



**PUBLIC NOTICE
THE ELOY CITY COUNCIL
Meets
MONDAY, OCTOBER 13, 2025
6:00 PM
ELOY CITY COUNCIL CHAMBERS
595 NORTH C STREET
ELOY, ARIZONA 85131
For a
REGULAR MEETING**

AGENDA

- I. Call to Order**
- II. Roll Call**
- III. Moment of Silence**
- IV. Pledge of Allegiance**
- V. Public Appearances**

Those wishing to **ADDRESS THE CITY COUNCIL** may do so by signing in on a form provided by the City Clerk, identifying the topic(s) or agenda item(s). **ACTION** taken as a result of public comment regarding non agenda items will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date.

SPEAKERS SHALL BE LIMITED TO THREE (3) MINUTES.

- A. Scheduled
- B. Unscheduled

VI. Reports and Announcements

- A. Mayor's Announcements
 - 1. Proclamation — Fire Prevention Month
- B. Council Members' Announcements
- C. City Manager's Announcements
 - 1. Presentation to the Mayor and City Council of the Certificate of Achievement for Excellence in Financial Reporting for the fiscal year ending June 30, 2024, in recognition of the City's commitment to transparency and excellence in financial management and reporting.
 - 2. Eloy Police Chief Council Briefing

VII. Consent Agenda

ALL ITEMS LISTED WITH AN ASTERISK(*) ARE CONSIDERED TO BE ROUTINE MATTERS AND WILL BE ENACTED BY ONE MOTION AND ONE ROLL CALL

VOTE OF THE COUNCIL. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS UNLESS A COUNCIL MEMBER SO REQUESTS, IN WHICH EVENT THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED IN ITS NORMAL SEQUENCE ON THE AGENDA.

- *A. Approval of Minutes — September 8, 2025, and September 22, 2025, Regular Meeting
- B. Consideration and possible acceptance of a Change Order from Rummel Construction, Inc. for the Eloy Municipal Airport Drainage Improvements – Phase II (Alternate Bid Project), in accordance with the FAA/ADOT FY2022–FY2026 Approved Airport Capital Improvement Plan (ACIP), with funding provided through the current Eloy Airport Grants Fund, in an amount not to exceed \$158,055.76. David Malewitz
- C. Consideration and possible approval of Case No. FP2025-005: Exceptional Healthcare — a request for approval of a two-lot Final Plat on approximately 9.5 acres, located at the southeast corner of East Milligan Road and South Sunshine Boulevard. Dan Symer, AICP

VIII. Business: Possible Discussion and/or Action on the Following:

- A. Consideration and possible approval of Case No. FP2025-006: Kitt Solar — a request for approval of a one-lot Final Plat encompassing approximately 645 acres, located at the southwest corner of West Milligan Road and South Eleven Mile Corner Road. staff Dan Symer, AICP
- B. Consider the adoption of Resolution No. 25-1634 authorizing the Mayor to execute Contract No. COE-2025-014, a Site Maintenance Agreement with 301 AK 8ME LLC, Kitt Solar developer — Avaintus, LLC. Dan Symer, AICP
- C. Discussion and Possible Motion to Appoint an Acting City Manager and Set the Starting Date and Salary.

IX. Executive Session

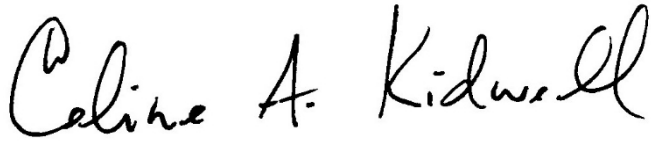
Possible executive session for discussion/consultation for legal advice with the city attorney and/or city staff concerning any of the agenda items, pursuant to A.R.S. §38-431.03 (A) (3) and (4).

- A. Pursuant to A.R.S. § 38-431.03 (A)(1), (3) and (4), the Eloy City Council shall meet in Executive Session for the purpose of discussion and/or negotiation of a salary of a public officer, Assistant City Manager to serve as Acting City Manager, including legal advice (if requested by City Council) with the City Attorney.

X. Adjournment

POSTED BY AT ELOY CITY HALL, ELOY POST OFFICE, AND CITY WEBSITE:
www.elayaz.gov

THE FACILITY WILL BE OPEN TO THE PUBLIC 30 MINUTES PRIOR TO THE START OF THE MEETING AND SEATING WILL BE AVAILABLE FOR “REASONABLY ANTICIPATED ATTENDANCE.”

A handwritten signature in black ink that reads "Celine A. Kidwell". The signature is fluid and cursive, with the first name "Celine" and last name "Kidwell" being more prominent than the middle initial "A.". The signature is positioned above a horizontal line.

Celine A. Kidwell, CMC, FCRM
City Clerk

INDIVIDUALS WITH SPECIAL ACCESSIBILITY NEEDS MAY CONTACT MICHELLE HALL, ADA COORDINATOR FOR THE CITY OF ELOY AT 520-466-9201 OR 520-466-7455 (TDD). IF POSSIBLE, SUCH REQUESTS SHOULD BE MADE 72 HOURS IN ADVANCE. ONE OR MORE MEMBERS OF THE COUNCIL AND/OR STAFF MAY PARTICIPATE BY TELEPHONIC OR VIDEO MEANS.

**CITY OF ELOY
REQUEST FOR COUNCIL ACTION**

Agenda Item: V.A.

Date: 10/13/2025

Date submitted:
07/01/2025

Action: Other

Subject: Scheduled

Date requested:
10/13/2025

TO: Mayor and City Council

FROM:

RECOMMENDATION:

DISCUSSION:

FISCAL IMPACT:

Approved as to Form:



Stephen R. Cooper, City Attorney

CITY OF ELOY
REQUEST FOR COUNCIL ACTION

Agenda Item: **V.B.**

Date: **10/13/2025**

Date submitted:
07/01/2025

Action: Other

Subject: Unscheduled

Date requested:
10/13/2025

TO: Mayor and City Council

FROM:

RECOMMENDATION:

DISCUSSION:

FISCAL IMPACT:

Approved as to Form:



Stephen R. Cooper, City Attorney



PROCLAMATION

OFFICE OF THE MAYOR

WHEREAS, the City of Eloy is committed to ensuring the safety and security of all those living in and visiting Eloy; and

WHEREAS, fire remains a serious public safety concern both locally and nationally, and the presence of lithium-ion batteries in many household devices introduces unique fire risks; and

WHEREAS, most of the electronics used in homes daily — including smartphones, tablets, laptops, power tools, e-bikes, e-scooters, and toys — are powered by lithium-ion batteries, which, if misused, damaged, or improperly charged, can overheat, start a fire, or explode; and

WHEREAS, the National Fire Protection Association® (NFPA®) reports an increase in battery-related fires, underscoring the need for public education on the safe use of lithium-ion batteries; and

WHEREAS, residents should follow three key safety practices: purchase only certified products, charge batteries safely, and recycle them responsibly to prevent battery-related fires; and

WHEREAS, lithium-ion batteries store a large amount of energy in a small space, and improper use, such as overcharging, using off-brand chargers without safety certification, or exposing batteries to damage, can result in fire or explosion; and

WHEREAS, the proper disposal and recycling of lithium-ion batteries help prevent environmental hazards and reduce fire risks in the home and community; and

WHEREAS, Eloy's first responders are dedicated to reducing the occurrence of fires through prevention, safety education, and community outreach; and

WHEREAS, the 2025 Fire Prevention Week™ theme, “Charge into Fire Safety™: Lithium-Ion Batteries in Your Home,” serves to remind us of the importance of using, charging, and recycling lithium-ion batteries safely to reduce the risk of fires in homes and communities.

NOW, THEREFORE, I, Andrew Sutton, Mayor of the City of Eloy, do hereby proclaim October 2025 as,

FIRE PREVENTION MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Eloy to be affixed this thirteenth day of October, in the year of our Lord, two thousand twenty-five.

Andrew Sutton
Mayor of Eloy

ATTEST:

Celine Kidwell
City Clerk

CITY OF ELOY

REQUEST FOR COUNCIL ACTION

Agenda Item: **VI.C.1.**

Date: **10/13/2025**

Date submitted:
09/18/2025

Action: Other

Subject: Presentation to the Mayor and City Council of the Certificate of Achievement for Excellence in Financial Reporting for the fiscal year ending June 30, 2024, in recognition of the City's commitment to transparency and excellence in financial management and reporting.

Date requested:
10/13/2025

TO: Mayor and City Council

FROM: Brian Wright, Finance Director

RECOMMENDATION:

It is recommended that the City Council formally accept the Certificate of Achievement for Excellence in Financial Reporting presented to the City of Eloy by the Government Finance Officers Association (GFOA) in recognition of the City's Comprehensive Annual Financial Report for the fiscal year ending June 30, 2024.

DISCUSSION:

The Certificate of Achievement for Excellence in Financial Reporting is the highest form of recognition in governmental accounting and financial reporting. Receiving this award is a significant accomplishment for the City of Eloy and demonstrates the City's strong commitment to transparency, accountability, and excellence in financial management. This award is presented to the Mayor and City Council in recognition of their leadership, dedication, and ongoing support of sound financial practices.

