, Subcontractor, or any Supplier, not covered under this Contract.

**14.10 INDEPENDENT CONTRACTOR**

Contractor is and shall be an independent contractor. Any provisions in the Contract Documents that may appear to give City the right to direct Contractor as to the details of accomplishing the Work or to exercise a measure of control over the Work means that Contractor shall follow the wishes of City as the results of the Work only. These results shall comply with all applicable laws and ordinances.

**14.11 CONFIDENTIALITY**

Contractor, for the benefit of City, hereby agrees it will not release or cause or permit to be released to the public any press notices, publicity (oral or written) or advertising promotion relating to, any statement regarding, or any other public announcement or disclosure or cause or permit to be publicly announced or disclosed, in any manner whatsoever, the specific terms and conditions of this Agreement or any comment relating to the Project or the site. Notwithstanding the foregoing, Contractor shall be entitled to disclose the terms of the Agreement to the extent required by law or in the course of enforcing or defending a claim or action hereunder. Contractor shall give City reasonably prompt notice of any disclosure or statement made pursuant to this provision.

**14.12 SURVIVAL**

All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Agreement.

**14.13 COVENANTS AGAINST CONTINGENT FEES**

Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of City Council, or any employee of City has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, City shall have the right to annul the Contract without liability or at its discretion to deduct from the Contract Price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**14.14 NO WAIVER**

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part thereof, or the right of either party to thereafter enforce each and every provision.

**14.15 NONEXCLUSIVE REMEDIES**

The remedies set forth in this Contract are cumulative and not exclusive, and failure to exercise any remedy (including, without limitation, any right to terminate) shall not preclude any party from exercising any other right in seeking any other remedy available to it at law or in equity.

**14.16 PROJECT COMMUNICATIONS**

- 14.16.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract. City may change the designated Project Manager and, subject to Section 4.4.14 of these General Conditions, Contractor may change Contractor Representative, by written notice to the other.
- 14.16.2 Project communications may be exchanged by e-mail, but email communications cannot change the terms of the Contract or the scope of work or effectuate any change that requires a written change order.

14.16.3 Unless otherwise provided herein, notices under the Contract shall be in writing and shall be deemed to have been duly given and received either (a) on the date of service if personally or electronically served on the party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	City Engineer Engineering Department City of Mesa PO Box 1466 Mesa, Arizona 85211-1466
With a Copy to:	Assistant City Engineer and The Project Manager for the Contract Engineering Department City of Mesa PO Box 1466 Mesa, Arizona 85211-1466
To Contractor:	Contractor's Representative for the Contract

For specific project contact information and email address, call Engineering at 480-644-2251.

#### **14.17 CONTRACTOR EVALUATION**

Contractors are hereby advised that City has a Contractor Evaluation Program. To determine which Contractors are meeting their construction obligations, the evaluation may include the following items.

Quality of Construction; Quality of Project Supervision; Adherence to Contract Time, and Construction Schedule; Cooperation and Coordination with City Forces and Other Contractors Working in Project Areas; Use and Coordination of qualified Subcontractors and Suppliers.

Copies of City's evaluation form are available for review at the Engineering Department.

#### **14.18 DRUG FREE WORKPLACE PROGRAM**

14.18.1 City has adopted a policy establishing a drug free workplace for itself and as a requirement for Contractors doing business with City, to ensure the safety and health of employees working on City Projects. This program applies to all Contracts with Contract amount of \$25,000.00 or more.

14.18.2 Contractor shall require a drug free workplace for all employees working under the Contract. Specifically, all employees of Contractor who are working under a Contract with City shall be notified, in writing, by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace.

14.18.3 Failure to require a drug free workplace in accordance with the City's policy may result in termination of the Contract and possible debarment from bidding on future City projects.

#### **14.19 PROTEST POLICY**

Refer to City of Mesa Protest Policy: Procurement Rules at <https://www.mesaaz.gov/files/assets/public/v1/business-development/procurement/procurementrules.pdf>, Article 6. Protests, Appeals, Debarments, Confidential Information, and Contract Disputes.

**14.20 BIDS**

All General Contractors and Subcontractors shall hold their bids valid for a period of 60 days from the proposal due date stated on the Advertisement for Bids.

**14.21 BASIS OF AWARD**

The Contractor shall submit a bid for the Base Bid and for each of the Alternates. If the project is awarded, the City reserves the right to award to the lowest responsible, responsive bidder based on the Base Bid or based on the Base Bid plus any combinations of the Alternates.

**14.22 NON-DISCRIMINATION**

Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity and expression, veterans' status, marital status, or familial status, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VI of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), Mesa City Code, Section 6, Chapter 14, and any other applicable non-discrimination laws and rules.

**14.23 ISRAEL BOYCOTT DIVESTMENTS**

In accordance with the requirements of A.R.S. § 35-393.01, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of Israel.

**14.24 ETHNIC UYGHUR CERTIFICATION**

14.24.1 Forced Ethnic Uyghur Labor Prohibition. In accordance with the requirements of A.R.S. § 35-394, Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use (i) the forced labor of ethnic Uyghurs in the People's Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

14.24.2 Termination for Violation of Forced Ethnic Uyghur Labor Prohibition. If, after providing the certification described in 14.24.1, Contractor becomes aware that it is not in compliance with the certification, it shall notify the City within 5 business days of becoming aware of the noncompliance. Contractor acknowledges that it must remedy the noncompliance and provide written certification of that within 180 days after notifying the City of its noncompliance. If Contractor fails to remedy the noncompliance and provide the written certification within 180 days, the contract shall terminate immediately.

