

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT is entered into as of the Effective Date set forth below between the CITY OF BISBEE, an Arizona municipal Corporation (“City”) and **Viking Special Contracting** (“Contractor”). The City and the Contractor are sometimes referred to individually as a “Party” and collectively as the “Parties” as context requires.

In consideration of the mutual promises of the Parties, the City and the Contractor agree as follows:

1. **The Work**: The Contractor shall furnish all labor, materials, equipment, supplies and other items necessary to perform the Work for the Project described as: **Hillcrest E.P.A Mitigation** located at **1 Hillcrest Drive**, Bisbee, Arizona, in strict accordance with the Drawings and Specifications and all other Contract Documents.

2. **Contract Price**: Subject to increases and decreases for Change Orders in accordance with the Contract Documents, the City shall pay to the Contractor the following Contract Price, in progress payments as provided in the Contract Documents: **\$217,232.49**

Supplemental Terms and Conditions: The following supplemental terms and conditions and/or documents and supplements thereto are incorporated into this Contract as though fully set forth:

- A. Invitation for Bids and Bid Form
- B. The Project Manual
- D. Plans/Construction Drawings
- E. Payment and Performance Bonds

ARTICLE I - DEFINITIONS

For purposes of this Contract, the following definitions shall apply:

1.1 “Addenda” means clarifications or changes in the Work or the Contract provided to bidders in writing prior to the public bid on the Contract.

1.2 “Bid” or “Offer” means a responsive bid or quotation submitted by a Bidder in response to the Invitation for Bids.

1.3 “Bid Form” means the document provided by the City of Bisbee for the Bidder’s to provide unit prices for items in the Work, sign and return.

1.4 “Bid Deadline” means the date and time set forth on the cover of the RFP for the Purchasing Division to be in actual possession of the sealed Bids.

1.5 “Bid Opening” means the date and time set forth on the cover of the Invitation for Bids for opening of sealed Bids.

1.6 “Bidder” means any person or firm submitting a competitive Bid in response to the RFP.

1.7 “City” means the City of Bisbee, an Arizona municipal corporation.

1.8 “City Representative” means the City employee who is responsible for monitoring and overseeing the Contractor’s performance under this Contract and for providing information regarding details pertaining to the Work.

1.9 “Confidential Information” means that portion of a Bid, proposal, Offer, or protest that contains information that the person submitting the information believes should be withheld, provided (i) such person submits a written statement advising the City of this fact at the time of the submission and (ii) the information is so identified wherever it appears.

1.10 “Contract” means, collectively, the (i) Offer/Bid, (ii) Project Manual)/(ii) the RFP, including all exhibits, (iii) the Contract, (iv) the Notice of Award, (v) the Notice to Proceed or Purchase Order(s), (vi) any Addendum, Change Order or Amendment, (vii) the Contractor’s Certificates of Insurance and a copy of the Declarations Page(s) of the insurance policies, (viii) the Certificate of Completion and (ix) any Plans, Specifications or other documents attached, appended or incorporated into the RFP or this Contract by reference. Alternate or optional bid items will become part of this Contract only if they are accepted by the City in writing on the Bid Form.

1.11 “Contractor” means the individual, partnership, corporation or limited liability company who has submitted a Bid in response to the RFP and who, as a result of the competitive bidding process, is awarded a contract for Materials or Services by the City.

1.12 “Contract Time” means the time period during which the Contractor must complete all of the Work related to the Project.

1.13 “Day(s)” means calendar day(s) unless otherwise specified.

1.14 “Final Completion” shall be defined as set forth in Section 2.17 and shall occur not later than 30 Days from the date of Substantial Completion unless otherwise designated by the City and subject to modification by changes in the Work as provided below.

1.15 “Materials” means any personal property, including equipment, materials, replacements, and supplies provided by the Contractor in conjunction with this Contract and shall include, in addition to Materials incorporated in the Project, equipment and other material used and/or consumed in the performance of the Work.

1.16 “Price” means the total expenditure for the defined Project, inclusive of all Materials, commodities or Services.

1.17 “Project” means the purpose and Work described as set forth in the of the RFP.

1.18 “Punch List” means that list of items provided by the City to Contractor at the time of Substantial Completion indicating items to be completed or corrected, including the time for completion or correction by Contractor after Substantial Completion.

1.19 “Services” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance and as further defined in this Contract. This term does not include “professional and technical services” as defined in the Procurement Code.

1.20 “Site” is the land or premises on which the Project is located.

1.21 “Specification” means any description of the physical characteristics, functional characteristics, or the nature of a commodity, product, supply or Services. The term may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

1.22 “Subcontractor” means those persons or groups of persons having a direct contract with the Contractor to perform a portion of the Work and those who furnish Materials according to the plans and/or Specifications required by this Contract.

1.23 “Sub-Subcontractor” is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor’s Work and shall include material men and suppliers.

1.24 “Substantial Completion” shall be defined as set forth in Section 2.16 below and shall occur not later than the date set forth in the schedule, subject to modification by changes in the Work as provided herein.

1.25 “Request for Proposals” or “RFP” means the request by the City for participation in the competitive bidding process according to all documents, including those attached or incorporated herein by reference, utilized for soliciting Bids for the Materials and/or Services in compliance with the City’s Procurement Code.

1.26 “Vendor” means any firms, entities or individuals desiring to prepare a responsive Bid in response to the RFP.

1.27 “Work” means all labor (including supervision), Materials and equipment incorporated or to be incorporated in the Project that are necessary to accomplish the construction required by this Contract.

ARTICLE II - GENERAL TERMS

2.1 Plans and Specifications to Successful Contractor. The successful Contractor may obtain one (1) hardcopy and one (1) electronic set of the Plans and Specifications for this Project from the City at no cost.

2.2 Contract Time. The Contract Time for this Project shall be ten (10) Days from the Notice to Proceed. All Work on the Project shall be completed on or before the expiration of the Contract Time.

2.3 Pre-Construction Conference. Prior to the start of the Work, the Contractor shall attend a pre-construction conference. The City will contact the Contractor to schedule a specific date, time and location for the pre-construction conference. The purpose of this conference is to outline specific items and procedures and to address items that require special attention on the part of the Contractor. The Contractor may also present proposed variations in procedures that the Contractor believes may (A) improve the Project, (B) reduce cost or (C) reduce inconvenience to the public. Any necessary coordination and procedures for construction inspection and staking will be addressed during the pre-construction conference. The Contractor will be required to provide the following items at, or prior to, the pre-construction conference, each of which is subject to review and approval by the City:

23.1 Key Personnel; Subcontractors. A list of the names and emergency telephone numbers of all proposed key personnel, Subcontractors and suppliers that the Contractor intends to utilize on the Project, in the form attached hereto as Exhibit H and incorporated herein by reference. The term "Key Personnel" means individuals who will be directly assigned to this Project and includes, but is not limited to, the owner, principals, project manager, project superintendent, scheduler, construction engineer and supervisory personnel. At least two of the Bidder's Key Personnel must have a minimum of three years' experience in similar projects and the scheduler must have experience in employing scheduling techniques appropriate for this Project. Resumes of Key Personnel shall be submitted upon request by the City's Representative. Proposed Subcontractors shall be qualified and have the requisite professional or technical licenses and be licensed to do business in the State of Arizona. The list shall include such information on the professional background of each of the assigned key individuals as may be requested by the City Representative. Such key personnel and Subcontractors shall be satisfactory to the City and shall not be changed except with the written consent of the City. Additionally, the City shall have the right to request that the Contractor personnel and Subcontractors be removed from the Project if, in the City's sole discretion, such personnel or Subcontractor(s) are detrimental to the Project delivery process. Upon receipt of such request, the Contractor shall remove such personnel or Subcontractor(s) unless the Contractor can provide the City with sufficient documentation to prove it is commercially impractical to replace the personnel or Subcontractor(s) with substitute personnel possessing similar qualifications. The City's approval of substituted personnel or Subcontractor(s) shall not be unreasonably withheld.

232 Progress Schedule. A construction progress schedule showing the estimated time for start and completion of the major items of Work and the critical path for completion of the Work.

233 Payment Schedule. A payment schedule showing the estimated dollar volume of Work for each calendar month during the life of the Project.

234 Traffic Control. If requested by the City, a written proposal, prepared by an individual who is IMSA or ATSSA certified, outlining the intended plans for traffic control and for maintaining continuous access to residences and businesses along the construction site.