For the fiscal year 2023–2024, the City's Finance Department, with the assistance of Heinfeld, Meech & Co. P.C., prepared the City's 13th Annual Comprehensive Financial Report (ACFR). The ACFR provides a detailed presentation of the City's financial condition, reporting on activities and balances for the fiscal year. The report is organized into three sections:

1. **Introductory Section** – includes the transmittal letter.
2. **Financial Section** – includes the independent auditor's report, management's discussion and analysis, government-wide and fund financial statements, notes, required supplementary information, combining statements, and schedules.
3. **Statistical Section** – includes financial, economic, and demographic information.

The Government Finance Officers Association (GFOA) awarded the Certificate of

Achievement to the City of Eloy after an impartial review determined the ACFR met the program's high standards. These standards include demonstrating a constructive "*spirit of full disclosure*" to clearly communicate the City's financial story and encourage residents, stakeholders, and other users to engage with the report.

FISCAL IMPACT:

None

Approved as to Form:

A handwritten signature in blue ink, appearing to read "Stephen R. Cooper", is written over a solid black horizontal line.

Stephen R. Cooper, City Attorney



Government Finance Officers Association
203 North LaSalle Street, Suite 2700
Chicago, Illinois 60601-1210
312.977.9700 fax: 312.977.4806

7/21/2025

Andrew Sutton
Mayor
City of Eloy, Arizona

Dear Andrew:

We are pleased to notify you that your annual comprehensive financial report for the fiscal year ended June 30, 2024 qualifies for GFOA's Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

When a Certificate of Achievement is awarded to a government, an Award of Financial Reporting Achievement (AFRA) is also presented to the individual(s) or department designated by the government as primarily responsible for its having earned the Certificate. This award has been sent to the submitter as designated on the application.

We hope that you will arrange for a formal presentation of the Certificate and Award of Financial Reporting Achievement, and give appropriate publicity to this notable achievement. A sample news release is included to assist with this effort.

We hope that your example will encourage other government officials in their efforts to achieve and maintain an appropriate standard of excellence in financial reporting.

Sincerely,

Michele Mark Levine
Director, Technical Services



Government Finance Officers Association

Certificate of
Achievement
for Excellence
in Financial
Reporting

Presented to

**City of Eloy
Arizona**

For its Annual Comprehensive
Financial Report
For the Fiscal Year Ended

June 30, 2024

Christopher P. Morill

Executive Director/CEO



**The Government Finance Officers Association of
the United States and Canada**

presents this

AWARD OF FINANCIAL REPORTING ACHIEVEMENT

to

Finance Department
City of Eloy, Arizona



The Award of Financial Reporting Achievement is presented by the Government Finance Officers Association to the department or individual designated as instrumental in the government unit achieving a Certificate of Achievement for Excellence in Financial Reporting. A Certificate of Achievement is presented to those government units whose annual financial reports are judged to adhere to program standards and represents the highest award in government financial reporting.

Executive Director

Christopher P. Morrell

Date: 7/21/2025

**CITY OF ELOY
REQUEST FOR COUNCIL ACTION**

Agenda Item: **VII.A.**

Date: **10/13/2025**

Date submitted:
07/01/2025

Action: Formal

**Subject: Approval of Minutes —
September 8, 2025, and September 22,
2025, Regular Meeting**

Date requested:
10/13/2025

TO: Mayor and City Council

FROM:

RECOMMENDATION:

DISCUSSION:

FISCAL IMPACT:

Approved as to Form:



Stephen R. Cooper, City Attorney



**City of Eloy
Minutes
City Council Regular Meeting
September 8, 2025 at 5:30 PM
City Council Chambers**

I. Call to Order

Mayor Sutton called the meeting to order at approximately 6:00 p.m..

II. Roll Call

Present:

Andrew Sutton, Mayor
Michelle McKinley-Tarango, Vice Mayor
Sara Curtis, Councilmember
JoAnne Galindo, Councilmember
Jose Garcia, Councilmember
Daniel Snyder, Councilmember
Michael Vodrazka, Councilmember

Staff:

David Malewitz, City Manager
Stephen Cooper, City Attorney
Michelle Hall, Deputy City Clerk/Executive Assistant to the City Manager
Mackenzie Letcher, Assistant City Manager

III. Moment of Silence

Mayor Sutton requested a moment of silence in honor of the Orozco family. On August 28, 2025, a father, two sons, and a brother were killed outside of Eloy on the highway.

IV. Pledge of Allegiance

The moment of silence was followed by the Pledge of Allegiance led by Council Member Galindo.

V. Public Appearances

A. Scheduled

1. Informational Presentation and Discussion Regarding Capital Financing Options, Including Revitalization District (RD) and Community Facilities District (CFD) Models,

and Debt Issuance (“Debt 101”) by Nick Dodd (Raymond James) and Zack Sakas (Greenberg Traurig) for the Purposes of Enhancing Options for Community Growth.

Finance Director Brian Wright introduced Nick Dodd from Raymond James (Financial Advisor) and Zach Sakas from Greenberg Traurig (Bond Attorney) to present on capital financing options, including revitalization districts and community facilities districts.

Key Topics Covered:

- General Obligation Bonds
- Excise Tax Bonds (Highway User Revenue)
- Utility Revenue Bonds
- Certificates of Participation/Lease Purchase Agreements
- Greater Arizona Development Authority (GADA)
- Water Infrastructure Finance Authority (WIFA)
- USDA Loans
- Utility Pledged Revenue Obligations
- Community Facilities Districts (CFDs)
- Revitalization Districts (RDs)
- Municipal Improvement Districts

Discussion Highlights:

- The City currently has an A+ bond rating.
- Two existing excise tax obligations (2017 City Hall, 2021 Police Department)
- Seven loans through WIFA (four water, three wastewater)
- Utility pledged revenue obligations do not require voter approval
- CFD and RD policies will be updated and brought to Council in the coming months.
- One RD application is currently under review.

Council members asked questions regarding tax sunset clauses, bond ratings, and the impact of paying off existing debt. Mayor Sutton thanked the presenters for making the complex information digestible.

B. Unscheduled

Resident Donna Kisler thanked Mayor Sutton and Council Member Vodrazka for visiting their village on August 28, 2025, for listening to their concerns, and for sharing the city's improvement goals aimed at making it a better place to live.

VI. Reports and Announcements

A. Mayor's Announcements
Mayor's Announcements

Mayor Sutton reported on the following activities:

- **August 28:** Attended Eloy Chamber luncheon at Robson Ranch with an Arizona Department of Transportation (ADOT) presentation on the Arizona passenger rail study and Exceptional Community Hospital
- **August 28:** Visited Grande Valley Ranch with Council Member Vodrazka for a Q&A session with residents
- **August 29:** Attended Santa Cruz High School game where the running track was dedicated to Charles G. "Nap" Lawrence, Hall of Famer and philanthropist
- **August 30:** Participated in a water drive for the Police Department at Tumbleweed Inn
- **August 31:** Attended Pinal Partnership Breakfast at Central Arizona College with Council Members Snyder, Curtis, and Galindo, along with City Manager Malewitz and Assistant City Manager Letcher.
- **September 8:** Toured the new Exceptional Healthcare hospital facility (opening Monday, September 15, 2025; public tours available September 12, 2025)

B. Council Members' Announcements

Council Member Galindo:

- Reported on the Pinal Partnership Breakfast and praised Assistant City Manager Letcher.
- Promoted Eloy Fiestas Patrias 2025 on Friday, September 12, 2025, and Saturday, September 13, 2025, with a parade on Saturday at 9:00 a.m.

Council Member Snyder:

- Highlighted takeaways from the Pinal Partnership Breakfast regarding planning process efficiency and stakeholder meetings
- Suggested that the City consider quality circle meetings with developers and stakeholders

Council Member Curtis:

- Announced 2025 FAI World Cup of Canopy Piloting at Skydive Arizona (running through September 10 –13, 2025, starting 6:00 a.m. daily)
- Confirmed two skydivers will jump into the Fiestas Patrias parade with Mexican and U.S. flags at 9:00 a.m.
- Supported Council Member Snyder's stakeholder meeting concept, referencing success with the solar ordinance process

C. City Manager's Announcements

City Manager Malewitz reported:

- **Transportation Grant Award:** \$2.6 million Transportation Alternatives Grant awarded for the Battaglia Sidewalk project with a \$151,600 local match; design to be completed this fiscal year, construction by FY28, ADOT managing construction
- **APS Power Line Project:** Public hearing held September 8, 2025, 1:00-5:00 p.m. for the transmission line project east of Highway 87
- **Airport Air Park Master Plan:** Kickoff meeting scheduled this week for business park/industrial use planning around the airport
- **Agenda Process:** Thanked Council for engagement and encouraged members to reach out with questions on agenda items

1. Eloy Police Chief Council Briefing

1. Eloy Police Chief Sergio Banales Council Briefing

Sergio Banales presented the following for August 2025:

Internal Department Updates:

- Officer Steven Lindsey graduated from Gilbert Regional Academy on August 14, 2025, and is now in the Field Training Officer program.
- Dispatcher Dr. Hawkins rejoined the department on August 20, 2025, and began working solo immediately.
- Currently, hiring one additional dispatcher; one dispatcher in training.
- Police Officer Recruit Tadd Mendez began police academy today at the Gilbert Regional Academy.