**SECTION 15 – PROVISIONS APPLICABLE SOLELY TO GMP AND COST-BASED CONTRACTS, CHANGE ORDERS, AND JOB ORDERS**

**Note:** The provisions in this Section 15 only apply to Contracts or Change Orders involving Guaranteed Maximum Price (GMP) or Cost-Based Pricing.

**15.1 ADDITIONAL DEFINITIONS**

The definitions set forth in Sections 2 apply to GMP and Cost-Based Contracts, Change Orders, and Job Orders, together with the additional definitions set forth below.

Baseline Cost Model –

A breakdown and estimate of the scope of the Project developed by CMAR pursuant to Section 17.5.1 of these General Conditions.

CMAR or Construction Manager at Risk –

The person or firm selected by City to provide pre-construction and/or construction services as detailed in a Construction Manager at Risk Contract with City. In these General Conditions, the term “Contractor” includes CMAR under both Pre-Construction and Construction Services Contracts.

CMAR Fee or Contractor’s Fee –

An agreed to percentage in an accepted GMP that represents the Contractor’s fee for performance of the Work.

Contract Documents –

Where compensation under the Contract is based upon a GMP accepted by City, the term “Contract Documents” also includes the accepted GMP Proposal.

Contract Price –

Where compensation under the Contract based upon a GMP accepted by City, the term “Contract Price” refers to the GMP.

Cost of the Work –

The direct costs necessarily incurred by Contractor in the proper, timely, and complete performance on the Work. The Cost of the Work shall include only those costs set forth in Section 15.2 of these General Conditions.

Cost-Based Contract, Change Order, or Job Order –

A Contract, Change Order, or Job Order where the Contract Price is based upon the actual cost of performing the Work, subject to the terms of the Contract Documents, including this Section 15. These would include those generally referred to as “Cost of the Work plus a Fee with a GMP,” or “Time and Materials plus a Fee.”

Deliverables –

The work products prepared by Contractor in performing the scope of work described in the Contract. Some of the major deliverables to be prepared and provided by Contractor during pre-construction may include but are not limited to: the Baseline Cost Model and Schedule that validate City’s plan and budget, Construction Management Plan, Detailed Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, Detailed Cost Estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, Constructability Review, Cost Control Log, Traffic control and phasing plans and others as indicated in this Contract or required by the Project Team.

Detailed Project Schedule –

The Detailed Project Schedule developed by the CMAR for the review and approval of the Project Manager in accordance with Section 17.3 of these General Conditions, if applicable.

General Conditions Costs –

Those costs set forth in Section 4 of Appendix 9 to these General Conditions.

GMP Plans and Specifications –

The plan and specifications upon which the Guaranteed Maximum price Proposal is based.

GMP Proposal –

The proposal of Contractor submitted pursuant to Section 17.7 of these General Conditions for the entire Work and/or portion (phases) of the Work.

Guaranteed Maximum Price or GMP –

The Guaranteed Maximum Price set forth in the Contract, Change Order, or Job Order if applicable.

Pre-Construction Services –

The services to be provided under the Pre-Construction Services Contract, including Section 17 of these General Conditions.

Pre-Construction Services Contract –

The Contract entered into between City and the CMAR for Pre-Construction Services to be provided by the CMAR, including, without limitation, the generation of a GMP Proposal. If the GMP Proposal is accepted by City and a Construction Contract is entered into between City and CMAR, the duties, obligations and warranties of the CMAR under the Pre-Construction Services Contract survive and are incorporated into the resulting Construction Contract.

**15.2 CONTRACT PRICE**

- 15.2.1 The Contract Price for all Contracts, Change Orders, and Job Orders based upon payment of the Cost of the Work plus a Fee with a GMP or Time and Materials plus a Fee shall be the Cost of the Work incurred agreed to in writing by City, limited to the amount of the GMP, if agreed to. Unless otherwise expressly provided in the Contract, Change Order, or Job Order, all Cost Based pricing shall be subject to and limited to GMP.
- 15.2.2 The Contract Price may only be changed as set forth in Section 9 above.
- 15.2.3 Only costs specifically designated as reimbursable costs are eligible for payment by City or may be charged against the Contract Price. All other costs will not be paid by City and shall not be chargeable against the Contract Price.
- 15.2.4 Cost-Based Contracts. For Contracts, Change Orders, or Job Orders, reimbursable costs shall be determined pursuant to Appendix 9 to these General Conditions, Cost of the Work, and not by MAG Specifications §109.5.
- 15.2.5 After the contract is executed, Contractor shall execute all Subcontractor and Supplier Contracts within 90 days, unless otherwise approved in writing by the City. Once these Subcontracts are executed, any Buyout Savings shall be identified and applied to the Contract per Appendix 9.

**15.3 ALLOWANCES**

- 15.3.1 Contractor shall include in the Contract Price all Allowances stated in the Contract Documents and agreed to in writing by City. Items covered by these Allowances shall be supplied for such amounts and by such persons as City may direct, provided Contractor will not be required to employ persons against whom Contractor makes a reasonable objection. Materials, labor, and equipment under an Allowance shall be selected by City in accordance with a schedule to be mutually agreed upon by City, Design Professional and Contractor or otherwise in reasonably sufficient time to avoid delay in the Work.
- 15.3.2 Unless otherwise provided in the Contract Documents:
  - 15.3.2.1 These Allowances shall cover the cost to Contractor, less any applicable trade discount, of the materials, labor, and equipment required by the Allowances, delivered at the Site, and all applicable taxes;
  - 15.3.2.2 Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit and other expenses relating to materials, labor, and equipment required by the Allowance shall be included in the Contract Sum and not in the Allowance; and

15.3.2.3 Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize the difference between actual costs for an Allowance item and the amount of the Allowance item and changes, if any, in handling costs on the Site, labor, installation costs, overhead, profit and other expenses.