235 Drawings, Materials & Equipment. An itemized list of all required shop drawings, material and equipment submittals and a schedule indicating the dates each of these items will be transmitted to the City for review.

2.4 Notice to Proceed. The Notice to Proceed shall stipulate the actual Contract start date, the Contract Time and the dates of Substantial Completion and Final Completion. The time required for the Contractor to obtain permits, licenses and easements shall be included in the Contract Time and shall not be justification for a delay claim by the Contractor. The time required for the Contractor to prepare, transmit, and obtain approval of applicable submittals shall be included in the Contract Time and shall not be justification for a delay claim by the Contractor. No Work shall be started until after all required permits, licenses, and easements have been obtained. The Contractor shall notify the City, in writing, at least 72 hours before the following events:

241 Commencement. The start of construction.

242 City Services Shut Down. Shutdown of City water, sewer, drainage, irrigation and/or traffic control facilities.

243 Well or Pump Shut Down. Shutdown of existing water wells and booster pumps. Such shutdown shall not exceed 72 hours of any facility and only one facility may be shutdown at any one time.

244 Water. All draining and filling of waterlines and irrigation laterals and all operations of existing valves or gauges. The City will furnish all required water meters to measure the amount of water used during the Work; provided however, that the meter provided is only for construction purposes. The Contractor shall pay for all water used to complete the Work.

245 Start-up and Testing. Start-up or testing of any water well or booster pump to be connected to any part of the existing City water system. This includes operation of existing valves necessary to accommodate the water.

2.5 Laws and Regulations. The Contractor shall keep fully informed of all rules, regulations, ordinances, statutes or laws affecting the Work herein specified, including existing and future (A) City and County ordinances and regulations, (B) State and Federal laws and (C) Occupational Safety and Health Administration (“OSHA”) standards.

2.6 Rights-of-Way. The Contractor shall obtain an encroachment permit for any of the Work completed in the public right-of-way. The Contractor will be responsible for any required Cochise County permits or other agency permits. The City will provide any necessary easements for Work specified under this Contract, and the Contractor shall not enter or occupy with workers, tools, equipment or materials any private ground outside the property of the City without the written consent of the owner thereof. The Contractor, at its own expense, is responsible for the acquisition of any additional easements.

2.7 Inspection and Compliance. The Contractor shall inform itself fully of the conditions relating to the construction of the Project and the employment of labor thereon and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work. Failure to do so will not relieve the Contractor of its obligation to furnish all material and labor necessary to carry out the provisions of this Contract. Insofar as possible in carrying out its work, the Contractor shall employ such methods or means as will not cause any interruption of or interference with the Work of any other contractor. Contractor affirms that it has inspected the jobsite and has thoroughly reviewed this Contract including, without limitation, the Scope of Work/Specifications listed on Exhibit A, as the same may be revised by the City, and is not relying on any opinions or representations of City; and by submission of the bid herein avows that the Contractor has satisfied itself as to the character, quality and quantity of surface and subsurface materials or existing obstacles to be encountered. Contractor agrees to perform and complete such Work in strict accordance with this Contract and under the general direction of the City. Contractor agrees that any exclusions of any Work must be approved in writing by the City prior to acceptance of this Contract or same shall not be excluded hereunder. Contractor shall provide all competent supervision necessary to execute all Work and any Work incidental thereto in a thorough, first-class, workmanlike manner. It is Contractor’s responsibility that all of the Work and any Work incidental thereto conforms to, and is performed in accordance with, all applicable Federal, State, County and City laws, codes, ordinances, regulations (including National Pollutant Discharge Elimination System and air pollution standards) and orders of public authorities bearing on performance of the Work.

2.8 Environmental Matters. Contractor shall provide or cause to be provided a copy of this Section (Environmental Matters) to each Subcontractor and each Sub-subcontractor participating in the Work.

2.8.1 Definitions. The following terms will have their respective designated meanings:

2.8.1.1 “City Hazardous Waste” means Hazardous Waste (i) that consists of Hazardous Substances in any existing structure, facility or equipment on City’s

property or otherwise present on City's property at commencement of the Work, and (ii) that has become Hazardous Waste due to any part of the Work. However, City Hazardous Waste does not include any Hazardous Substance that has become a Hazardous Waste due to any Contractor Release.

28.12 "Contractor Hazardous Waste" means any Hazardous Waste arising during or from the Work that is generated by the acts or omissions of the Contractor, a Subcontractor or any Sub-subcontractor (including, without limitation, a Contractor Release) and that is not City Hazardous Waste.

28.13 "Contractor Release" means a Release of a Hazardous Substance (including, without limitation, Hazardous Substances that were on or in City's property at commencement of the Work) arising from acts or omissions of Contractor or any Subcontractor or Sub-subcontractor or their employees or workers. However, Contractor Release does not include Releases of pre-existing Hazardous Substances on City's property of which the City had not made Contractor aware and as to which Contractor, Subcontractors, and Sub-subcontractors acted reasonably.

28.14 "Environmental Law" means any and all laws, ordinances, regulations, rules, and administrative and court decisions (federal, state, and local) now or hereafter in effect and as in effect from time to time and as amended from time to time pertaining to environmental conditions or to protection or regulation of the environment (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.); the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601, et seq.); the Superfund Amendments and Reauthorization Act of 1986, Title III (42 U.S.C. § 11001 et seq.); the Clean Air Act (42 U.S.C. § 7401, et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, et seq.); the Oil Pollution Act (33 U.S.C. § 2701 et seq.); the Arizona Environmental Quality Act (A.R.S. § 49-101, et seq.); the Arizona Underground Storage Tank Act (A.R.S. § 49-1001, et seq.); the Arizona Water Quality Assurance Revolving Fund Act (A.R.S. § 49-281, et seq.); and any successor statutes to the foregoing and any regulations, rules or guidelines promulgated pursuant thereto.)

28.15 "Hazardous Substance" means any of the following: (i) any petroleum, oil, gasoline, kerosene, other petroleum product, flammable substance, volatile organic compound, volatile solvent, explosive, asbestos, polychlorinated biphenyl, dioxin, toxic herbicide or pesticide, radioactive material, radon gas and materials containing formaldehyde; (ii) any material, substance or waste now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes,"

“extremely hazardous substances,” “restricted hazardous wastes,” “toxic substances,” “regulated substances,” “solid wastes,” “pollutant,” or “contaminant” or words of similar import in any Environmental Law; (iii) any other material, substance, or waste now or hereafter classified or regulated as “hazardous” or “toxic” under any Environmental Law; (iv) any material, substance or waste now or hereafter listed in the United States Department of Transportation Table (49 CFR 172.101) or classified by the United States Environmental Protection Agency as “hazardous” (40 CFR Part 302) or in any successor or replacement tables or classifications as in effect from time to time; and (v) any Hazardous Waste.

28.1.6 “Hazardous Waste” means “hazardous waste”, as defined in the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.) and any successor statutes and any regulations, rules, or guidelines promulgated pursuant thereto as in effect from time to time (including, without limitation, any such waste resulting from removal of, demolition of, modifications of, or additions to part or all of any existing structure, facility, or equipment).

28.1.7 “Project Hazardous Waste” means any Hazardous Waste arising on City’s property from the Work (including, without limitation, Contractor Hazardous Waste and City Hazardous Waste), regardless of: (a) whether generated by the acts or omissions of City, Contractor, a Subcontractor or a Sub-subcontractor; (b) whether it consists of Hazardous Substances that were on or in City’s property at commencement of the Work and that have become Hazardous Waste in the course of the Work; and (c) whether it consists of Hazardous Substances that are brought on to City’s property for or during the Work by Contractor, a Subcontractor or a Sub-subcontractor and that have become Hazardous Waste in the course of the Work.

28.1.8 “OSHA” means the Federal Occupational Safety and Health Act (29 U.S.C. § 651 et seq.) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time.

28.1.9 “Release” means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, releasing, spilling, or similar action or event.

28.1.10 “Underground Storage Tank” shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. § 6991, and also shall include (i) any tank of 1,100 gallons or less capacity used for storing motor fuel; (ii) any tank used for storing heating oil for consumption on the premises where stored; or (iii) any septic tank; and any pipes connected to hazardous items.