Community Engagement:

- August 11: Met with Santa Cruz High School principal and superintendent regarding school safety, lockdown drills, and adopted school program
- August 20: Met with Toltec Superintendent Dr. Michelle Poppen regarding school safety and cooperation
- September 5: Participated in lockdown exercise at Toltec Elementary
- August 30: Participated in a Fill the Police Cruiser water drive for public safety, organized by Tumbleweed Inn. A special thanks to Sheryl Pedigo

Notable Enforcement Activity:

- **August 1:** Student with a BB gun at Santa Cruz High School; staff acted quickly, item confiscated, no threats or injuries
- **August 8:** Investigation of threat to bring a gun to Eloy Jr. High; not substantiated; extra police presence provided
- **August 14:** Street racing enforcement on Estrella and Hannah; two drivers arrested, vehicles impounded
- **August 19:** Three suspects arrested for burglary in the 600 block of North 11

Mile Corner for stealing copper wire

Traffic Unit Activity:

Labor Day Week Detail (August 29-September 1):48-hour detail with four officers, 118 hours dedicated

- 112 enforcement stops
- 158 citations issued
- 21 arrests (including aggravated DUI, DUI with drugs, under-21 DUI, distracted driving, seat belt violations, child safety seat violations, criminal speed, reckless/aggressive driving)

Commercial Vehicle Inspections:

- 21 inspections completed in August (approximately one hour each)
- 88 violations noted/cited
- 3–4 trucks taken out of service
- Proactive outreach to local businesses with commercial fleets, offering voluntary inspections

Additional Traffic Unit Statistics:11 arrests, 7 warnings, 166 traffic citations issued

- Council Member Galindo thanked Chief Banales and officers for their hard work and noted the importance of proactive commercial vehicle enforcement.
- Council Member Garcia thanked the Eloy Police Department for their support of the parade and mentioned the assistance of the Arizona Rangers with special event security.

VII. Consent Agenda

Motion: Councilmember _____ moved to approve Consent Agenda Items A, B, and J [or specify which items]. **Second:** Councilmember _____ **Discussion:** [Any items pulled for discussion] **Vote:** [PASSED/FAILED] - (List how each member voted)

A. Approval of Minutes - August 25, 2025 Regular Meeting

Council Member Snyder requested that Consent Agenda Item I be pulled from the consent agenda for separate discussion.

Motion: Council Member Garcia moved to approve the consent agenda, excluding Item I.

Second: Council Member Galindo

Vote: Approved 7-0

B. Authorization to Purchase a New John Deere Loader and Monroe Towmaster Equipment Trailer Under the Sourcewell Cooperative Purchasing Contracts #011723 and #092922 from the Authorized John Deere and Towmaster Distributor RDO

Equipment Company in the Amount Not To Exceed \$400,000 for the Public Works Streets Division

- C. Acceptance and approval of the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant Agreement 3-04-0014-021-2025 for T-Hangar Reconstruction Design in the amount of \$178,666. This project is included in, and was approved as part of, the City's adopted Capital Improvement Plan for FY2025–2026.
- D. Approval of a Professional Services Agreement with Lochner (formerly Armstrong Consultants, Inc.) for Design Phase Services for the Eloy Municipal Airport T-Hangar Reconstruction project, in accordance with the FAA/ADOT FY2026-2031 Approved Airport Capital Improvement Plan (ACIP) and as approved in the current City of Eloy FY2025–2026 Airport Capital Improvement Program for an amount not to exceed \$159,720. This project is included in, and was approved as part of, the City's adopted Capital Improvement Plan for FY2025–2026.
- E. Acceptance and approval of the Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grant Agreement 3-04-0014-022-2025 for Apron Reconstruction Design for the amount of \$218,500. This project is included in, and was approved as part of, the City's adopted Capital Improvement Plan for FY2025–2026.
- F. Approval of a Professional Services Agreement with Lochner (formerly Armstrong Consultants, Inc.) for Design Phase Services for the Eloy Municipal Airport Apron Reconstruction project, in accordance with the FAA/ADOT FY2026-2031 Approved Airport Capital Improvement Plan (ACIP) and as approved in the current City of Eloy FY2025–2026 Airport Capital Improvement Program for an amount not to exceed \$169,970. This project is included in, and was approved as part of, the City's adopted Capital Improvement Plan for FY2025–2026.
- G. Adoption of Resolution No. 25-1632, accepting grant funds from the Gila River Indian Community in the amount of \$35,000 for the Eloy Police Department's Emergency Radio Redundancy and VHF Repeater Replacement Project, and authorizing the Mayor and City Manager, or designee, to sign all documents necessary to execute the grant. This project is included in, and was approved as part of, the City's adopted Capital Improvement Plan for FY2025–2026.
- H. Adoption of Resolution No. 25-1633 accepting grant funds from the Gila River Indian Community in the amount of \$23,261 for the Eloy Police Department's Next Generation Automated Fingerprint Identification System Upgrade Project, and authorizing the Mayor and City Manager, or designee, to sign all documents necessary to execute the grant. This project is included in, and was approved as part of, the City's adopted Capital Improvement Plan for FY2025–2026.
- I. Consideration and Approval of a Proposal from Holiday Lighting Company (dba HLC) for Upgraded Lighting Installation on the Eloy Water Tower Utilizing the Cooperative Purchasing Agreement Between the City of Avondale and Holiday Lighting Company Inc., in an Amount Not to Exceed \$29,000. This project is included in, and was approved as part of, the City's adopted Capital Improvement Plan for FY2025–2026. Assistant City Manager Mackenzie presented a request to upgrade the water tower lighting system.

Background:

- In 2024, \$30,000 was invested in the water tower, including the replacement of LED lights on the legs, relocation of the Arizona Power Service (APS) pole, trenching, and conduit work by Ellison Mills.
- HLC inspection found significant water penetration in the tower head lighting system.
- The IP65 rating is insufficient for monsoon conditions, characterized by high winds and diagonal rain.
- 16 of 32 lights (approximately half) failed after inspection
- The previous system had no warranty

Proposed Solution:

- Upgrade to higher-rated RGBW (Red, Green, Blue, and White) LED lighting fixtures with enhanced water resistance.
- The new system includes a 5-year warranty
- Installation is tentatively scheduled for October 16, 2025.
- Total cost: \$26,950 plus \$2,050 contingency (not to exceed \$29,000)
- Funding: \$20,000 from CIP allocation, remainder from Water Tower Maintenance Fund (\$20,000 annual allocation)

Discussion:

- Council Member Snyder requested clarification on water penetration issues and total historical costs for the water tower project.
- Council Member Garcia raised concerns about compliance with the Dark Sky Ordinance.
- Council Member Curtis suggested shutting off lights at certain hours (11:00 p.m. or midnight).
- Community Development Director Symer confirmed the tower has an exemption, lights are currently shut off at 11:00 p.m. per ordinance, and will provide a detailed response via email.
- The council acknowledged that the original purpose of tower lighting was to enhance visibility from the interstate.

Motion: Council Member Schneider moved to approve the water tower lighting upgrade as presented.

Second: Council Member Curtis (with a caveat to review operating hours going forward)

Vote:

- Yes: Snyder, Galindo, Vodrazka, Curtis, Tarango, Sutton (6)
- No: Garcia (1)
- **Result:** Motion approved 6-1

- J. Consideration and approval of a proposal submitted by Sunland Asphalt and Construction, LLC, in an amount not to exceed \$600,000, for the Fiscal Year 2025–2026 Pavement Preservation Program. The monies for this project have been appropriated as part of the approved FY2025–2026 City Budget. Authorization is further requested for the Mayor to execute all necessary agreements.

VIII. Business: Possible Discussion and/or Action on the Following:

- A. Adopt Resolution No. 25-1631 approving Case No. CUP2025-005: Desert Septic. A request by George Allen, property owner, for a Conditional Use Permit for Outdoor Storage for the property located at 4650 and 4712 N Tumbleweed Rd.

Community Development Director Dan Symer presented Case Number CUP 2025-005, a request by George Allen (property owner) for a conditional use permit for outdoor storage at 4650 and 4712 North Tumbleweed Road (1.84 acres total).

Applicant Information:

- Business: Desert Septic
- Use: Outdoor storage for equipment and a small office
- Location: Island district, across from the RV park
- Planning Commission recommendation: Approval (6-0 vote)
- Staff recommendation: Approval with attached stipulations

Applicant Presentation (George Allen):

- No waste stored on site
- Trucks: F-350/F-450 one-ton trucks with tractors (2–3 daily)
- One service pump truck (Monday–Friday, dumped daily at the City of Casa Grande)
- Deliveries every other Friday (flatbed trailer with septic tanks and pipe)
- Seven-foot-tall fence planned
- Mini excavators for residential work, not large commercial equipment
- Has spoken with airport management (the Hills), not yet with residential neighbors across the street.