#### **15.4 CONTINGENCY**

Contingency may only be included within the GMP with prior approval from the City. Contingency may only be used in accordance with the terms set forth in these General Conditions and with prior written approval by the City.

#### **15.5 REDUCTION IN RETENTION**

If the Contract Price is based upon a GMP, in order to receive payment of one-half of the retention as set forth in Section 8.2.2.3 above, Contractor must also submit to the Project Manager a complete accounting of the actual reimbursable Cost of the Work to date, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, buyout information, etc.) as required by City, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. In addition, all subcontracts shall be executed prior to any request for reduction in retention. Any excess payments by City, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to City. The Project Manager's determinations as to actual reimbursable Cost of the Work shall be the basis of payment until final Project Closeout and Final Payment under the Contract.

#### **15.6 FINAL PAYMENT**

If the Contract Price is based upon a GMP, as a further condition precedent to Final Payment by City, Contractor must submit to the Project Manager a complete final accounting of the actual reimbursable Cost of the Work, including all such documentation (including, without limitation, invoices, subcontracts, subcontractor change orders, purchase orders, records of payment, etc.) as City may require, to establish whether the payments made to Contractor equal, exceed, or are less than the actual reimbursable Cost of the Work to date. Any excess payments by City, as determined by the Project Manager, shall be deducted from the one-half retention payment to be made to Contractor, and any additional excess amounts paid to Contractor shall be refunded by Contractor to City. Disputes relating to the Final Cost of the Work shall be subject to City's audit rights under Sections 8.9 above and 15.7 below, and the dispute resolution process under Section 13 above.

#### **15.7 OPEN BOOK**

On any GMP-based or Cost-Based Contract, Job Order, or Change Order, City may attend any and all meetings or discussions pertaining to the Project, including bid openings, and shall have access to all books, invoices, accounts, memoranda, correspondence, and written communications or records of any kind pertaining to the Project, including without limitation, those stored in electronic format.

#### **15.8 DIFFERING SITE CONDITIONS AND/OR CHANGE IN LAWS**

A Change Order for increased costs under Section 9.4 or 9.5 above will only be considered or granted by City to the extent such actual, documented costs are justified.

### **SECTION 16 – PROVISIONS APPLICABLE SOLELY TO JOB ORDER CONTRACTS (JOC)**

**Note:** The provisions in this Section 16 only apply to Job Order Contracts. To the extent the Contract Price for a Job Order is a GMP or Cost-Based, the provisions of Section 15 above will also apply. To the extent a Job Order may include design services, the provisions of Section 17 below may also apply.

**16.1 ADDITIONAL DEFINITIONS**

The definitions set forth in Sections 2 and below shall apply to all Job Order Contracts and Job Orders. In addition, the definitions set forth in Section 15.1 above shall apply to all Cost-Based Job Orders.

**Schedule of Values –**

The Schedule of Values (SOV) shows the pricing for Contract Items, Equipment, and Labor Rates. The SOV is incorporated into the Contract as Exhibit E thereto.

**Contract –**

Includes specific Job Order Contract and Job Orders issued and agreed to by City and Contractor.

**Contractor's Job Order Proposal –**

The Proposal submitted by Contractors in response to an RFP issued by City to develop a Job Order.

**Guaranteed Maximum Price (GMP) Job Order –**

Job Order under which Contractor is compensated for actual costs incurred.

**Job Order –**

The document for a Project executed by City under a Job Order Contract, as modified by all Change Orders, if any, relating to the Project.

**Job Order Request for Proposal (RFP) –**

The Request for Proposal issued by City for each Job Order Project.

**16.2 ORDERING AND PROCESSING PROCEDURES FOR JOB ORDERS**

16.2.1 The process for developing and issuing a Job Order for a particular Project consists of three (3) procedures: (1) issuance of a RFP by City; (2) Contractor's response to the RFP in the form of Contractor's Job Order Proposal; and (3) Issuance of a Job Order by City, as set forth below.

**16.2.2 RFP's for Job Orders**

16.2.2.1 City will provide to Contractor RFP with a Scope of Work (SOW) describing the Work to be performed, which may include special instructions and conditions, material submittal requirements, and, if applicable, a complete set of sketches, construction drawings and specifications for the Job Order.

16.2.2.2 Some Job Order RFP's will be issued by City without detailed sketches, drawing and specifications and will rely on Contractor to produce them for City review and approval and is considered to be Pre-Construction and incidental design services included in Contractor's Fee. In addition, Contractor will not be reimbursed for any Pre-Job Order costs, including proposal preparation, attendance during negotiations, or site visits.

**16.2.3 Contractor's Job Order Proposal**

16.2.3.1 Contractor shall respond within twenty-one (21) Calendar Days of the RFP date or site visit, whichever is later or as otherwise indicated on a case-by-case basis, by submitting Contractor's Job Order Proposal to the City representative.

16.2.3.2 Unless otherwise required under the terms of the RFP, Contractor's Job Order Proposal shall include the following:

16.2.3.2.1 Contractor's Price Proposal in electronic format as specified by the City as set forth below; and

16.2.3.2.2 A Project Schedule and Schedule of Values that reflects the costs of each work element on the Schedule. The Schedule must show all milestones (e.g., permits, submittals, ordering materials, demolition, work phases, closeout and completion date); and

16.2.3.2.3 Necessary documentation will be required to indicate that adequate scoping, layout, setup and planning to accomplish the Work has been done. Examples of documentation that might reasonably be expected include sketches, drawings, calculations, catalog cut sheets and specifications.