282 General Requirements.

2821 Compliance with Environmental Law and OSHA. Contractor shall comply with and shall cause all Subcontractors and Sub-subcontractors to comply with this Section and with all Environmental Law and OSHA applicable to (i) Contractor, (ii) Subcontractors, (iii) Sub-subcontractors, (iv) the Work and (v) all of their activities in respect of the Work.

2822 Hazardous Substances. (i) Hazardous Substances may be transported to and from and stored, used and be present on City's property in such quantities as are generally recognized to be usual and customary for performance of the Work. (ii) Hazardous Waste may be generated on City's property of such kinds and in such quantities as are generally recognized to be usual and customary in connection with performance of the Work. Hazardous Waste so generated may be stored temporarily on City's property. (iii) Prior to final completion of the Work, Contractor shall remove or cause to be removed from City's property and disposed of in accordance with Environmental Law and OSHA any Hazardous Substances (other than Project Hazardous Waste) brought onto City's property during the Work or used in connection with the Work. (iv) Other than as provided in (i), (ii) and (iii), Contractor shall not, and Contractor shall cause all Subcontractors and Sub-subcontractors to not, dispose of, generate, manufacture, process, produce, Release, treat or otherwise store, use or have in or on or transport to or from City's property any Hazardous Substance, regardless of whether the Hazardous Substance is preexisting on City's property or otherwise.

2823 Releases of Hazardous Substances. Upon any Release of any Hazardous Substance in connection with the Work, whether relating to a pre-existing condition on City's property (for example, arising from any demolition of, modification of, or addition to any structure, facility or equipment) or relating to acts or omissions of Contractor, a Subcontractor or a Sub-subcontractor, Contractor shall take any immediate action reasonably necessary to contain the Release. City may elect to have Contractor control and carry out any containment, clean-up, removal and remediation activity. Alternatively, City shall have the right to elect to control and carry out any containment, clean-up, removal and remediation activity. Regardless of who takes the actions, Contractor shall absorb, without reimbursement from City, all costs and expense incurred by Contractor in connection with any Contractor Release. In addition, Contractor shall pay or reimburse City for all costs and expenses incurred by City relating to any Contractor Release. If the amount is not paid promptly, City may offset the amount against any amount payable by City to Contractor under the Contract Documents or otherwise. Remediation, removal, and other cleanup action arising from any Release shall be in full compliance with Environmental Law and OSHA and shall be subject to approval by City. In addition, City may require remedial, removal or other cleanup action in excess of applicable minimum requirements of Environmental Law and OSHA (A) as reasonably necessary or appropriate in the judgment of City to permit human use and habitation of City's property and to permit use of City's property, and (B) as reasonably consistent in the judgment of City with such habitation and uses.

2824 Hazardous Waste. The Contractor shall arrange for handling, storage and disposal of any Project Hazardous Waste. On an interim basis until the Contractor can make arrangements, Contractor shall assure proper handling (including, without limitation, segregation from waste that is not Hazardous Waste) and storage of Project Hazardous Waste in full compliance with Environmental Law and OSHA.

2825 Notifications to City. Contractor shall notify City's Project Manager immediately upon occurrence of any of the following:

i. any discovery by Contractor, a Subcontractor or any Sub-subcontractor of any Hazardous Substance in any existing structure, facility or equipment on City's property;

ii. any Release of any Hazardous Substance in connection with the Work;

iii. the creation or generation of any Hazardous Waste resulting from the Work (including, without limitation, Hazardous Waste arising from the removal of, demolition of, modification of, or addition to any existing structure, facility or equipment);

iv. the need for any remediation or removal of any Hazardous Substance relating to the Work whether relating to a pre-existing condition on City's property or to acts or omissions of Contractor, a Subcontractor or a Sub-subcontractor; or

v. any claim, demand, inquiry, investigation, litigation or other action or proceeding by any governmental authority or other person relating to any Hazardous Substance, Hazardous Waste, Environmental Law or OSHA relating to the Work.

vi. Except for immediate action to contain any Release of any Hazardous Substance and except for interim handling and storage of Project Hazardous Waste, Contractor shall not take any action as to any matter in i, ii, iii, iv or v without the prior written approval of the City and the City shall have the right to elect to control and carry out any such action or matter.

2826 Other Asbestos. Contractor and each Subcontractor and Sub-subcontractor shall comply with all requirements of Environmental Law and OSHA concerning any other asbestos in the Work area.

2.9 Safety Plan. Contractor shall have sole responsibility and liability for jobsite safety. Contractor is responsible for all safety precautions and programs and shall perform the Work in

accordance with OSHA, American National Standards Institute and National Institute for Occupational Safety and Health standards. Contractor shall provide all protection and necessary supervision to implement said safety precautions and programs. Contractor shall take all reasonable precautions for the safety of and provide reasonable protection to prevent damage, injury or loss to: (A) employees or others on the Project, (B) the Work and materials and (C) other property at the Project or adjacent thereto. Contractor shall designate a responsible person on the Project whose duty shall be prevention of accidents.

2.10 Traffic Regulations. All traffic affected by the Work under this Contract shall be regulated in accordance with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) which is incorporated herein by reference; provided, however, that this Contract shall govern in a conflict with the terms of the MUTCD. At the time of the pre-construction conference, the Contractor shall designate an employee who is (i) certified in construction traffic control by the American Traffic Safety Services Association (ATSSA) or the International Municipal Signal Association (IMSA) and (ii) well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring, and altering traffic control measures, as necessary.

2.101 Major Streets. The following shall be considered major streets: arterial and collector streets so classified by the City.

2.102 Traffic Control Devices. All traffic control devices required for the Work under this Contract shall be the responsibility of the Contractor. The Contractor shall place advance warning signs (such as REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT and DO NOT PASS) in accordance with the MUTCD. The Contractor shall provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs and shall take all necessary precautions for the protection of the Work and safety of the public. The Contractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes. All barricades and obstructions shall be illuminated at night, and all safety lights shall be illuminated from sunset until sunrise. All barricades and signs used by the Contractor shall conform to the standard design generally accepted for such purposes and payment for all such services and materials shall be as set forth in the Project Manual.

2.103 Existing Signs. Unless otherwise specified in the Plans, the Contractor shall ensure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Contractor shall notify the City, in writing, at least 48 hours in advance for direction from the City to the Contractor temporarily relocate or cover said signs. The City will direct the Contractor as to the correct positions to re-set all traffic and street name signs to permanent locations when notified by the Contractor that the interfering construction is complete.

2.104 Manual Traffic Control. Manual traffic control shall be in conformity with the MUTCD. When construction activities or traffic hazards at the construction site require

the use of flagmen, it shall be the Contractor's responsibility to provide trained flagmen to direct traffic safely. When traffic hazards at construction sites warrant the use of certified police personnel to direct traffic, arrangements must be made with the liaison officer at the Bisbee Police Department.

2.105 Contractor Equipment. The assembly and turnarounds of the Contractor's equipment shall be accomplished using adjacent local streets when possible. Equipment used and/or directed by the Contractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Contractor shall, at its sole expense, provide a flagman or off-duty Bisbee police officer to assist with spotting.

2.106 Traffic Alterations. During construction, it may be necessary to alter traffic control. Any such alterations shall be in accordance with the MUTCD. No street within the Project area may be closed to through traffic or to local emergency traffic without prior, written approval of the City. Written approval may be given if sufficient time exists to allow for notification of the public at least 72 hours in advance of such closing. Partial closure of streets within the Project shall be done in strict conformity with the MUTCD and the City's written directions.

2.107 Intersections. Caution should be used when excavating near intersections with traffic signal underground cable. Contractor shall notify the City, in writing, 48 hours in advance of any Work at such intersections. The Contractor shall install and maintain temporary overhead traffic signal cable as specified by the City when underground conduit is to be severed by excavations at intersections. The Contractor shall, at its sole expense, provide an off-duty, Bisbee police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City's satisfaction. Magnetic detector loops shall, under no circumstances, be spliced.

2.108 Adjacent Property Access. Unless otherwise approved in writing by the City, The Contractor shall maintain access to all businesses, schools and residences along the Project alignment at all times.

2.109 Covered Crossings. Where crossings of existing pavement occurs, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow, as determined by the City in its sole discretion. If plates cannot be used, crossings shall either be backfilled, or the Contractor shall provide a detour.