Discussion:

Council Member Curtis inquired about odor concerns; the applicant confirmed that there is no waste storage on site.

Council Member Curtis inquired about truck traffic and weight; the applicant described light-duty trucks with minimal daily trips.

Council Member Galindo inquired about neighbor outreach; the applicant had not yet contacted residential neighbors, but had spoken with the airport.

Motion: Council Member Garcia moved to read Resolution 25-1631 by title only.

Second: Council Member [not specified]

Vote: Approved unanimously

City Clerk Kidwell read the resolution by title.

Motion: Council Member Garcia moved to approve Resolution 25-1631 as presented.

Second: Council Member Galindo

Vote: Approved 7-0

IX. Executive Session

No executive session was held.

X. Adjournment

Mayor Sutton adjourned the meeting at 7:43 p.m.

Note: A video recording of the meeting is available for further information, in accordance with Arizona Revised Statutes § 38-431.01(E).

BY:

Andrew Sutton, Mayor

ATTEST:

Celine A. Kidwell, City Clerk

APPROVED AS TO FORM:

Stephen R. Cooper, City Attorney

BY:

ATTEST:

Andrew Sutton, Mayor

Celine Kidwell, City Clerk

APPROVED AS TO FORM:

Stephen R. Cooper, City Attorney



**City of Eloy
Minutes
City Council Regular Meeting
September 22, 2025 at 6:00 PM
City Council Chambers**

I. Call to Order

Mayor Andrew Sutton called the meeting to order at 6:11 p.m.

II. Roll Call

Present:

Andrew Sutton, Mayor
Michelle Tarango, Vice Mayor
Sara Curtis, Council Member — via phone
JoAnne Galindo, Council Member
Jose Garcia, Council Member
Daniel Snyder, Council Member
Michael Vodrazka, Council Member

Staff Present:

David Malewitz, City Manager
Stephen Cooper, City Attorney
Celine Kidwell, City Clerk
Mackenzie Letcher, Assistant City Manager

III. Moment of Silence

A moment of silence was observed.

IV. Pledge of Allegiance

Councilmember Garcia led the Pledge of Allegiance.

V. Public Appearances

A. Scheduled

There were no scheduled public appearances.

B. Unscheduled

Faith Pales, Resident, addressed two concerns:

1. Asked why the senior citizen center is not open on Fridays, and that seniors may depend on the lunch service
2. Request for alternative revenue sources, so the senior center can be a dedicated space for seniors without rental interruptions that require removing decorations and setup.

Bill Wisnowski, a Resident, reported ongoing issues with Waste Management's service, including crushed recycling bins (replaced twice in 16 weeks) and communication delays that require the city to act as an intermediary, rather than allowing direct contact with the provider.

VI. Reports and Announcements

A. Mayor's Announcements

Mayor Sutton reported on recent activities, including:

- FAI World Cup of Canopy Piloting opening ceremonies
- Fiesta Patrias celebration organized by Corazon de Latinos Unidos
- Santan Valley city council selection process
- Troy Thomas Center glow-in-the-dark dodgeball event
- Men's Breakfast at First Assembly of God Church
- Suicide Prevention Walk with the Sparrow Campaign

1. Proclamation — Hispanic Heritage Month (September 15, 2025 – October 15, 2025)

Vice Mayor Tarango read as Mayor Sutton presented a proclamation recognizing the Latino Familia Initiative and Corazon de Latino Unidos for their contributions to the community.

B. Council Members' Announcements

- Council Member Vodrazka: Reported on hospital tour, 9/11 breakfast with students, Fiesta Patrias 2025 participation, and Coolidge Centennial celebration
- Council Member Galindo: Attended 9/11 breakfast, worked at Fiesta Patrias, and participated in a suicide awareness walk.
- Council Member Garcia: Attended the 9/11 ceremony and cops and clergy meeting at the police department.

C. City Manager's Announcements

City Manager David Malewitz announced:

- Silent Witness Anti-Crime Night event Tuesday, September 23, 2025, 6:00

- p.m. - 9:00 p.m. in Casa Grande
- Well #3 rehab project starting in the first week of October 2025
- Fall Break programs at Troy Thomas Center
- Drive-through pet vaccination Saturday, September 27, 2025, 8:00 a.m. -10:00 a.m. at City Hall
- Poll for a joint Planning & Zoning Commission meeting on October 15th at 5:30 p.m. for the Airpark Master Plan kickoff

D. Report from Rich Vitiello, Pinal County Board of Supervisor District 1

Pinal County Supervisor Rich Vitiell, of District 1, discussed the state legislature's attempts to override local planning and zoning authority, requesting municipal cooperation to oppose such measures. He also addressed questions about the distribution of the half-cent sales tax following San Tan Valley's incorporation.

E. Quarterly Report From The Eloy Chamber of Commerce

Eloy Chamber of Commerce Executive Director Andrew Rodriguez presented a comprehensive report, including:

- Membership growth from 176 to 205+ members
- Visitor center statistics: 21,010 visitors in 2025 vs 19,008 in 2024
- Museum landscaping completion with \$25,000 in donations
- The "Shop Eloy" section was added to the visitor center.
- Proposed name changes: Sunland Visitor Center to Eloy Visitor Center, Santa Cruz Valley Historic Museum to Eloy Historic Museum
- Board members Dr. Terry Ecklund (President), Michael Powell (Vice President/Treasurer), and Richard Rosales (Secretary) attended and spoke to the Eloy Chamber of Commerce report, addressing the Council.

Mayor Sutton called for a 5-minute break at 7:35 p.m. The meeting resumed at 7:43 p.m.

VII. Consent Agenda

Motion: Councilmember Jose Garcia moved to approve the Consent Agenda as presented.

Second: Councilmember JoAnne Galindo

Vote: Approved 6-0

- A.** Approval of Minutes - September 15, 2025 Work Session
- B.** Recommendation to the Arizona Department of Liquor Licenses and Control (ADLLC) for issuance of a Series 15 Special Event License to the Eloy Chamber of Commerce for the Eloy Glow event, November 8, 2025.

VIII. Business: Possible Discussion and/or Action on the Following:

- A.** Authorization to use General Fund Reserves to pay off Water Infrastructure Finance

Authority (WIFA) debt obligations 910103-09, 92A150-10, 920216-12, and 910164-15 totaling \$2,343,899.52

Finance Director Wright explained the proposal to pay off four Water Infrastructure Finance Authority debt obligations totaling \$2,343,899.52, which would save approximately \$180,000 in interest and free up capacity for future water/wastewater infrastructure projects.

Motion: Councilmember Garcia moved to authorize the use of General Fund Reserves to pay off WIFA debt obligations 910103-09, 92A150-10, 920216-12, and 910164-15 totaling \$2,343,899.52.

Second: Vice Mayor Michelle Tarango

Vote: Approved 6-0

B. General Plan Update Visioning Summary

Consultant Terry Hogan from Logan Simpson provided a comprehensive update on the General Plan process, reporting that over 3,300 people engaged through various outreach methods. Presented draft vision statement: "Eloy is growing with purpose, rooted in history, guided by community pride, focused on improving quality of life for all." Four themed areas were identified: Purposeful Growth, Prosperous Economy, Balanced Environment, and Resilient Infrastructure. Eloy General Plan Open House Workshop 2 is scheduled for October 18, 2025.

Action: No action taken — informational presentation

C. Consideration of Acceptance of Resignation of Public Officer, City Manager, and Establishment of Employment End Date

Mayor Sutton apologized for the technical difficulties during the meeting and thanked attendees for their patience. The public portion of the meeting concluded at approximately 8:08 p.m. City Council entered into Executive Session.

Time Returned to Open Regular Session: 9:01 p.m.

Action Taken Upon Return:

Motion: Council Member Jose Garcia moved to accept the resignation of City Manager David Malewitz with a last day of employment of November 14, 2025, followed by 45 days of on-call availability.

Second: Vice Mayor Michelle Tarango

Vote: Approved 6-0

IX. Executive Session

- A. Pursuant to A.R.S. §38-431.03 (A)(1), (3), and (4), the City Council may convene into Executive Session for the following purposes. First, the Council will discuss the resignation of the City Manager, including the process, timing, and available options for recruiting and/or selecting a new City Manager. Second, the Council may discuss and/or consider the appointment of an Interim City Manager, including matters related to negotiating the salary and terms of**

employment. The Council may also receive legal advice and consider such an appointment.

Mayor Sutton announced that pursuant to A.R.S. §38-431.03 (A)(1), (3), and (4), the Council would convene into Executive Session to discuss the City Manager's resignation, recruitment process, and potential Interim City Manager appointment, including salary negotiations and legal advice.

Time Entered Executive Session: 8:08 p.m.

Attendees: City Council*, City Manager David Malewitz, City Attorney Stephen Cooper, City Clerk Celine Kidwell, Assistant City Manager Mackenzie Letcher.

*Council member Sara Curtis attended the Executive Session via phone.

X. Adjournment

With no further business, Mayor Sutton adjourned the meeting at 9:01 p.m.

Mayor Sutton adjourned the meeting at 7:43 p.m.

Note: A video recording of the meeting is available for further information, in accordance with Arizona Revised Statutes § 38-431.01(E).