16.2.3.3 For specific GMP Job Orders, City shall require Contractor to comply with any or all of the requirements of Section 17.7 below, where applicable.

16.2.4 Contractor's Price Proposal for GMP Job Orders

Contractor shall provide the Price Proposal for GMP Job Orders in the format as directed by City. Unless otherwise instructed by City in writing, all Price Proposals on GMPs shall comply with Section 15 above of these General Conditions. Contractor's Price Proposals for GMP Job Orders must, unless otherwise expressly set forth in the RFP, include a GMP for total performance of the Work.

16.2.4.1 For each proposal, the Contractor shall provide a breakdown of costs including, but not limited to labor rates, material costs, and equipment rates. All costs shall be broken down by division/specialty. City retains the right to have the Contractor establish Contractor's costs by bidding their costs against at least three (3) other interested trade Contractors. No self-performed work will be allowed to be performed on a lump sum basis.

16.2.4.2 The Contractor's Price Proposal shall include Exhibit F JOC GMP Summary and a breakdown of Contractor General Conditions Costs as set forth in Appendix 9 to these General Conditions, unless otherwise approved by the City. These direct costs shall be totaled. The total Job Order cost shall be this total cost with reasonable General Conditions Costs, General and Administrative Costs, Profit, Tax, Insurance and Bond, as set forth herein.

16.2.4.3 Contractor shall provide a summary of Subcontractor/Supplier quotes, identification of the Subcontractor/Supplier for each quote, and the selected quote. Cost shall be based upon firm price quotes from Subcontractors on Contractor's approved Subcontractor list. To the extent practicable, Contractor shall obtain firm price quotes from a minimum of three (3) Subcontractors for each discipline applicable to the project. If three (3) quotes cannot reasonably be obtained for a discipline, Contractor shall make known the reasons Contractor was unable to obtain additional price quotes.

16.2.4.4 Contractor shall provide City with copies of Subcontractor quotes and the basis for selection of each Subcontractor.

16.2.4.5 Contractor shall select Subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select Subcontractors based on price alone. A qualifications and price selection may be a one-step selection based on a combination of qualifications and price or two-step selection. In a two-step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.

16.2.4.6 If City objects to a selected Subcontractor, City shall make the objection and the reasons for the objection known to the Contractor. Contractor shall then present an acceptable Subcontractor for the applicable discipline. City shall not unreasonably object to or withhold approval of a Subcontractor.

16.2.5 Issuance of Job Order

16.2.5.1 City Representative will compare the Contractor's Job Order Proposal with the City's estimate, schedules and other requirements, and then, if the City Representative determines it is in the best interest of City, arrange a meeting with Contractor, at which time the Contractor's Job Order Proposal will be discussed and negotiated.

16.2.5.2 If the City Representative determines that it is in the best interest of the City, City shall then issue a Job Order to Contractor for execution.

16.2.6 Job Order Intent. Each Job Order shall include all items reasonably necessary to complete the Project under that Job Order as described in the scope of the Work in that Job Order. All Work shall be performed in a professional manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose, unless otherwise specified. The Notice to Proceed date, and the award date established therein, shall be deemed an integral part of the Job Order the same as if set forth therein.

### **16.3 DESIGN SERVICES**

16.3.1 This effort includes all "extensions of design" for systems that are typically specified in a performance-oriented manner by consultants and designers. Examples include: fire sprinkler systems, fire alarm and sprinkler systems, control systems, prefabricated metal building and similar situations. These designs are normally provided under submittals as a shop drawing with engineering backup and, as appropriate, seals of registered engineers specializing in the particular system.

16.3.2 Incidental Design includes all documents, sketches, schematic diagrams, floor plan layouts, equipment schedules and other documents produced by the contractor to define the work required for projects that the City does not develop formal or abbreviated designs requiring a seal by a registered engineer. Incidental design may include preparation of designs requiring an architect or engineer seal.

16.3.3 Contractor represents, covenants, and agrees, and contractually assumes the obligation to furnish, all of the required Incidental Design Services through properly licensed and experienced Design Professionals in complete accordance with all of the duties imposed on a Design Professional under the Contract Documents, Laws, Regulations, or Legal Requirements, and the common law.

16.3.4 All Incidental Design Documents (and all other Project-related documents, models, computer drawings and other electronic expression, photographs and other expressions CADD, and BIM files and images included) that Contractor and/or Contractor's Design Professional(s) prepare in connection with a Job Order and the copyrights therein (collectively, the "Instruments of Service") shall be the property of City. Contractor covenants and agrees to execute any additional document reasonably requested by City to confirm such assignment without any additional compensation.

### **16.4 CONSTRUCTION SERVICES**

16.4.1 The following subsections set forth requirements beyond those set forth in Section 4 above which apply to Construction Services performed under a Job Order.

16.4.2 Contractor shall perform the Work using only those firms, team members and individuals designated by Contractor consistent with each Job Order or otherwise approved by City pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager. For changes and replacements, see General Conditions Section 4.4.13 and 4.4.14.

16.4.3 Construction Phasing

16.4.3.1 City use of the Project Site is anticipated while the Work is being performed. The Work shall be planned and accomplished so that there will be a minimum of interference and inconvenience. Any blockage of exits, driveways, access to office space, buildings, or other access must be coordinated in advance.

16.4.3.2 The Work shall, so far as practicable, be done in definite sections or divisions and confined to limited areas which shall be completed before Work in other sections or divisions are begun.