2.10.10 Liability. The Contractor is solely responsible for, and assumes full liability for, the traffic control relating to this Project. Contractor shall submit a final traffic control plan to City for its review and approval no less than one (1) week prior to commencing work under this Contract. Traffic, as referenced herein, shall include any and all motor vehicles, bicyclists, and pedestrian traffic on roadways, sidewalks, bicycle paths, alleys, and/or rights-of-way at, attendant to, and/or adjacent to the Project.

2.11 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, fines, penalties, judgments, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”) to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Contractor, its officers, employees, agents, or any tier of subcontractor in connection with Contractor’s work or services in the performance of this Contract. The amount and type of insurance coverage requirements set forth in this Contract will in no way be construed as limiting the scope of the indemnity in this Section.

2.12 Insurance.

2.12.1 General.

2.12.1.1 Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Contract at the City’s option.

2.12.1.2 No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Contract or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

2.12.1.3 Additional Insured. All insurance coverage, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Contract.

2.12.1.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all Work or Services required to be performed under the terms of this Contract are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Contract.

2.12.15 Primary Insurance. The Contractor's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Contract and in the protection of the City as an Additional Insured. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute to it.

2.12.16 Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

2.12.17 Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the Work or Services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

2.12.18 Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

2.12.19 Use of Subcontractors. If any Work under this Contract is subcontracted in any way, Contractor shall execute written agreement with its Subcontractors containing the indemnification provisions set forth in this Contract and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

2.12.10 Evidence of Insurance. Prior to commencing any Work or Services under this Contract, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Contract, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Contract and that such coverage and provisions are in full force and effect. Confidential information such as the

policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Contract. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the policies required by this Contract expire during the life of this Contract, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the City 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Contract shall be identified by referencing the bid number and title of this Contract. Certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate bid number and title or reference to this Contract, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - i. Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
 - ii. Auto Liability - Under ISO Form CA 20 48 or equivalent.
 - iii. Excess Liability - Follow Form to underlying insurance.
- b. Contractor's insurance shall be primary insurance with respect to performance of this Contract.
- c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of Work or Services performed by Contractor under this Contract.
- d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

2.122 Required Insurance Coverage.

2.122.1 Commercial General Liability. Contractor shall maintain

“occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Contractors, products-completed operations, personal injury and advertising injury, and explosion, collapse, and underground hazard (XCU) coverage. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

2.1222 Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor’s Work or Services under this Contract. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If Hazardous Substances or Hazardous Wastes are transported, Contractor shall include endorsement CA 9948 and have a minimum of \$3,000,000 per accident limits for bodily injury and property damage. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

2.1223 Professional Liability. If this Contract is the subject of any professional Services or Work, or if the Contractor engages in any professional Services or Work in any way related to performing the Work under this Contract, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

2.1224 Workers’ Compensation Insurance. Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by Federal and State statutes having jurisdiction over Contractor’s employees engaged

in the performance of Work or Services under this Contract and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

2.1225 Umbrella/Excess Liability. The Contractor shall carry Umbrella/Excess Liability insurance with an unimpaired limit of not less than \$4,000,000 per occurrence combined limit that “follows form” and applies in excess of the Commercial General Liability, Commercial/Business Automobile Liability and Employer's Liability, as required above.

2.1226 Builder's Risk Insurance. Unless expressly waived by the City Administrator in a written addendum or amendment to this Contract, the Contractor shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Contractor, the Contractor's Subcontractors and sub-subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

2.1227 Additional Coverage. To the fullest extent permitted by law, if the Contractor maintains higher insurance limits than the minimums shown above or required under this Contract, the City requires and shall be entitled to coverage for the higher limit maintained.

2.1228 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days' prior written notice to the City.

2.13 Performance Bond. The Contractor shall be required to furnish non-revocable security binding the Contractor to provide faithful performance of this Contract in the amount of one hundred percent (100%) of the total Contract Price payable to the City. Performance security shall be in the form of a performance bond, certified check, cashier's check or irrevocable letter of credit. All performance bonds shall be executed on the City-approved form, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority to transact surety business in the State of Arizona by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have, at the time of submission of the performance bond, an A.M. Best's Key Rating Guide of “A-” or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

2.14 Payment Bond. The Contractor shall be required to furnish non-revocable security for the protection of all persons supplying labor and material to the Contractor or any Subcontractor

for the performance of any Work related to this Contract. Payment security shall be in the amount of one hundred percent (100%) of the total Contract Price and be payable to the City. Payment security shall be in the form of a payment bond, certified check, cashier's check or irrevocable letter of credit. All payment bonds shall be executed on the City-approved form, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority to transact surety business in the State of Arizona by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have, at the time of submission of the payment bond, an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

2.15 Changes in the Work. The City may, without invalidating this Contract, order changes in the Work consisting of additions, deletions or other revisions to this Contract and the Contract Price and the Contract Time shall be adjusted as provided below. The Scope of Work, Contract Price and/or the Contract Time may only be made by written Change Order authorizing said change and said changes shall be performed under the applicable conditions of this Contract. A Change Order is a written instrument issued after execution of the Contract signed by the City and Contractor, stating their agreement upon all of the following:

1. The scope of the change in the Work;
2. The amount of the adjustment to the Contract Price;
3. The extent of the adjustment to the Contract Time(s); and
4. Any change to the terms and conditions of the Contract.

2.15.1 The Contractor shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the City and shall proceed in accordance with the procedures set forth in this Section. If the Contractor proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this Article, the Contractor hereby waives all rights or claims Contractor may have as a result of the change. The City's right to make changes shall not invalidate the Contract or relieve the Contractor of any liability. Any requirement of notice of change to the Surety shall be the responsibility of the Contractor.

2.152 Minor Changes in the Work. Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. The Contractor may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Contractor shall promptly inform the City, in writing, of any such changes and record such changes on the documents maintained by the Contractor and provided to the City prior to the invoice for final payment.

2.153 Cost of Change. The cost or credit to the City resulting from a change in Work shall be determined as agreed to by the Parties. If the City and Contractor are unable to agree on the pricing methodology or cost of the change, the Contractor shall promptly

proceed with performing the change, upon receipt of a written order signed by the City. Any dispute regarding the pricing methodology or cost of the change shall not relieve the Contractor from proceeding with the change as directed by the City. If any changes in Work increase the Contract Price by a value equal to or more than ten percent (10%), the change will require the concurrence and approval of the Bisbee City Council and therefore establish a new Contract Price.

2.154 Waiver of Claims. A fully executed Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items covered or affected, as well as time extensions. Any such claim not presented by the Contractor for inclusion in the Change Order is irrevocably waived.

2.155 Emergencies. In an emergency beyond the Contractor's control, affecting the safety of persons and/or property, the Contractor, without special instruction or authorization from the City, shall act, at its discretion, to prevent threatened damage, loss, or injury. Any compensation claimed by the Contractor on account of such emergency work shall be determined in accordance with this Article.

2.16 Substantial Completion. The City shall determine when the Project and the Contractor's Work are substantially complete. The Contractor shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. "Substantial Completion" means construction has been completed in accordance with the Contract Documents to the extent that the City can use or occupy the entire Project, or the designated portion of the Project, for the use intended without any outstanding, concurrent construction at the site, except as may be required to complete or correct Punch List items. A prerequisite for Substantial Completion, over and above the extent of construction completion required, is receipt by the City of acceptable documentation that Contractor has successfully tested and demonstrated all systems for their intended use. The date of Substantial Completion shall be confirmed by a Certificate of Substantial Completion signed by the City and Contractor. The Certificate of Substantial Completion signed by the City and Contractor shall state the respective responsibilities of the City and the Contractor for security, maintenance, utilities, damage to the Work and insurance. The Certificate of Substantial Completion shall also include the Punch List as created and modified by the City and establish the time for completion and correction of all Punch List items. If the City and the Contractor cannot agree as to the appropriate date of Substantial Completion, such issue shall be submitted for dispute resolution. Notwithstanding such disagreement, the Contractor shall diligently proceed with completion of the Punch List items.