BY:

Andrew Sutton, Mayor
ATTEST:

Celine A. Kidwell, City Clerk

APPROVED AS TO FORM:

Stephen R. Cooper, City Attorney

BY:

ATTEST:

Andrew Sutton, Mayor

Celine Kidwell, City Clerk

APPROVED AS TO FORM:

Stephen R. Cooper, City Attorney

CITY OF ELOY

REQUEST FOR COUNCIL ACTION

Agenda Item: **VII.B.**

Date: **10/13/2025**

Date submitted:
09/29/2025

Action: Formal

Subject: Consideration and possible acceptance of a Change Order from Rummel Construction, Inc. for the Eloy Municipal Airport Drainage Improvements – Phase II (Alternate Bid Project), in accordance with the FAA/ADOT FY2022–FY2026 Approved Airport Capital Improvement Plan (ACIP), with funding provided through the current Eloy Airport Grants Fund, in an amount not to exceed \$158,055.76.

Date requested:
10/13/2025

TO: Mayor and City Council

FROM: Kristina Wasiniak, Public Works Business Manager

RECOMMENDATION:

Staff recommends that the City Council accept the Change Order from Rummel Construction, Inc. for the Eloy Municipal Airport Drainage Improvements – Phase II (Alternate Bid Project), in accordance with the FAA/ADOT FY2022–FY2026 Approved Airport Capital Improvement Plan (ACIP), with funding provided through the current Eloy Airport Grants Fund, in an amount not to exceed \$158,055.76.

DISCUSSION:

This project aims to enhance and protect existing and future airport infrastructure by addressing drainage issues caused by off-site run-off. It is identified within the FY2022-FY2026 Approved Airport Capital Improvement Plan (ACIP) and aims to mitigate water-related damage and improve airport safety and functionality.

This change order from Rummel Construction, Inc. is for the Eloy Municipal Airport Drainage Improvements — Phase II (Alternate Bid Project) to include the reconstruction of the drainage channel on the northeast side of the airfield. This upgrade corresponds to Project 1 – Floodplain Improvements, as outlined in the Eloy Airport Drainage Master Plan prepared by Kimley-Horn in August 2014. The project's total cost is estimated at \$750,000 with ADOT grant sponsorship totaling \$675,000 and the city share equaling \$75,000. The total change order amount of \$158,055.76 for Rummel Construction, Inc.'s construction services aligns with the FAA/ADOT FY2022-FY2026 Approved Airport Capital Improvement Plan (ACIP) and will be funded through the current Eloy Airport Grants Fund.

On April 11, 2022, the City entered into a contract with Dibble Engineering for the Design, Bid, and Construction Phase Services for the Eloy Municipal Airport Drainage Improvements — Phase II project. Dibble Engineering completed the design, and the project was advertised for bid in the Casa Grande Dispatch on March 27, 2025, and April 1, 2025. A pre-bid conference was held on April 9, 2025, at City Hall, and bidders were invited to attend a site visit following the conference. Sealed bids were accepted until April 30, 2025, at 2:00 pm, at which time the received bids were publicly opened and read aloud. Dibble Engineering evaluated the bid submittals and provided a bid tabulation and recommendation of award. Rummel Construction, Inc. was the apparent low bidder of the five (5) bids received.

On June 26, 2025, the City entered into a contract with Rummel Construction Inc. for the Eloy Municipal Airport Drainage Improvements — Phase II construction. The base bid construction of the new drainage channel on the south side of the airfield was completed on September 17, 2025. Rummel Construction Inc.'s initial alternate bid exceeded the remaining grant award for the northeast airfield portion of the project. After careful consideration by Dibble Engineering and Rummel Construction Inc., the alternate bid scope of work was scaled down to accommodate the remaining grant funds while staying within the limits of the existing ADOT grant.

Construction will be completed in a single phase and will last for approximately 21 days. Acceptance of this change order is essential to complete a portion of the critical drainage improvements identified in the airport's capital improvement planning, and utilizing previously awarded ADOT grant funds.

FISCAL IMPACT:

The funding is \$158,055.76 for Rummel Construction Inc.'s construction services for Eloy Municipal Airport Drainage Improvements — Phase II (Alternate Bid Project), approved in the current Airport Grants Fund and Capital Improvement Program. This project is grant-funded and reimbursable through ADOT (grant no. E2S2C01C). The Drainage Improvements — Phase II total cost is estimated at \$750,000 with ADOT grant sponsorship totaling \$675,000 and the **city share equaling \$75,000.**

Approved as to Form:



Stephen R. Cooper, City Attorney

PROJECT CHANGE ORDER No. 1

9/5/2025

Eloy Municipal Airport

Airfield Drainage Improvements, Phase II

ADOT Grant No. E2S2C01C Eloy Project No. 2022-001

Contractor: Rummel Construction, Inc.

Description: This change order compensates the contractor for installation of additional drainage features within the scope of the existing ADOT grant.

Reason:

- 1) Channel improvements are necessary to reduce erosion and provide airport security.

Cost Analysis: The cost estimate provided by the contractor was reviewed and compared favorably to the Engineer's estimate and were deemed reasonable by Eloy.

Table No. 1 – Cost Information

Item No.	Description	Unit	Unit Price	Quantity	Amount
C-102-6.2	SWPPP (Sch II)	LS	\$4,500.00	1	\$4,500.00
C-105-6.2	Mobilization (Sch II)	LS	\$9,700.00	1	\$9,700.00
GTP-20.06.2	Airfield Barricading, Safety & Security (Sch II)	LS	\$14,000.00	1	\$14,000.00
GTP-30.01.1	Remove & Salvage Existing Millings	CY	\$50.00	21	\$1050.00
GTP-30.01.2	Salvage & Stockpile Existing Riprap	CY	\$30.00	76	\$2,280.00
GTP-40.01.1	Tied Concrete Block Mat Channel Lining with Non-Woven Geotextile	SF	\$15.75	4,450	\$70,087.50
GTP-40.02.1	Riprap or Salvaged Riprap w/ Geosynthetic Filter Fabric	SY	\$41.00	41	\$1,640.00
GTP-40.03.1	Concrete Cut-Off Wall (MAG 552-Mod)	LF	\$278.32	143	\$39,799.76
P-152-4.2	Channel Regrading/Reshaping	SY	\$16.50	909	\$14,998.50
	Total				\$158,055.76

30 calendar days are provided for completion of the additional work.