16.4.4 **Work Site Conflicts.** In the event of a conflict between Contractor and others in an occupied area or where other Contractors are performing work on the same area under other Contracts, City shall decide the dispute and that decision shall be final.

16.4.5 **Ownership of Work Product.** Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of City. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to City. The rights in this Section are exclusive to City in perpetuity.

## **SECTION 17 – PROVISIONS APPLICABLE SOLELY TO PRE-CONSTRUCTION SERVICES**

**Note:** Unless otherwise specified in the Contract, the provisions in this Section 17 only apply to Contracts involving Pre-Construction services being performed by a CMAR (i.e., the Construction Manager at Risk Pre-Construction Services Contract). That is why in the Section 17, the term "CMAR" is utilized instead of the term "Contractor", which is utilized throughout the remainder of these General Conditions. See the definitions of "Contractor" in Section 2 above and "CMAR" in Section 15.1 above.

### **17.1 ADDITIONAL DEFINITIONS**

The definitions set forth in Section 2 and 15.1 above shall apply to all Pre-Construction Services Contracts.

### **17.2 GENERAL**

17.2.1 CMAR shall perform the Services required by, and in accordance with the Contract Documents and as outlined in Exhibit A of the Contract to the satisfaction of the Project Manager, exercising the degree of care, skill, diligence and judgment a professional construction manager experienced in the performance of such services for construction and/or facilities of similar scope, function, size, quality, complexity and detail to the Project in urban areas throughout the United States, would exercise at such time, under similar conditions. CMAR shall, at all times, perform the required services consistent with sound and generally accepted engineering principles and construction management and construction contracting practices.

17.2.2 As a participating member of the Project Team, CMAR shall provide to City and Design Professional a written evaluation of City's Project Program and budget, each in terms of the other, with recommendations as to the appropriateness of each. CMAR shall prepare a Baseline Cost Model that validates City's budget. The Baseline Cost Model shall include all assumptions and basis of estimates in enough detail so that the Project Team can compare future detail estimates to the Baseline Cost model for variances. City and Design Professional will provide all the reasonably required data that is available in order to reach agreement between the team members that the Baseline Cost Model is an accurate projection of the costs of the Project.

17.2.3 CMAR shall attend Project Team meetings, which may include, but are not limited to, bi-weekly Project management meetings, Project workshops, special Project meetings, construction document rolling reviews, public meetings and partnering sessions. CMAR attendance at design or other meetings in which CMAR is provided the opportunity but does not actively participate and/or is not properly prepared is not acceptable. Repeated instances of non-participation and/or lack of preparedness shall be grounds for termination of CMAR Contract for default.

17.2.4 CMAR shall provide Pre-Construction Services, described herein, in a timely manner and consistent with the intent of the most current Drawings and Specifications. CMAR shall promptly notify City in writing whenever CMAR determines any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work that deviates more than the allowed contingencies within the Baseline Cost Model or requires an adjustment in the Baseline Cost Model, Detailed Cost Estimate, Detailed Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such as established.

17.2.5 CMAR when requested by City, shall attend, make presentations and participate as may be appropriate in public agency and or community meetings, relevant to the Project. CMAR shall provide drawings, schedule diagrams, budget charges and other materials describing the Project when their use is required or appropriate in any such public agency meetings.

17.2.6 **Ownership of Work Product.** All Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of City. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or material, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. §101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to City. The rights in this Section are exclusive to City in perpetuity.

17.2.7 CMAR represents to City in completing Pre-Construction Services and providing the reports and analysis required thereunder, that Work can be properly and timely constructed within the GMP Proposal, if accepted. CMAR does not assume any design responsibilities unless specifically called for in the scope of work, but CMAR shall be responsible for their errors, omissions or inconsistencies included in the Work.

**17.3 DETAILED PROJECT SCHEDULE**

17.3.1 The fundamental purpose of the Detailed Project Schedule is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Detailed Project Schedule requirements. CMAR shall, however, develop and maintain the Detailed Project Schedule on behalf of and to be used by the Project Team based on input from the other Project Team members. The Baseline Project Schedule shall be developed as part of the Baseline Cost Model. The Detailed Project Schedule shall use the Critical Path method ("CPM") technique, unless required otherwise, in writing by City. CMAR shall use scheduling software acceptable to City to develop the Detailed Project Schedule. The Detailed Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Detailed Project Schedule shall indicate milestone dates for the phases once determined. As part of construction phase, City may require CMAR to prepare a "resource loaded" schedule for all work, including work performed by Subcontractors, detailing each of the project tasks and the required/anticipated number of personnel per day for each task. CMAR shall also indicate on the schedule its ability to meet said required/anticipated personnel requirements.

17.3.2 CMAR shall include and integrate in the Detailed Project Schedule the services and activities required of City, Design Professional and CMAR including all construction phase activities based on the input received from City and the Design Professional.

The Detailed Project Schedule shall define activities as determined by City to the extent required to show: (a) the coordination between preliminary design and various pre-construction documents, (b) any separate long-lead procurements, (c) any permitting issues, (d) any land, right-of-way, or easement acquisition, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) occupancy of the completed Work by City.

The Detailed Project Schedule shall include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, Total Float for all activities to the extent authorized by City, relationships between the activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Final Acceptance.