2.17 Final Completion. The City shall determine when the Project and the Contractor's Work is finally completed. "Final Completion" means completion of the Project by the Contractor in accordance with the Contract Documents, certified to the City by the Contractor. Final Completion shall be achieved only upon the City's written acceptance of (A) the construction, (B) all testing, (C) demonstration by Contractor that the Work functions as required by the Contract Documents and meets all Contract requirements, (D) resolution of all outstanding system

deficiencies and Punch List items, if any, (E) delivery of all as-built documentation, drawings, completed record documents (with revisions made after Substantial Completion), annotated submittals and design document deliverables, (F) submittal, acceptance, and delivery of the one hundred percent (100%) complete O&M manuals, (G) delivery of warranties, inspection certificates, bonds and all other required documents, (H) all pre- requisites for final payment and (I) submittal of Contractor's request for final payment and acceptance enclosing all required documentation. Upon Final Completion the City shall issue a Notice of Completion to the Contractor on behalf of the City. Following receipt of payment from the City, the Contractor shall make all payments due to the Subcontractors.

2.18 Payments to Contractor. Payment shall be conditioned upon Contractor's compliance with the payment terms and conditions set forth below. Contractor expressly acknowledges and agrees that (A) the Contract Price is an estimated amount based upon an engineer's estimate of the quantities of the Materials deemed necessary to perform the Work and (B) the amount of any payment to be made pursuant to this Contract shall be determined by the field-measured quantities of Materials actually installed by Contractor. Material or equipment delivered to the Project by or on behalf of Contractor shall not constitute material or equipment furnished in the performance of the Work until same has been incorporated into the improvements constituting the Project. Payment shall not constitute acceptance by the City or evidence thereof of any Work performed.

2.18.1 Progress Payments.

2.18.1.1 On or before the 15th day of each month after construction has commenced, the Contractor shall submit to the City an application for payment consisting of the cost of the Work performed up to the end of the prior month. The application shall be deemed approved and certified for payment seven (7) Days after it is submitted unless before that time the City prepares and issues a specific written finding setting forth those items in detail that are not approved for payment under this Contract. Prior to submission of the next application for payment, the Contractor shall make available at the request of the City a statement accounting for the disbursement of funds received under the previous application for purposes of audit. The extent of such statement shall be as agreed upon between the City and Contractor.

2.18.1.2 Within fourteen (14) Days after approval of each monthly application for payment, the City shall pay directly to the Contractor the appropriate amount for which application for payment is made, less amounts (a) previously paid by the City, (b) sufficient to pay expenses the City reasonably expects to incur in correcting deficiencies which are set forth in writing and provided to the Contractor and (c) any retainage as set forth in Section 2.18.2 below.

2.18.1.3 The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of this Contract.

2.18.14 Upon Substantial Completion of the Work, the City shall pay the Contractor the unpaid balance of the cost of the Work, less a sum equal to the Contractor's estimated cost of completing any unfinished items as agreed to between the City and the Contractor as to extent and time for Final Completion. The City thereafter shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

2.182 Retainage. With respect to the Work, the City shall retain ten percent (10%) of the amount of each estimate until Final Completion and acceptance of all Material, equipment and Work covered by this Contract.

2.1821 Any securities submitted by Contractor in lieu of retainage as may be allowed by law, shall be deposited in an escrow account by the City. The City shall be listed as payee or multiple payees with Contractor on all such securities.

2.1822 When the Work is fifty percent (50%) completed, one-half of the amount retained including any securities substituted pursuant to Section 2.18.2 shall be paid to the Contractor upon the Contractor's request, provided the Contractor is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After the construction Work is fifty percent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments made under this Contract may be retained, provided the Contractor is making satisfactory progress on the Project. If, at any time, the City determines satisfactory progress is not being made, ten percent (10%) retention shall be reinstated for all progress payments made under this Contract after the determination.

2.18.3 Title to Construction Work. The Contractor warrants that title to all Work covered by an application for payment shall pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment, all Work for which applications for payment have been previously issued and payments received from the City shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, Materials and equipment relating to the Work.

2.18.4 Final Payment.

2.18.4.1 Final payment, consisting of the unpaid balance of the cost of the Work shall be due and payable at Final Completion and acceptance by the City. Before issuance of final payment, the City may request satisfactory evidence that all payrolls, Materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

2.18.4.2 In making final payment the City waives all claims except for:

- a. Outstanding liens.
- b. Improper workmanship or defective Materials.
- c. Work not in conformance with this Contract or Work not completed.
- d. Terms of any special warranties required by this Contract.
- e. Delivery to City of all warranties, operation and maintenance manuals, "AS-BUILT" drawings and other documents as required by this Contract.
- f. Right to audit Contractor records for a period of three years.
- g. Claims previously made in writing and which remain unsettled.

2.18.4.3 Acceptance of final payment by the Contractor shall constitute a waiver of affirmative claims by the Contractor, except those previously made in writing and identified as unsettled at the time of final payment.

2.19 Warranty. Contractor or its assignee shall give to the City a one-year warranty against deficiencies in material and workmanship for all Work on the Project or other such warranty as required by the City, which warranty shall begin on the Final Completion date specified in the Notice of Completion as provided in this Section. Any material deficiencies in material or workmanship identified by City staff during the one-year warranty period shall be brought to the attention of the Contractor or its assignee that provided the warranty, which shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City. Continuing material deficiencies in a particular portion of the Work shall be sufficient grounds for the City to require (1) an extension of the warranty for an additional one-year period and (2) the proper repair of, or the removal and reinstallation of, that portion of the Work that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Contractor agrees to repair any damage to the Work caused by Contractor's construction activities on the Property. Nothing contained herein shall prevent the City or Contractor from seeking recourse against any other third-party for damage to the Work caused by such third-party.

2.20 Offset.

2201 Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Contractor any amounts Contractor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Contract.

2202 Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Contractor any amounts Contractor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

ARTICLE III- PERFORMANCE OF THE WORK

31 Soil and Subsurface Conditions. Contractor shall make its own determinations as to the soil and subsurface conditions, including rock, caliche and groundwater and shall complete the Work in whatever material and under whatever conditions may be encountered or created, without extra cost to the City.

32 Blue Stake and Call Before You Dig. The Contractor shall comply with the statutory requirements in A.R.S. title 40, chapter 2, article 6.3 (Underground Facilities); A.R.S. § 40-360.21, *et seq.*, as amended from time to time.

33 Work Scheduling. Time is of the essence for this Contract. Contractor shall provide the City with any requested scheduling information and a proposed schedule for performance of the Work within the Contract Time in a form acceptable to the City and approved by the City, in his sole and absolute discretion, providing for commencement and completion of the Work (the "Schedule"). The Schedule shall include the date for Substantial Completion of the Work. The City may revise the Schedule during the course of the Work. Contractor, to induce the City to enter into this Contract, has and does hereby agree to fully perform and complete the Work for the Contract Price within the Schedule.

34 Contractor's Representative. The Contractor or its authorized representative shall be present at the Work site at all times during working hours. Instructions and information provided by the City to the Contractor's representative shall be considered as having been given to the Contractor.

35 Prosecution of the Work. The Contractor shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Schedule. If the delay is an Inexcusable Delay, as defined below, the Contractor shall prepare a recovery schedule for the City's review and approval, showing how the Contractor will compensate for the delays and achieve Substantial Completion by the date(s) shown on the Schedule. If the Contractor is unable to demonstrate how it will overcome Inexcusable Delays, the City may order the Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the Substantial Completion date(s) set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the City shall either (A) authorize an equitable extension in the Schedule to account for such delay, and equitably adjust the contract sum on account of such delay or (B) request that the Contractor

prepare a recovery schedule showing how (if possible) the Contractor can achieve Substantial Completion by the applicable date shown on the Schedule, and equitably adjust the Contract Price in accordance with the provisions of this Contract on account of any extraordinary activities required of the Contractor on account of such recovery schedule.

36 Extensions of Time.

3.6.1 Allowable Extensions. An extension in the scheduled date of Substantial Completion will only be granted in the event of Excusable Delays affecting the Schedule for the Work. The Contractor must submit evidence reasonably satisfactory to the City substantiating such costs. Such adjustment to the Price and Substantial Completion date shall be issued in a Change Order or Contract amendment, as applicable.

3.6.2 Excusable Delay. To the extent any of the following events results in an actual delay in the Work, such shall constitute an “Excusable Delay” (to the extent not set forth below, a delay will be considered an “Inexcusable Delay”):

3.6.2.1 Delays resulting from Force Majeure.

3.6.2.2 Differing, unusual or concealed site conditions that could not reasonably have been anticipated by the Contractor in preparing the Schedule, including, without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines, and groundwater conditions.