Recommended by: _____

Engineer



9/8/2025

Date: _____

Accepted by: _____

Contractor



Date: _____

9/8/2025

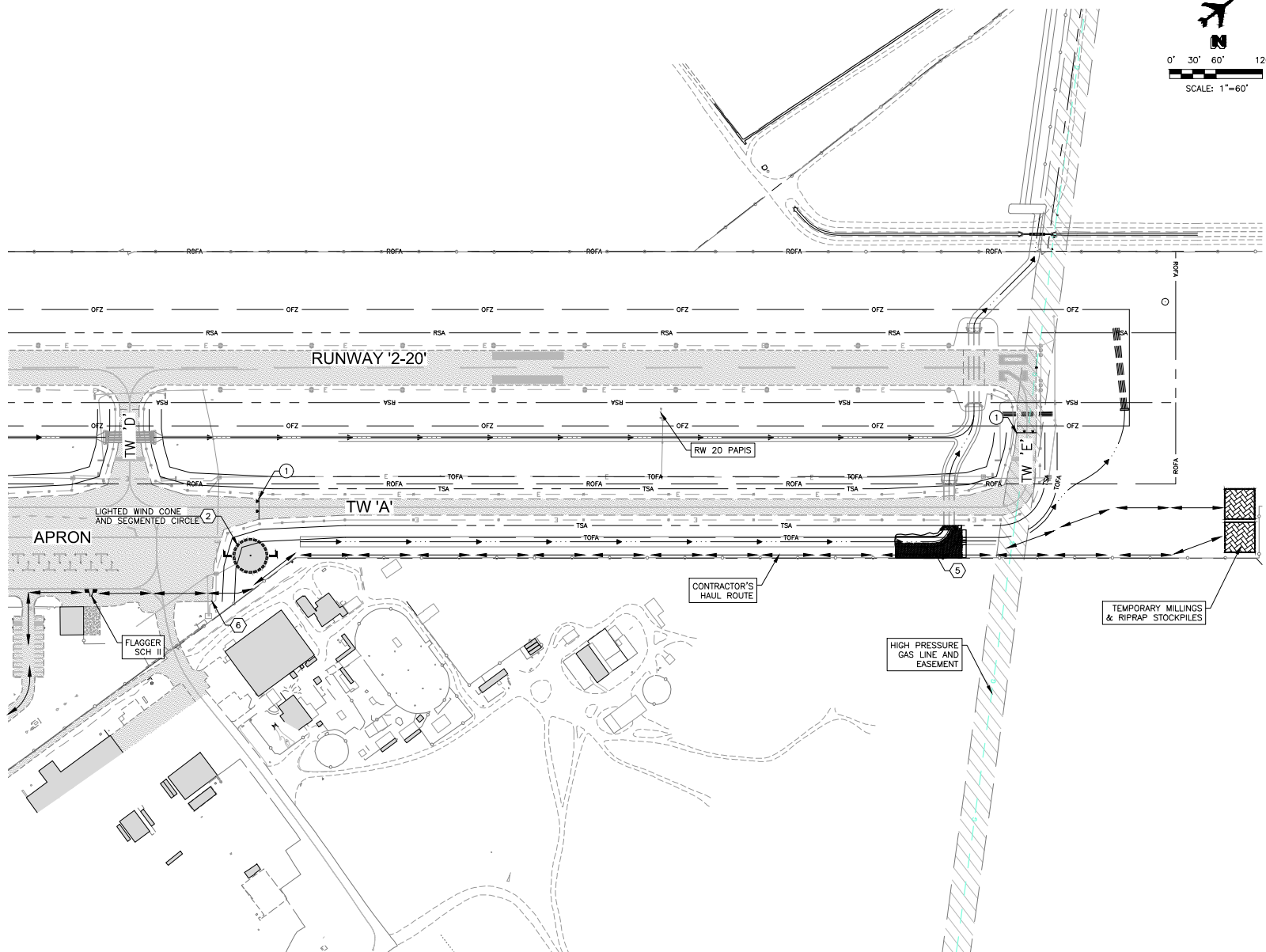
DIBBLE

Concurred by: _____ Date: _____
Eloy/Airport Sponsor

Concurred by: _____ Date: _____
ADOT Representative

E2S2C01C Grant Table	Total	State Share	Eloy Share
Design/Engineering Services	\$ 213,204.95	\$ 213,204.95	\$ -
Rummel Construction, Inc.	\$307,492.60	\$ 307,492.60	\$ -
Change Order No. 1	\$ 158,055.76	\$ 158,055.76	\$ -
Construction Administration	\$ 69,171.85	\$ 69,171.85	\$ -
Total Cost	\$ 747,925.16	\$ 747,925.16	\$ -
Grant Amount	\$ 750,000.00	\$ 750,000.00	\$ -
Remaining Balance	\$ 2,074.84	\$ 2,074.84	\$ -

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AS BUILT DATE	
DIBBLE	
DIBBLE PROJECT NO 1017038.08	
	
SCH II CONSTRUCTION SAFETY NOTES	
1. THE CONSTRUCTION DURATION IS 21 CALENDAR DAYS. 2. THE CONTRACTOR SHALL PLACE & MAINTAIN THE BARRICADES AT THE LOCATIONS AS PROVIDED BY THE RFR. 3. THE BARRICADES SHALL BE PLACED TO KEEP ALL CONSTRUCTION TRAFFIC AWAY FROM ACTIVE AIRFIELD PAVEMENTS. 4. CONTRACTOR SHALL SUPPLY & MAINTAIN A CONSTRUCTION LOCK ON THE CONSTRUCTION ACCESS GATE. GATE LOCKING & ACCESS SHALL BE COORDINATED AS NEEDED WITH THE CITY OF ELOY. 5. A PORTION OF TAXIWAY 'A' AND TAXIWAY 'E' ARE TO BE CLOSED DURING ALL WORK DONE INSIDE THE TOFA.	
CONSTRUCTION NOTE	
1 LOW PROFILE BARRICADES W/ OMNIDIRECTIONAL LIGHTS, DET 1, DWG GG2.00	
REFERENCE NOTES	
2 PROTECT IN PLACE 5 WORK WITHIN THE INFIELD AREA REQUIRES CLOSE COORDINATION WITH SKY DIVE ARIZONA AND SHALL BE COMPLETED WITHIN 21 CALENDAR DAY 6 CONTRACTOR TO COORDINATE HAULING OPERATIONS WITH SKY DIVE ARIZONA'S OPERATIONS TO AVOID CONFLICTS W/ AIRCRAFT LOADING ZONE	
LEGEND	
→ HAUL ROUTE → FLOW LINE TEMPORARY MILLINGS & RIPRAP STOCKPILES TIED CONCRETE BLOCK MAT CHANNEL LINING W/ NON-WOVEN GEOTEXTILE, DET 1, DWG GG3.01 LOW PROFILE BARRICADES W/ OMNIDIRECTIONAL LIGHTS, DET 1, DWG GG2.00	
	
REVISION	BY DATE
 ELOY MUNICIPAL AIRPORT	
ADOT GRANT NO. E252C01C	
AIRFIELD DRAINAGE IMPROVEMENTS (PHASE II)	
SCHEDULE II BARRICADING PLAN	
DRN: CAC DES: CAC CHK: RWT	DRAWING SHEET
DATE: 09/24 DATE: 09/24 DATE: 09/25	
SCALE: 1" = 100' HORIZ. VERT.	GG2.02 9 OF 20

**FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT**

THIS AGREEMENT is by and between the CITY OF ELOY

(Owner) and RUMMEL CONSTRUCTION, INC.

(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Airfield Drainage Improvements (Phase II)
at Eloy Municipal Airport.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Airfield Drainage Improvements (Phase II)
at Eloy Municipal Airport.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Dibble (Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Dates for Substantial Completion and Final Payment

A. The Work will be substantially completed within 35 calendar days if both Schedule I and II are awarded and 14 calendar days if just Schedule I is awarded of the Notice to Proceed and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 calendar days of Substantial Completion.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$570 for each day that expires after the time specified for completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$5000.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A and 5.01.B: below

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.A:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Contractor shall submit progress payments on the 25th day of each month projecting through the end of that month. Per Arizona Revised Statutes (ARS) 34-221, B2 the pay application is deemed approved and certified after 7 days from date of submission unless within that time a written notification of items not approved by the Owner or Owner's agent is provided to Contractor. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment within 14 days (per ARS 34-221) after progress payment has been approved during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

- a. 20 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

- b. 20 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of one percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 6, inclusive).
2. Performance bond (pages 1 to 2, inclusive).
3. Payment bond (pages 1 to 2, inclusive).
4. Other bonds (pages to , inclusive).
 - a.(pages to , inclusive).
 - b.(pages to , inclusive).
 - c.(pages to , inclusive).
5. General Conditions (pages 1 to 66, inclusive).
6. Supplementary Conditions (pages 1 to 3, inclusive).
7. Specifications as listed in the table of contents of the Volume 1. of 3.
8. Drawings consisting of 20 sheets with each sheet bearing the following general title: [or] the Drawings listed in Volume 2. Airfield Drainage Improvements (Phase 2)
9. Addenda (numbers 1 to 1, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 19, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (pages to , inclusive).
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1, inclusive).
 - b. Work Change Directives.

c. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Other Provisions

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on June 26, 2025 (which is the Effective Date of the Agreement).

OWNER:

City of Eloy

By: Andrew Sutton

Title: Mayor, City of Eloy

[CORPORATE SEAL]

CONTRACTOR:

Rummel Construction, Inc.

By: Eric Decker

Title: Executive Vice President

[CORPORATE SEAL]

Attest: Celine K. Dwyer

Title: city clerk

Address for giving notices:

595 North C St, Ste. 104
Elroy, AZ 85131

(If Owner is a corporation, attach evidence of authority to (Where applicable) sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

Attest: Jennifer Anderson

Title: Estimator

Address for giving notices:

7520 E. Adobe Dr
Scottsdale, AZ 85255

License No.: 114845

Agent for service or process: Authority to
Sign attached

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address): Rummel Construction, Inc. SURETY (Name and Address of Principal Place of Business):

OWNER

City of Eloy

Public Works

1137 W. Houser Road

Eloy, AZ 85131

7520 E. Adobe Drive
Scottsdale, AZ 85255

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

CONTRACT

Date: June 26th, 2025

Amount: Three Hundred Seven Thousand, Four Hundred Ninety-Two Dollars and 60/100 (\$307,492.60)

Description (Name and Location): Eloy Municipal Airport - Airfield Drainage Improvements (Phase II) ADOT Grant No. E2S2C01C

BOND

Bond Number: 39S226413

Date (Not earlier than Contract Date): June 26th, 2025

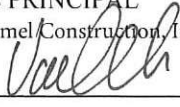
Amount: Three Hundred Seven Thousand, Four Hundred Ninety-Two Dollars and 60/100 (\$307,492.60)

Modifications to this Bond Form: None

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: Rummel Construction, Inc.