17.3.3 A Baseline Project Schedule shall be initiated with the project Baseline Cost Model and agreed to by the project team at the same time. CMAR shall update and maintain a detailed Progress Project Schedule throughout pre-construction such that it shall not require major changes at the start of the construction phase to incorporate CMAR's plan for the performance of the construction phase Work. CMAR shall provide updates and/or revisions to the Detailed Project Schedule for use by the Project Team, whenever required, but no less often than at the Project Team meetings. CMAR shall include with such submittals a narrative describing its analysis of the progress achieved to-date vs. the Baseline Project Schedule, including any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

17.3.4 If phased construction is deemed appropriate at the time of developing the Baseline Cost Model or during the development of the Detailed Project Schedule, and City and Design Professional approve, CMAR shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. CMAR shall take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

17.3.5 Long Lead Time Items. As part of developing the Detailed Project Schedule, CMAR shall identify all long lead time materials, fabrications, equipment, or other items which may impact the Project Schedule and may require early action on the part of the Project Team. Dates for selecting and ordering long lead time items will be included and highlighted in the Detailed Project Schedule

17.3.6 Equipment Plan. Contractor shall develop an Equipment Plan that addresses all rental and owned equipment, regardless of whether such equipment will be provided by CMAR or subcontractor(s), that will be necessary to construct the Project and the cost of which will be included as a Cost of the Work in the GMP Proposal. The Equipment Plan will seek to minimize the cost of the equipment to City and maximize the efficient and coordinated use of the equipment for completion of the Project. The Equipment Plan will not only include the costs and allowable lease rates for the equipment, but will also include an equipment schedule that will be incorporated into the Detailed Project Schedule and the Schedule of Values submitted with the GMP Proposal.

#### **17.4 DESIGN DOCUMENT REVIEWS**

17.4.1 CMAR shall evaluate periodically the availability of labor, materials/equipment, cost-sensitive aspects of the design; and other factors that may create an unacceptable variance to the Baseline Cost Model and/or Baseline Project Schedule.

17.4.2 CMAR shall recommend, in conjunction with the Project Team, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for CMAR to construct the Project. These additional investigations, if agreed to be necessary by the Project Manager and the Design Professional, shall be acquired by City and copies of the reports will be provided to CMAR.

17.4.3 CMAR shall meet with the Project Team as required to review designs during their development. CMAR shall familiarize itself with the evolving documents through pre-construction. CMAR shall proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. CMAR shall furthermore advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Drawings and Specifications. CMAR shall use established value analysis principles in recommending cost effective alternatives.

17.4.4 CMAR shall routinely conduct constructability and bid-ability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews shall attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, completeness and coordination of Work of Subcontractors and Suppliers.

17.4.4.1 CMAR shall evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design is prepared to facilitate fabrication, transport and installation; (e) sequences of Work required by or inferable from the Drawings and Specifications are practicable; (f) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues; and (g) the design maintains continued operation of the existing City systems and maintains traffic on adjacent roadways. CMAR shall also review the Drawings and Specifications to ensure that what is depicted therein can be constructed as designed and shall promptly inform the Project Team of any issues.

17.4.4.2 CMAR shall check cross-reference and complementary Drawings and sections within the Specifications and in general evaluate whether: (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well, or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to Differing Site Conditions.

17.4.4.3 The results of the reviews shall be provided to Project Team in formal, written reports clearly identifying all reviewed documents and the discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. CMAR shall meet with Project Team to discuss any findings and review reports.

17.4.4.4 CMARs reviews shall be from a Contractor's perspective, and though it shall serve to eliminate/reduce the number of RFIs and changes during the construction phase, responsibility for the Drawings and Specifications shall remain with the Design Professional and not CMAR.

17.4.5 It is CMAR's responsibility to assist the Design Professional in ascertaining that, in CMAR's professional opinion, the Construction Documents are in accordance with applicable Laws, Regulations, or Legal Requirements, building codes, sound engineering principle's rules and regulations.

If CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, sound engineering principle's rules and regulations, it shall promptly notify the Project Team in writing, describing the apparent variance of deficiency. However, the Design Professional is ultimately responsible for the compliance of the Drawings and Specifications with those laws, statutes, ordinances, building codes, rules and regulations.

17.4.6 The Project Team shall routinely identify and evaluate using value analysis principles and alternate systems, approaches, design changes that have the potential to reduce Project costs while still delivering a high quality and fully functional Project consistent with the Project Program. If the Project Team agrees, CMAR in cooperation with the Design Professional, will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. City, through the Project Manager, will direct which alternatives will be incorporated into the Project. The Design Professional will have full design responsibility for the review and incorporation of CMAR suggested alternatives into the Drawings and Specifications. CMAR shall analyze the costs and schedule impacts of the alternatives against the Baseline Cost Model and Schedule and provide a recommendation for the Project Team's consideration and City's approval prior to the establishment of the GMP.

## **17.5 BASELINE COSTS MODEL, DETAILED COST ESTIMATES, AND SCHEDULE OF VALUES**

17.5.1 At the conclusion of the Master Planning and Programming, if required, CMAR will review all available information regarding the design and scope of the Project using CMAR's experience in performing similar work, knowledge of similar projects and current and projected construction costs and, based upon that review, shall develop a Baseline Cost Model for review by the Project Team and approval by City. Once approved by City, the Baseline Cost Model shall be continually referenced as detailed estimates are created as the design progresses throughout Pre-Construction until the final GMP for the entire Project is established. A final GMP for the entire Project must be established and approved by City prior to the start of construction. It is the responsibility of CMAR to ensure City has sufficient information to evaluate and approve a final GMP prior to the time necessary to start construction so construction can be completed within the Contract Time. The Project Detailed Cost Estimate shall be the best representation from CMAR of what the complete functional Project's construction costs will be as indicated by the most current available documents and will be constantly checked against the Baseline Cost Model. CMAR shall communicate to the Project Team and assumptions made in preparing the Baseline Cost Model. The Baseline Cost Model shall support CMAR's Detailed Cost Estimates and may be broken down initially as dictated by the available information, as required by City.