3.6.2.3 Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by the Contractor.

3.6.2.4 Delays resulting from changes in Applicable Laws occurring after the date of execution of this Contract.

3.6.2.5 Delays occurring due to the acts or omissions of the City and those within the control of the City.

3.6.2.6 Delays occurring due to the acts or omissions of a utility, so long as Contractor has coordinated with the utility causing the delay and the delay occurs despite reasonable steps taken by Contractor to avoid the delay.

3.6.2.7 Delays resulting from weather conditions that make it unreasonable to perform the Work in accordance with the Schedule; provided, however, that Contractor’s Schedule shall be deemed to include 7 Days for weather delays (the “Expected Delay Days”), regardless of whether such weather delays are specifically set forth in the Schedule. Contractor shall notify the City within 24 hours in writing of a weather-related delay. If Contractor fails to give the required 24-hour notice, no such weather delay will be subtracted from the expected Delay Days. Weather

delays shall not be deemed “Excusable” unless all of the Expected Delay Days have been exhausted.

3.6.2.8 Delays resulting from Additional Work (defined below) that cannot be performed concurrently with the Work on the Schedule.

3.6.3 Required Notice. In order to obtain an extension of time due to an Excusable Delay, the Contractor shall comply with the following requirements. The Contractor shall notify the City in writing of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Contractor becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Contractor expects to be delayed. After the cessation of the Excusable Delay, the Contractor shall notify the City of the number of Days the Contractor believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the City, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

3.6.4 Determination. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then-current status of Excusable Delays and Inexcusable Delays, the City will provide the Contractor with written notice of City’s determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay. The City’s determination may be issued at such time as the City deems reasonable, but not later than 10 Days after receipt by the City of the Contractor’s written request for such determination. The Contractor shall not, however, deem an issuance by the City of such a determination to be a concurrence of the matters set forth in the Contractor’s request.

3.6.5 Concurrent Delay. To the extent the Contractor is entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Contractor or by an Inexcusable Delay, the Contractor shall not be entitled to any additional costs for the period of such concurrency.

3.7 Liquidated Damages.

3.7.1 The liquidated damages amount set forth in this Section is fixed and agreed upon by and between the Contractor and the City to be reasonable and necessary because of the extreme difficulty if not impossibility of ascertaining the actual damages the City would sustain in the event of a delay. The liquidated damages amount is agreed to be the amount of damages which the City would sustain for a delay but shall not limit or preclude any damages for improper Work or other losses incurred by the City not directly caused by the delay. The liquidated damages amount may be retained by the City from any payment

due to the Contractor. A delay shall further constitute a breach of this Contract. Should the liquidated damages exceed the Contract Price due or to become due, then the Contractor shall pay the City the difference within three (3) days after the City's written demand. It is further agreed that time is of the essence for each and every portion of this Contract and for the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract additional time is allowed for the completion of any work, the new time limit fixed by such extension also shall be of the essence of this Contract. If the Contractor neglects, fails, or refuses to complete the entirety of the Work within the Contract Time, or any proper extension thereof granted by the City in writing, the Contractor agrees, as consideration for the awarding of this Contract, to pay to the City the amount of \$217,232.49, NOT AS A PENALTY BUT AS LIQUIDATED DAMAGES for each and every calendar day that the entirety of the Work is not completed within the Contract Time. The Contractor will not be charged with liquidated damages or any excess cost when the City determines in its sole and absolute discretion that any delay in the completion of the Work or any part thereof is due: (i) to any preference, priority or allocation order duly issued by the City; (ii) to unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the City, acts of another contractor in the performance of a Contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; or (iii) to any delays of subcontractors or suppliers occasioned by any of the causes specified in (i) or (ii) above.

3.7.2 Prior to Termination. If this Contract is not terminated, the Contractor shall continue performance and be liable to the City for the liquidated damages until the Work is complete.

3.7.3 After Termination. In the event the City exercises its right of termination, the Contractor shall be liable to the City for any excess costs and, in addition, for liquidated damages until such time as the City may reasonably obtain delivery or performance of similar Services.

3.8 Suspension by the City for Convenience.

3.8.1 City Determination. The City may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may determine to be appropriate for its convenience.

3.8.2 Contract Adjustments. Adjustments caused by suspension, delay or interruption shall be made for increases in the applicable contract sum and/or the date(s) of Substantial Completion. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Contract is applied to render an equitable adjustment.

3.9 Termination by the City for Convenience. The City may, upon 30 Days' written notice to the Contractor, terminate this Contract, in whole or in part, for the convenience of the

City without prejudice to any right or remedy otherwise available to the City. Upon receipt of such notice, the Contractor shall immediately discontinue all Services affected unless such notice directs otherwise. In the event of a termination for convenience of the City, the Contractor's sole and exclusive right and remedy shall be payment for all Work performed through the date of termination. The Contractor shall not be entitled to be paid any amount as profit for unperformed Services or consideration for the City's termination by convenience.

3.10 Termination by the City for Cause.

3.10.1 Default; Cure. If the Contractor refuses or fails to supply sufficient properly skilled staff or proper Materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Contract, and such nonperformance or violation continues without cure for 15 Days after the Contractor receives written notice of such nonperformance or violation from the City, then the City may, without prejudice to any right or remedy otherwise available to the City, terminate this Contract.

3.10.2 Substitute Performance. Upon termination of this Contract by the City, the City shall be entitled to furnish or have furnished the Services to be performed hereunder by the Contractor by whatever method the City may deem expedient. Also, in such case, the Contractor shall not be entitled to receive any further payment until completion of the Work, and the total compensation to the Contractor under this Contract shall be the amount that is equitable under the circumstances. If the City and the Contractor are unable to agree on the amount to be paid under the foregoing sentence, the City shall fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Contractor may dispute the City's assessment of the termination amount pursuant to the dispute resolution process set forth in in Part D of this Contract.

3.10.3 Contractor Insolvency. Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the City may terminate this Contract, without prejudice to any right or remedy otherwise available to the City, upon giving three business days' written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the City may terminate this Contract by giving three business days' written notice to the Contractor unless the Contractor or the trustee completes all of the following:

3.10.3.1 Promptly cures all breaches within such three-day period.

3.10.3.2 Provides adequate assurances of future performance.

3.10.3.3 Compensates the City for actual pecuniary loss resulting from such breaches.

3.10.3.4 Assumes the obligations of the Contractor within the established time limits.

3.11 Contract Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Contract as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Contract are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Contract obligations, this Contract shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Contract. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Contract in any budget in any fiscal year other than the fiscal year in which this Contract is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Contract. The City shall keep Contractor informed as to the availability of funds for this Contract. The obligation of the City to make any payment pursuant to this Contract is not a general obligation or indebtedness of the City. Contractor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Contract pursuant to this Section.

3.12 Additional Work, Materials and/or Overtime. Contractor expressly agrees that if overtime or additional workers or materials are necessary to meet the Schedule, that such overtime will be performed or additional workers or materials will be procured by the Contractor, and the additional expense thereof shall be borne by Contractor unless the delay requiring overtime was directly caused by the City, in which event Contractor shall be entitled to compensation for such overtime Work. If the City requests Contractor to perform additional Work in connection with the Project ("Additional Work"), Contractor shall charge the City a negotiated fixed amount for the Additional Work. In the event a fixed amount cannot be negotiated, Contractor shall invoice the City on a time and materials basis for the Additional Work at the unit prices set forth in the price sheet.

3.13 No Damage for Delay or Additional Work by the City. Contractor shall adjust its operations to conform to any progress schedule changes and hereby waives and releases the City from any liability for damages or expenses that may be caused to or sustained by Contractor by reason of such changes or by reason of delays in the Work, whether caused in whole or in part by conduct on the part of the City, including without limitation, any breach of this Contract or delays by other contractors or Subcontractors. Contractor's exclusive remedy in the event of delay or Additional Work by the City shall be an extension of time hereunder to complete the Work.

3.14 Risk of Loss. Contractor shall assume the risk of loss occasioned by fire, theft or other damage to Materials, machinery, apparatus, tools and equipment relating to the Work prior to actual installation in final place on the Project and acceptance by the City. Contractor shall be responsible for damage to the Materials, machinery, apparatus, tools, equipment and property of the City and other contractors resulting from the acts or omissions of its Subcontractors, employees, agents, representatives Subcontractors, and for payment of the full costs of repair or replacement of any said damage.