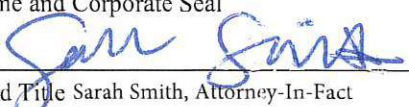
Signature:  (Seal)

Name and Title: Vanessa Andersen, EVP

SURETY

Liberty Mutual Insurance Company (Seal)

Surety's Name and Corporate Seal

By: 

Signature and Title Sarah Smith, Attorney-In-Fact
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

SURETY

CONTRACTOR AS PRINCIPAL Company:

Signature: _____ (Seal)

Name and Title:

(Seal)

Surety's Name and Corporate Seal

By: _____

Signature and Title
(Attach Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-610 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects. 00610-0

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.
 2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
 3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2. Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and
 - 3.3. Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract;
 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
 4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
 5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
- of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
- 6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of Contractor.
7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
 8. Surety hereby waives notice of any change, including changes of time, to Contractor to related subcontracts, purchase orders, and other obligations.
 9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
 11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
 12. Definitions.
 - 12.1. Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
 - 12.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
 Surety Agency or Broker
 Owner's Representative (engineer or other party)

6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities

CW!
 2152 S. Vineyard, Suite 107
 Mesa, AZ 85210
 480-961-5700

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address): Rummel Construction, Inc. SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):
City of Eloy
Public Works
1137 W. Houser Road Eloy,
AZ 85131

7520 E. Adobe Drive
Scottsdale, AZ 85255

Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02116

CONTRACT

Date: June 26th, 2025

Amount: Three Hundred Seven Thousand, Four Hundred Ninety-Two Dollars and 60/100 (\$307,492.60)

Description (Name and Location): Eloy Municipal Airport - Airfield Drainage Improvements (Phase II) ADOT Grant No. E2S2C01C

BOND

Bond Number: 39S226413

Date (Not earlier than Contract Date): June 26th, 2025

Amount: Three Hundred Seven Thousand, Four Hundred Ninety-Two Dollars and 60/100 (\$307,492.60)

Modifications to this Bond Form: None

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: Rummel Construction, Inc.

Signature: [Signature] (Seal)

Name and Title:

Name: Vanessa Anderson, EP

SURETY

Liberty Mutual Insurance Company (Seal)

Surety's Name and Corporate Seal Name and Title: Surety's
and Corporate Seal

By:

Signature and Title
(Attach Power of Attorney)

By: [Signature]
By: Sarah Smith, Attorney-In-Fact

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

SURETY

CONTRACTOR AS PRINCIPAL Company:

Signature: _____ (Seal)

(Seal)

Signature and Title (Attach
Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-615 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors. 00615-0

CW1
2192 S. Vineyard, Suite 107, Mesa AZ 85210
480-941-5400

**FOR INFORMATION ONLY - Name, Address and Telephone
Surety Agency or Broker:**

Owner's Representative (engineer or other party):

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1. Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1. Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 15.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.



POWER OF ATTORNEY

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8212972-977124

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Caitlin Coon, Jill Dahlin, Emma Eginton, Jacob H. Grover, Carrie Perica, Sarah Smith, Lori Spelde, Jeffery L. Steed

all of the city of Mesa state of AZ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 14th day of January, 2025.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By:

Nathan J. Zangerle
Nathan J. Zangerle, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 14th day of January, 2025 before me personally appeared Nathan J. Zangerle, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Nathan J. Zangerle, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 26th day of June, 2025.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

**WRITTEN CONSENT
OF THE BOARD OF DIRECTORS OF
RUMMEL CONSTRUCTION, INC.**

January 1, 2024

The undersigned, being all of the members of the Board of Directors (the "Board") of Rummel Construction, Inc., an Arizona corporation (the "Corporation"), acting by written consent and without a meeting, do hereby adopt the following resolutions and declare them to be in full force and effect as if they had been duly adopted at a special meeting of the Board, duly called, noticed, and held:

NOMINATION OF DIRECTORS OF THE CORPORATION

WHEREAS, the Board wishes to nominate new directors and officers for the Corporation.

NOW, THEREFORE, BE IT RESOLVED, that each of the following persons be, and each individually hereby is, nominated to be a member of the Board as approved by a majority of the then-sitting members:

Rod Rummel
Rick Rummel
Robert Gillis
Tony Ames
Tim Paulson

APPOINTMENT OF OFFICERS OF THE CORPORATION

WHEREAS, the Board wishes to appoint new officers of the Corporation.

NOW, THEREFORE, BE IT RESOLVED, that each of the following persons be, and each individually hereby is, appointed as an officer of the Corporation, to hold such office until his or her successor shall have been duly elected and qualified, or until his or her earlier death, resignation, or removal:

Rod Rummel	Executive Vice President & Chairman
Rick Rummel	President, Director
Tony Ames	Director
Robert Gillis	Director
Carlos Gonzalez	Executive Vice President, Secretary
Amy Allen	Assistant Secretary & General Counsel
Betsey Chavez	Chief Financial Officer, Treasurer
Dan Hoover	Assistant Treasurer
Vanessa Andersen	Executive Vice President, Administration

SIGNING AUTHORIZATION

NOW, THEREFORE, BE IT RESOLVED, that each of the following persons shall have the authority to execute all construction agreements, purchase orders, and other such documents as related to projects in the ordinary course of business:

Eric Decker	Executive Vice President
George Ernst	Vice President
Scott Nunemaker	Vice President
Dodd O'Neill	Vice President
Bill Matzdorff	Sector Manager
Matt Mallia	Sector Manager
Jamie Addison	Sector Manager
Craig Zimmerman	Sector Manager
Miller Rowley	Sector Manager
Pete Woods	Vice President
Andrew Torres	Construction Manager
Jeremiah Hancock	Pre-Construction Manager
Chad Bryce	Estimating Manager

GENERAL AUTHORIZATION

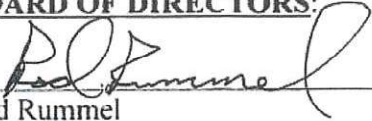
RESOLVED, that any director or authorized officer of the Corporation be, and is, hereby authorized and directed, in the name and on behalf of the Corporation, to make all such arrangements and to do and perform any and all acts as may be appropriate or necessary in order to implement fully the foregoing resolutions, including, without limitation, execution, filing and delivery of any and all papers, agreements, documents, instruments and certificates as may be appropriate or necessary, and that the making of any such arrangements, the performance of any such acts, and the execution, filing and/or delivery, as applicable, by any director or authorized officer of the Corporation of any such papers, agreements, documents, instruments and certificates shall conclusively establish the authority of such director or authorized officer of the Corporation with respect thereto;

RESOLVED, that all actions previously taken by any director, authorized officer, representative, or agent of the Corporation or any of its affiliates, in the name or on behalf of the Corporation in connection with the matters contemplated by the foregoing resolutions, be, and each of the same hereby is, adopted, ratified, confirmed and approved in all respects as the act and deed of the Corporation; and

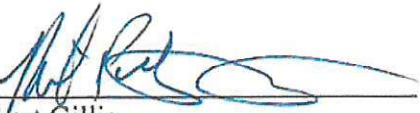
RESOLVED, that all of the acts, actions and things done for, in the name of, and on behalf of this Corporation to effect the purposes of these resolutions be, and they hereby are, in all respects, approved, ratified and confirmed.

IN WITNESS WHEREOF, the undersigned are all of the members of the Board who have adopted these resolutions effective as of the day and year first written above.

BOARD OF DIRECTORS:


Rod Rummel


Rick Rummel


Robert Gillis


Tony Ames

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
5. *Bidder*—An individual or entity that submits a Bid to Owner.
6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance

with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce

such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 *Terminology*

A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning. B. *Intent of Certain Terms or Adjectives*:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents. C. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight. D. *Defective*:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04). E. *Furnish, Install, Perform, Provide*:

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a wellknown technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.

- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies A.*

Reporting Discrepancies:

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and

binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

- 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for

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the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
 - B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with

reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.

- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute

resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 Subsurface and Physical Conditions

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Possible Price and Times Adjustments:*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
- 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

- d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
- 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in

any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.

H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor

is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.

- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

A. *Workers' Compensation*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
4. Foreign voluntary worker compensation (if applicable).

B. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:

1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
2. claims for damages insured by reasonably available personal injury liability coverage.
3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

C. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
3. Broad form property damage coverage.
4. Severability of interest.
5. Underground, explosion, and collapse coverage.
6. Personal injury coverage.
7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.

8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.

E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.

F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.

H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.

I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:

1. include at least the specific coverages provided in this Article.
2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice,

Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.

4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler

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explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.

- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06

Waiver of Rights

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.

D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.

E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the

reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06

Concerning Subcontractors, Suppliers, and Others

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07

Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08

Permits

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09

Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10

Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in

the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11

Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12

Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals A.*

Shop Drawing and Sample Submittal Requirements:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4. E. *Resubmittal Procedures*:
 1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a setoff against payments due to Contractor to secure reimbursement for such charges.
 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17

Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18

Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER’S RESPONSIBILITIES

- 9.01 *Communications to Contractor*
- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.
- 9.02 *Replacement of Engineer*
- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer’s status under the Contract Documents shall be that of the former Engineer.
- 9.03 *Furnish Data*
- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 9.04 *Pay When Due*
- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.
- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner’s duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner’s responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *Limitations on Owner’s Responsibilities*
- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 Owner's Representative

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 Project Representative

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 Rejecting Defective Work

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 Shop Drawings, Change Orders and Payments

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 Determinations for Unit Price Work

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

1. *Change Orders:*

- a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
- b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.

2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 Owner-Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 Unauthorized Changes in the Work

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
 1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;

- b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

- 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to

which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.

2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 Claims

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
 - C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

- D. *Mediation:*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

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- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or

indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:* Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:* Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.
- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 Uncovering Work

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees,

Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as setoffs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

- B. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 - 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing

Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. *Payment Becomes Due:*
 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- E. *Reductions in Payment by Owner:*
 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;

- j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite

consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 Partial Use or Occupancy

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 Final Payment

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is

satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate For Convenience

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in

- connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2001 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

SC-1.01.A.49 Add the following new Paragraph after Paragraph 1.01.A.48:

FAA – refers to the requirements of the Federal Aviation Administration.
FAA requirements are attached to these bid documents.