17.5.2 After receipt of the Design Professional's most current documents from certain specified pre-construction milestones, CMAR shall provide a draft Detailed Cost Estimate including a detailed written report detailing any variances to the Baseline Cost Model and Baseline Project Schedule. The Design Professional and CMAR will reconcile any disagreements on the estimate to arrive at an agreed upon Detailed Cost Estimate for the construction costs based on the scope of the Project through that specified pre-construction milestone. Pre-Construction milestones applicable to this paragraph are: Master Planning and Programming, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Drawings. If no consensus is reached, City will make the final determination. If the Project Team requires additional updates of the Detailed Cost Estimate beyond that specified in this paragraph, CMAR shall provide the requested information in a timely manner.

17.5.3 If at any point the Detailed Cost Estimate submitted to City exceeds the previously accepted Baseline Cost Model or previously approved Detailed Cost Estimate agreed to as set forth in Section 17.5.2 above, CMAR shall make appropriate recommendations to project Team on means/methods, materials, and or other design elements that it believes will reduce the estimated construction costs, such that it is equal to or less than the established Project Team's Baseline Cost Model.

17.5.4 Unless other levels of completion are agreed to in writing in the Construction Documents, at 50% Construction Drawings and included with the associated report, CMAR shall also submit to the Project Team for review and approval a Schedule of Values that complies with the following requirements. The Schedule of Values shall be based on City standard bid schedule and highlight significant variances from any previously submitted Schedule of Values. The Schedule of Values shall be directly related to the breakdowns reflected in the Detailed Project Schedule and CMAR's Detailed Cost Estimate. In addition, the Schedule of Values shall: (a) detail unit prices and quantity take-offs, (b) detail all other contingencies and unit price Work shown and specified in the detailed design documents.

17.5.5 CMAR is to track, estimate/price and address the Project Team's overall project cost issues that arise outside of the Baseline Cost Model and the latest approved Detailed Cost Estimate such as: City generated changes, Project Team proposed changes, alternate system analysis, constructability items and value engineering analysis. The system used to implement this process will be referred to as the Design Evolution Log. This is to be addressed between the Baseline Cost Model and the Master Planning and Programming Detailed Cost Estimate, and then (unless other levels of completion are agreed to in writing in the Construction Documents) between the Detailed Cost Estimates for each of the pre-construction milestones thereafter, Schematic Design, 50% Design Development, 100% Design Development, and 50% Construction Documents, and the bid packages for all Phases.

17.5.6 Upon request by City, CMAR shall submit to City a cash flow projection for the Project based on the current updated/revised Detailed Project Schedule and the anticipated level of payments for CMAR during the design and construction phases. In addition, if requested by City and based on information provided by City, CMAR shall prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist City in the financing process.

17.5.7 Construction Water. CMAR shall estimate the quantity of water to be used and include the cost thereof in each Detailed Cost Estimate and GMP Proposal provided by City.

**17.6 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS**

17.6.1 There are two ways to select Subcontractors and major Suppliers prior to submission of a GMP Proposal: (1) qualifications-based selection; or (2) a combination of qualifications and price. In either case, CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers, and for compliance with the requirements of Title 34 of the Arizona Revised Statutes in the selection of a Subcontractors/Suppliers, to the extent applicable. CMAR shall comply with its Subcontractor Selection Plan submitted with its Statement of Qualifications.

17.6.2 The CMAR shall not deviate from the submitted Plan without approval from the City.

17.6.3 Qualifications Based Selection.

17.6.3.1 City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when CMAR can demonstrate it is in the best interest of the Project. All Work that is performed, after such a qualifications-based selection, for a price that is negotiated by CMAR will be billed in accordance with the GMP for actual costs and may be subject to audit by City.

17.6.3.2 Qualifications-based selection of a Subcontractor(s)/Supplier(s) should only occur prior to the submittal of the GMP Proposal.

17.6.3.3 CMAR must receive written City approval for each Subcontractor(s) and Supplier(s) chosen using this method.

17.6.3.4 CMAR shall negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

17.6.4 Qualifications and Price Based Selection.

17.6.4.1 All Work shall be competitively bid unless a Subcontractor or Supplier was selected pursuant to paragraph 17.6.3 above.

17.6.4.2 CMAR shall develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by City and solicit bids for the various Work categories. CMAR shall submit all bidding documents to City for approval prior to releasing bidding documents.

17.6.4.3 If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, CMAR may request approval by City to submit less than three names. Without prior written notice to City, no change in the recommended Subcontractors/Suppliers shall be allowed.

17.6.4.4 If City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, CMAR shall nominate a substitute Subcontractor/Supplier that is acceptable to City.

17.6.4.5 CMAR shall distribute Drawings and Specifications, and when appropriate, conduct a Pre-Bid Conference with prospective Subcontractors and Suppliers.

17.6.4.6 If CMAR desires to self-perform certain portions of the Work, it shall request to be one of the approved Subcontractor bidders for those specific bid packages. CMAR's bid will be evaluated in accordance with the process identified below. If events warrant and City concurs that it is necessary in order to ensure compliance with the Project Schedule and/or the most recent Detailed Cost Estimate, CMAR may be authorized to self-perform Work without bidding or rebidding the Work. When CMAR self-performs work without bidding, only the actual costs associated with performing the Work in accordance with the approved GMP will be billed and may be subject to audit by City.

17.6.4.7 The City shall receive, open, record and evaluate the Subcontractor/Supplier bids. Bids for each category of Work shall be opened and recorded at a pre-determined time. City shall provide bids and bid tabulation to CMAR when all bids have been received. The apparent low bidders shall be interviewed by City and CMAR to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals Project Team, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. CMAR shall resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of Work.