3.15 Protection of Finished or Partially Finished Work. The Contractor shall properly guard and protect all finished or partially finished Work and shall be responsible for the same until the entire Contract is completed and accepted by the City. The Contractor shall turn over the entire Work in full accordance with this Contract before final settlement shall be made.

3.16 Character and Status of Workers. Only skilled foremen and workers shall be employed on portions of the Work requiring special qualifications. When required by the City, the Contractor shall discharge any person who is, in the opinion of the City, disorderly, dangerous, insubordinate, incompetent or otherwise objectionable. The Contractor shall indemnify and hold harmless the City from and against damages or claims for compensation that may occur in the enforcement of this Section. The Contractor shall be responsible for ensuring the legal working status of its employees and its Subcontractor's employees. The Contractor agrees that once assigned to Work under this Contract, key personnel shall not be removed or replaced without written notice to the City. If key personnel are not available for Work under this Contract for a continuous period exceeding 30 Days, or are expected to devote substantially less effort to the Work than initially anticipated, the Contractor shall immediately notify the City and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

3.17 Work Methods. The methods, equipment and appliances used on the Work shall be such as will produce a satisfactory quality of Work and shall be adequate to complete this Contract within the Contract Time. Except as is otherwise specified in this Contract, the Contractor's procedure and methods of construction may, in general, be of its own choosing, provided such methods (A) follow best general practice and (B) are calculated to secure results which will satisfy the requirements of this Contract. The Work covered by this Contract shall be carefully laid out in advance and performed in a manner to minimize interference with normal operation and utilization of the City's rights-of-way. The Contractor shall exercise caution during the course of this Work to avoid damage to all known existing or possible unknown existing underground utilities. It shall conduct its operations in such a manner as to avoid injury to its personnel and to avoid damage to all utilities. Any damage done will be repaired without delay and at the expense of the Contractor.

3.18 Safety Fencing Requirement for Trenches and Excavations. The Contractor shall provide safety construction fencing around all open trenches and excavations during all non-working hours. In addition, the Contractor shall provide safety fencing around the Project site during working hours in order to ensure public safety. The Contractor shall provide for the safety and welfare of the general public by adequately fencing all excavations and trenches that are permitted by the City to remain open when construction is not in progress. Fencing shall be securely anchored to approved steel posts located not less than six feet on center, having a minimum height of six feet, and shall consist of wire mesh fabric of sufficient weight and rigidity to adequately span a maximum supporting post separation of six feet. The fencing, when installed about the periphery of excavations and trenches, shall form an effective barrier against intrusion by the general public into areas of construction. The Contractor, at all times when construction is not in progress, shall be responsible for maintaining the fencing in good repair, and upon

notification by the City, shall take immediate action to rectify any deficiency. Prior to the start of any excavation or trenching required for the execution of the proposed Work, the Contractor shall submit to the City for approval, detailed plans showing types of materials and methods of fabrication for the protective fencing. There will be no separate measurement or payment for furnishing, installing, or maintaining protective fencing. The cost shall be considered incidental to the cost of the pipe, bridge, and any other structures for which trenching is necessary.

3.19 Plans and Shop Drawings, Samples and Substitution of Materials. Contractor shall furnish, within three (3) business days following request therefore by the City, detailed drawings of the Work, samples of Materials and other submittals required for the performance or coordination of the Work. Substitutions shall be equal or superior to Materials specified in the Contract Documents, shall be clearly identified on submittals as “proposed substitutions” and shall be approved by the City. Contractor shall be fully responsible for the adequacy, completeness and promptness of all such submittals. Materials shall not be furnished to the jobsite unless same is in strict compliance with the Specifications or otherwise approved in writing by the City. Approval by the City shall not relieve Contractor of full responsibility for compliance with scope, intent and performance in accordance with this Contract.

3.20 Outdoor Construction Time Restrictions. Unless otherwise permitted by the City, construction will be restricted as listed in the following table:

May 1 – October 31	November 1 – April
5:00 a.m. to 7:00 p.m.	6:00 a.m. to 7:00 p.m.

Construction Work shall not begin Work prior to 7:00 a.m. and shall stop by 7:00 p.m. on Saturdays, Sundays and all City, State and Federal holidays.

3.21 Construction Survey. Construction survey and as-built record drawings shall conform to the requirements of the Specifications.

3.22 Survey Control Points. Existing survey markers (either brass caps or iron pipes) shall be protected by the Contractor or removed and replaced under direct supervision of the City. Lot corners shall not be disturbed without knowledge and consent of the property owner. The Contractor shall replace benchmarks, monuments or lot corners moved or destroyed during construction at no expense to the City. Contractor and its sureties shall be liable for correct replacement of disturbed survey benchmarks except where the City elects to replace survey benchmarks using its own forces.

3.23 Excess Materials. When excavations are made, resultant loose earth shall be (A) utilized for filling by compacting in place or (B) disposed of off-site as directed by the City. Excess or unsuitable material, broken asphaltic concrete and broken portland cement concrete excavated from the right-of-way shall be removed from the Project Site and disposed of by the Contractor. Disposal of material within the Bisbee City Limits or Planning Area must be approved by the City. Waste material shall not be placed on private property without express permission of the property owner. The Contractor shall, at all times, keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, Contractor shall

remove all equipment, tools and surplus materials, and shall completely clean the premises, removing and disposing of all debris and rubbish and cleaning all stains, spots, marks, dirt, smears or other blemishes. When the Work premises are turned over to the City, they shall be thoroughly clean and ready for immediate use. Clean-up shall include removal of all excess pointing mortar materials within pipes and removal of oversized rocks and boulders left after finish grading. The Contractor shall provide for the legal disposal of all waste products and debris and shall make necessary arrangements for such disposal.

324 Temporary Sanitary Facilities. The Contractor shall provide ample toilet facilities with proper enclosures for the use of workers employed on the Work site. Toilet facilities shall be installed and maintained in conformity with all applicable State and local laws, codes, regulations and ordinances and shall be properly lit and ventilated, and kept clean at all times. Adequate and satisfactory drinking water shall be provided at all times and under no circumstances and under no conditions will the use of common cups be permitted. The Contractor must supply sanitary drinking cups for the benefit of all employees.

325 Electric Power, Water and Telephone. Unless otherwise specified, the Contractor shall make its own arrangements for electric power, water, and telephone. Subject to the convenience of the utility, it may be permitted to connect to existing facilities where available, but Contractor shall meter and bear the cost of such power or water, and installation and disconnect of such power, water and telephone services.

326 Energized Aerial Electrical Power Lines. Utility companies may maintain energized aerial electrical power lines in the immediate vicinity of this Project. Contractor shall not presume any such lines to be insulated. Construction personnel working in proximity to these lines may be exposed to an extreme hazard from electrical shock. Contractor shall ensure that its employees and all other construction personnel working on this Project are warned of the danger and instructed to take adequate protective measures, including maintaining a minimum ten feet of clearance between the lines and all construction equipment and personnel. (see: OSHA Std. 1926.550 (a) 15, as amended). As an additional safety precaution, Contractor shall call the affected utility companies to arrange, if possible, to have these lines de-energized or relocated when the Work reaches their immediate vicinity. The cost of such temporary arrangements shall be borne by the Contractor. Contractor shall account for the time necessary to cause such utility disconnection in the preparation of its Bid. Electrical utility companies may maintain energized underground electrical power lines in the immediate vicinity of this Project. These power lines represent an extreme hazard of electrical shock to any construction personnel or equipment coming in contact with them. Arizona law requires all parties planning excavations in public rights-of-way to contact all utility firms for locations of their underground facilities. The Contractor acknowledges and understands that the locations of any underground utilities indicated on the plans are approximate and require verification prior to any work. Contractor shall ensure that its employees and all other personnel working near any underground power lines must be warned to take adequate protective measure. (see: OSHA Std. 1926-651 (A), as amended).