17.6.4.8 If after receipt of bids, City objects to any Subcontractor/Supplier or to any self-performed Work without any reasonable basis, CMAR shall nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are approved by City, CMAR's proposed GMP for the Work or portion thereof shall be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

17.6.5 CMAR shall be required to prepare two different reports on the subcontracting process.

17.6.5.1 Within fifteen calendar days after each major Subcontractor/Supplier bid opening process; CMAR shall prepare a report for City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report shall detail: (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each sub-agreement; (b) the sum of all recommended Subcontractor/Supplier bids received; (c) and trade work and its cost that CMAR intends to self-perform, if any.

17.6.5.2 Upon completion of the Subcontractor/Supplier bidding process, CMAR shall submit a summary report to City of the entire Subcontractor/Supplier selection process. The report shall indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.

17.6.5 The approved Subcontractors/Suppliers shall provide a Schedule of Values with their bid proposals, which shall be used to create the overall Project Schedule of Values.

## **17.7 GMP PROPOSAL**

17.7.1 When a GMP Proposal is submitted for a phase of the Work, the GMP will have a Detailed Cost Estimate of the Costs of the Work (as set forth in Section 15.2) in each phase of the Work that is being proposed plus the current estimate for all other Work. City will not approve the GMP for the phase of work without a total estimate for the complete Project. City may request a GMP Proposal for all or any portion of the Project and at any time during pre-construction. Any GMP Proposals submitted by CMAR shall be based on and consistent with Baseline Cost Model and the current update/revised Detailed Cost Estimate at the time of the request and include any clarifications or assumptions upon which the GMP Proposal(s) are based.

17.7.2 A GMP Proposal for the entire Project shall be the sum of the Cost of the Work, CMAR Fee, and General Conditions Cost. CMAR guarantees to complete the Project at or less than the final GMP Proposal amount plus approved Change Orders. CMAR shall be responsible for any costs for expenses that would cause the Cost of the Work actually incurred, including the Construction Fee and General Conditions Costs, to exceed the GMP.

17.7.3 CMAR shall prepare its GMP Proposal in accordance with City's request for GMP Proposal requirements based on the most current completed Drawings and Specifications at that time, which unless otherwise directed by City in writing, shall be at 100% Construction Drawings. CMAR shall mark the face of each document of each set upon which its GMP Proposal is based. These documents shall be identified as the GMP Plans and Specifications. CMAR shall send one set of those documents to the Project Manager, keep one set and return the third set to the Design Professional.

17.7.4 An updated/revised Detailed Project Schedule, Equipment Plan, and Schedule of Values shall be included in any GMP Proposal(s), all of which shall reflect the GMP Plans and Specifications the Detailed Project Schedule shall be shown in relationship to the Project Schedule and identify any variance to the Baseline Project Schedule. Any such Detailed Project Schedule updates/revisions shall continue to comply with the requirements of Section 17.3.1 through 17.3.5.

### **17.7.5 GMP Proposals(s) Review and Approval**

17.7.5.1 CMAR shall meet with the Project Team to review the GMP Proposal(s) and the written statement of its basis. In the event the Project Team discovers inconsistencies or inaccuracies in the information presented, CMAR shall make adjustments as necessary to the GMP Proposal.

17.7.5.2 If during the review and negotiation of GMP Proposals design changes are required, City may authorize and cause the Design Professional to revise the GMP Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised GMP Plans and Specification will be furnished to CMAR. CMAR shall promptly notify the Project Team in writing if any such revised GMP Plans and Specifications are inconsistent with the agreed upon assumptions and clarifications.

17.7.6 All portions of or items comprising the GMP Proposal are subject to audit by City, as deemed appropriate by City, including, without limitation, any based upon unit prices or Work to be self-performed by CMAR, or its affiliates.

**17.8 PAYMENT PROCEDURE FOR PRE-CONSTRUCTION SERVICES**

17.8.1 Requests for monthly payments by CMAR for Pre-Construction Services shall be submitted monthly and shall be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month.

17.8.2 In no event will City pay more than seventy-five (75%) of the Contract Price until acceptance of ALL Pre-Construction Services and award of the final approved Construction Services Contract for the entire Project by City Council. If CMAR does not prepare a GMP Proposal that is acceptable to City, or the GMP Proposal exceeds the City's Construction Budget, then CMAR understands and acknowledges that it will forfeit any right to receive the 25% of the Contract Price being retained by City.

17.8.3 CMAR agrees that no charges or claims for costs or damages of any type shall be made by it for any delays or hindrances beyond the reasonable control of City during the progress of any portion of Pre-Construction Services specified in this Contract. Such delays or hindrances, if any, shall be solely compensated for by an extension of time for such reasonable period and may be mutually agreed between the parties. It is understood and agreed, however, that permitting CMAR to proceed to complete any such Services, in whole or in part after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of City of any of their respective legal rights herein.

17.8.4 No compensation to CMAR shall be allowed contrary to Article I, Chapter I, Title 34 of the Arizona Revised Statutes.

17.8.5 If any service(s) executed by CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of CMAR, CMAR is to be paid for the services performed prior to the abandonment or suspension.

**17.9 SURVIVAL OF THE DESIGN SERVICES CONTRACT, DUTIES, OBLIGATIONS AND WARRANTIES**

If the GMP Proposal is accepted by City and a Construction Contract is entered into between City and CMAR, the duties, obligations and warranties of CMAR under the Pre-Construction Services Contract survive and are incorporated into the resulting Construction Contract.