327 Site Clean Up. Contractor shall at all times, but not less than daily unless otherwise agreed by City, keep the premises on which the Work is being performed clean and free from

accumulation of any waste materials, trash, debris, and excess dirt, and at all times shall remove Contractor's implements, machinery, tools, apparatus and equipment from the jobsite when not needed on the jobsite. Should the City find it necessary in his/her opinion to employ help to clean up, remove or store any of the foregoing due to failure of Contractor to do so, the expense thereof shall be charged to Contractor. Verbal notice from the City on clean-up or removal is considered adequate notice hereunder, and failure to conform with his/her request within 24 hours thereof will be construed as a breach of this Contract by the Contractor and such charges will be made against Contractor's account as are necessary to accomplish the clean-up or removal. The cost of cleanup, removal or storage by the City, if not deducted by the City from monies due Contractor, shall be paid by Contractor within three (3) business days of written demand by the City.

328 Use of the Site. Contractor shall at all times comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention and safety equipment and practices, including any accident prevention and safety program of the City; provided, however, that the City shall not be required to impose any safety requirements or administer any such programs and the review or requirement of any safety plan by the City shall not be deemed to release Contractor or in any way diminish its liability, by way of indemnity or otherwise, as assumed by it under this Contract. Contractor shall conduct inspections regularly to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to Work for its employees and employees of its Subcontractors, laborers, suppliers of material and equipment and any other person visiting the Site, for adequacy of and required use of all safety equipment and for compliance herewith. When so ordered, Contractor shall stop any part of the Work that the City deems unsafe until corrective measures satisfactory to the City have been taken. Should Contractor neglect to adopt such corrective measures, the City may do so and deduct the cost from payments due Contractor. Contractor shall timely submit copies of all accident or injury reports to the City.

329 Public Information and Notification. The Contractor shall submit a public information and notification plan for this Project (the "Notification Plan") to the City at the first pre-construction meeting held prior to start of construction. The Notification Plan shall include, at a minimum, the items set forth in this Section; provided, however, that the City may waive any portion of the requirements of this Section upon a written determination that the Project scope does not warrant such notification. Contractor shall provide Project information to affected residents homeowners' associations, and businesses prior to and throughout the Project's duration. The Contractor shall use the Notification Plan to inform the local citizens, businesses, and City officials, not less than seven (7) Days in advance, of (A) necessary operations that create high noise levels, (B) street closures, (C) detour locations, (D) haul routes and material delivery routes and (E) disruption of bus routes, mail routes, and other delivery/pick-up routes.

ARTICLE 4- MISCELLANEOUS

4.1 Applicable Law; Venue. This Contract shall be governed by the laws of the State of Arizona and suit pertaining to this Contract may be brought only in courts in Cochise County, Arizona.

4.2 Conflict of Interest. This Contract is subject to the provisions of A.R.S. § 38-511. The City may cancel this Contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the City or any of its departments or agencies is, at any time while this Contract or any extension of this Contract is in effect, an employee of any other Party to this Contract in any capacity or a consultant to any other Party of this Contract with respect to the subject matter of this Contract.

4.3 Contract Amendments. This Contract may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor; provided, however, that Change Orders may be issued and approved administratively by the City when such changes do not alter the Contract Price.

4.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Contract will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Contract will promptly be physically amended to make such insertion or correction.

4.5 Severability. The provisions of this Contract are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Contract which may remain in effect without the invalid provision or application.

4.6 Independent Contractor. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor acknowledges and agrees that the Services provided under this Contract are being provided as an independent contractor, not as an employee or agent of the City. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Contractor do not intend to nor will they combine business operations under this Contract.

4.7 Entire Agreement; Interpretation-Parol Evidence. This Contract represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by this Contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting this Contract. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of,

(A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

4.13 Overcharges by Antitrust Violations. The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill this Contract.

4.14 Force Majeure. Except for payment for sums due, neither Party shall be liable to the other nor deemed in default under this Contract if and to the extent that such Party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; and other similar occurrences beyond the control of the Party declaring force majeure which such Party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the Party declaring force majeure notifies the other Party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the Party from resuming performance in accordance with this Contract. Force majeure shall not include the following occurrences:

4.14.1 Late Delivery. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences.

4.14.2 Late Performance. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Section.

4.14.3 Any delay or failure in performance by either Party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either Party is delayed at any time in the progress of the Work by force majeure, then the delayed Party shall notify the other Party and shall make a specific reference to this Section, thereby invoking its provisions. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other Party in writing. The time of Substantial Completion or Final Completion shall be extended by written Contract amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed Party from performing in accordance with this Contract.

4.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Contract.

4.16 Records and Audit Rights. To ensure that the Contractor and its Subcontractors are complying with the warranty required herein, Contractor's and its Subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of any Contractor and its Subcontractors' employees who perform any Work or Services pursuant to this Contract (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit

(1) evaluation and verification of any invoices, payments or claims based on Contractor's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of Work under this Contract and (2) evaluation of the Contractor's and its Subcontractors' compliance with the Arizona employer sanctions laws. To the extent necessary for the City to audit Records as set forth in this Section, Contractor and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Contract for the duration of the Work and until three years after the date of final payment by the City to Contractor pursuant to this Contract. Contractor and its Subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City shall give Contractor or its Subcontractors reasonable advance notice of intended audits. Contractor shall require its Subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Contract.

4.17 E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, the Contractor and its Subcontractors warrant compliance with all Federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). Contractor's or its Subcontractors' failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by the City.

4.18 Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a "boycott" of Israel, as that term is defined in A.R.S. § 35-393.

4.19 Right to Inspect Plant. The City may, at reasonable times, inspect the part of the

plant or place of business of the Contractor or Subcontractor that is related to the performance of this Contract.

4.20 Warranties. Contractor warrants to the City that all Materials and equipment furnished shall be new unless otherwise specified and agreed by the City and that all Work shall be of first-class quality, free from faults and defects and in conformance with this Contract. If at any time within one year following the date of Final Completion and acceptance of the entire Project (or such longer period as may be provided under warranties for equipment or Materials): (A) any part of the Materials furnished in connection with the Work shall be or become defective due to defects in either labor or Materials, or both, or (B) Contractor's Work or Materials, or both, are or were not in conformance with original or amended Scope of Work/Specifications, or supplementary shop drawings, then the Contractor shall upon written notice from the City immediately replace or repair such defective or non-conforming Material or workmanship at no cost to the City. Contractor further agrees to execute any special guarantees as provided by this Contract or required by law. Contractor shall require similar guarantees from all vendors and from all its Subcontractors. Contractor further agrees, upon written demand of the City and during the course of construction, to immediately re-execute, repair or replace any Work that fails to conform to the requirements of this Contract, whether caused by faulty Materials or workmanship, or both. In the event Contractor shall fail or refuse to make such change upon the City's written demand, the City shall have the right to have such Work re-executed, repaired or replaced, to withhold from or back charge to Contractor all costs incurred thereby.

4.21 Inspection. All Materials and/or Services are subject to final inspection and acceptance by the City. Materials and/or Services failing to conform to the Scope of Work/Specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Materials or Services, the City may elect to do any or all of the following by written notice to the Contractor: (A) waive the non-conformance; (B) stop the Work immediately; or (C) bring material or service into compliance and withhold the cost of same from any payments due to the Contractor.

4.22 No Replacement of Defective Tender. Every tender of Materials shall fully comply with all provisions of this Contract. If a tender is made which does not fully conform, this shall constitute a breach of this Contract as a whole.

4.23 Shipment Under Reservation Prohibited. Contractor is not authorized to ship Materials under reservation and no tender of a bill of lading will operate as a tender of the Materials.

4.24 Liens. All Materials, Service or construction shall be free of all liens. Contractor shall deliver a formal release of all liens to the City before the City issues the Notice of Completion.

4.25 Licenses. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

4.26 Patents and Copyrights. All Services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this Contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.

4.27 Preparation of Specifications by Persons other than City Personnel. All Specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing Specifications shall receive any direct or indirect benefit from the utilization of Specifications, other than fees paid for the preparation of Specifications.

4.28 Advertising. Contractor shall not advertise or publish information concerning this Contract without prior, written consent of the City.

IN WITNESS WHEREOF, the Parties have the Contract as of this 3rd day of October, 2023 (the "Effective Date").

CITY OF BISBEE

VIKING SPECIALTY CONTRACTING



Stephen Pauker, City Manager



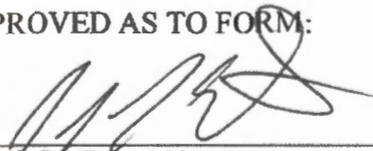
Jeff Burns

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



Joseph D. Estes, City Attorney