SC-1.01.A.50 Add the following new Paragraph after Paragraph 1.01.A.49:

Manufacturer's Certifications letter is documentation provided by the manufacturer, supplier, distributor, vendor, fabricator, etc. to various entities stating that the American Iron and Steel products to be used in this project are produced in the United States in accordance with American Iron and Steel requirements. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

ARTICLE 6 – BONDS AND INSURANCE

SC 6.03 Add the following new paragraph immediately after Paragraph 6.03.J:

K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Worker's Compensation:	
Each Accident	<u>\$1,000,000</u>
Disease – Each Employee	<u>\$1,000,000</u>
Disease – Policy Limit	<u>\$1,000,000</u>
2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:	
General Aggregate	<u>\$4,000,000</u>
Products - Completed Operations Aggregate	<u>\$4,000,000</u>
Personal and Advertising Injury	<u>\$2,000,000</u>
Each Occurrence (Bodily Injury and Property Damage)	<u>\$2,000,000</u>
3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:	
Combined Single Limit of	<u>\$2,000,000</u>

Each Occurrence	<u>\$10,000,000</u>
Aggregate	<u>\$10,000,000</u>

Each Occurrence	<u>\$5,000,000</u>
General Aggregate	<u>\$10,000,000</u>

☐

Each Occurrence
Annual Aggregate

SC-7.03 Add sentence 7.03d:

SC-7.04.B.1 Add the following new Paragraph after Paragraph 7.04.B:

4) comply with American Iron and Steel by providing Manufacturer's Certification letter of American Iron and Steel compliance, if applicable. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

Manufacturers' Certification letter is documentation provided by the manufacturer, supplier, distributor, vendor, fabricator, etc. to various entities stating that the iron and steel products to be used in the project are produced in the United States in accordance with American Iron and Steel Requirements. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

e. obtained Manufacturer's Certification letter for any item in the submittal subject to American Iron and Steel requirements and include the Certificate in the submittal. Refer to Manufacturer's Certification Letter provided in these Contract Documents.

SC 7.16.D.9 Add 7.16.D.9:

Engineer’s review and approval of Shop Drawings or Sample shall include review of compliance with American Iron and Steel requirements, if applicable.

SC 7.17.E Add 7.17.E:

Contractor shall certify upon Substantial Completion that all Work and Materials has complied with American Iron and Steel requirements as mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference. Contractor shall provide said Certification to Owner. Refer to General Contractor’s Certification Letter provided in these Contract Documents.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

SC 11.06.A.1 Modify 11.06.A.1 by inserting the following sentence after “within 15 days after the submittal of the Change Proposal.”:

Include supporting data (name of manufacturer, city and state where the product was manufactured, description of product, signature of authorized manufacturer’s representative) in the Manufacturer’s Certification Letter, as applicable.”

SC-11.07.C Add the following new Paragraph after Paragraph 11.07.B:

All Contract Change Orders must be concurred in by FAA before they are effective.

ARTICLE 14 – TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

SC 14.03.G Add 14.03.G:

G. Installation of Materials that are non-compliant with American Iron and Steel requirements shall be considered defective work.

ARTICLE 19 – STATE AND FEDERAL REQUIREMENTS

SC 19.01 Add the following language as Paragraph 19.01 with the title, “Agency Not a Party”:

A. This Contract is expected to be funded in part with funds provided by the Federal Aviation Administration. Neither Agency, nor any of its departments, entities, or employees is a party to this Contract. FAA contract requirements apply to this project, see FAA Contract Provisions and General Conditions attached to these bid documents.

SC 19.02 Add the following language after Article 19.01:

Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies an American Iron and Steel requirement to this project. All iron and steel products used in this project must be produced in the United States. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The deminimis and minor components waiver apply to this contract.

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

***The City of Eloy
Clerk's Office
595 N. C Street, Suite 104
Eloy, AZ 85131***

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
<u>1</u>	<u>04/18/2025</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

EJCDC® C-410, Bid Form for Construction Contracts.

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3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the Base Bid (Schedule I) and the Additive Alternate Bid (Schedule II) (if awarded) at the prices provided on the bid proposal sheets.

See attached bid proposal sheets.

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. List of Proposed Subcontractors;
 - C. List of Proposed Suppliers;
 - D. List of Project References;
 - E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - F. Contractor's License No.: 114845 A;
 - G. Completed DBE Participation Form
 - H. Required Bidder Qualification Statement with supporting data

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

Rummel Construction, Inc.

By:

[Signature]



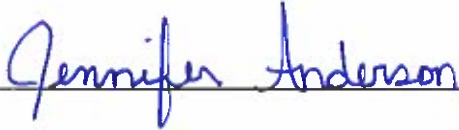
[Printed name]

Eric Decker | Executive Vice President

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

[Signature]



[Printed name]

Jennifer Anderson

Title:

Estimator

Submittal Date:

04/30/2025

Address for giving notices:

7520 E Adobe Drive | Scottsdale, AZ 85255

Telephone Number:

480.222.9922

Fax Number:

480.222.9923

Contact Name and e-mail address:

Jennifer Anderson

janderson@rummelconstruction.com

Bidder's License No.:

114845 A

(where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

**RESOLUTION OF
THE DIRECTORS OF
RUMMEL CONSTRUCTION, Inc.
An Arizona corporation**

The undersigned, constituting all of the directors of Rummel Construction, Inc., an Arizona corporation (the "Corporation"), by unanimous consent in writing pursuant to the authority contained in Section 10-704 of the Arizona Business Corporation Act, without the formality of convening a meeting, do hereby adopt and approve the following actions of the Corporation:

WHEREAS the Corporation has determined to allow Eric Decker, Corporate Vice President, the authority to execute by signature any and all proposals, bid documents, and contracts.

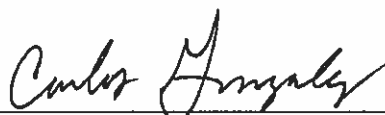
NOW THEREFORE BE IT RESOLVED THAT:

1. The Directors of the Corporation do hereby adopt the Resolutions of the Directors of the Corporation dated effective the 23rd day of January, 2017, and allow the execution of all proposals, bid documents, and contracts by Eric Decker.

DATED as of the 23rd day of January, 2017.


Rod Rummel, Chairman


Rick Rummel, President


Carlos Gonzalez, Secretary / Treasurer

Bid Bond

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (Name and Address): Rummel Construction, Inc. 7520 E. Adobe Drive, Scottsdale, AZ 85255

SURETY (Name, and Address of Principal Place of Business): Liberty Mutual Insurance Company
1001 4th Avenue, Suite 1700, Seattle, WA 98154

OWNER (Name and Address):
City of Eloy
595 N. C Street, Suite 101, Eloy, AZ 85131
BID

Bid Due Date: 4/30/25

Description (Project Name— Include Location): CITY OF ELOY

Eloy, Arizona

Eloy Municipal Airport

Airfield Drainage Improvements (Phase II)

BOND

Bond Number: N/A

Date: 4/24/25

Penal sum Five Percent of Bid Amount

\$ 5%

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

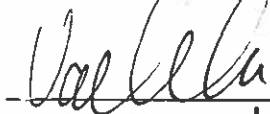
SURETY

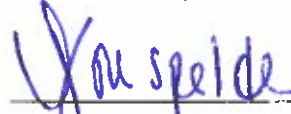
(Seal) (Seal)

Rummel Construction, Inc.
Bidder's Name and Corporate Seal

Liberty Mutual Insurance Company
Surety's Name and Corporate Seal

By:


Signature
Vanessa Andersen
Print Name
EVP
Title


Signature (Attach Power of Attorney)
Lori Spelde
Print Name
Attorney-In-Fact
Title

Attest: Attest:


Signature
E.V.P
Title


Signature Emma Eginton
Title Account Manager

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



POWER OF ATTORNEY

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8212972-977124

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Caitlin Coon, Jill Dahlin, Emma Eginton, Jacob H. Grover, Carrie Perica, Sarah Smith, Lori Spelde, Jeffery L. Steed

all of the city of Mesa state of AZ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 14th day of January, 2025.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: Nathan J. Zangerle
Nathan J. Zangerle, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY SS

On this 14th day of January, 2025 before me personally appeared Nathan J. Zangerle, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Nathan J. Zangerle, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 24th day of April, 2025.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary



Eloy Municipal Airport
Airfield Drainage Improvements (Phase II)
ADOT Grant No. E2S2C01C

BID PROPOSAL (SCHEDULE I – BASE BID)

CONTRACTOR Rummel Construction, Inc.

Bids shall be on a unit price basis as indicated below.

LINE No.	ITEM No.	DESCRIPTION	APPROX. QTY.	UNIT	UNIT PRICE	TOTAL PRICE
1	C-102-6.1	Stormwater Pollution Prevention Plan (Schedule I)	1	LS	\$ 9,500.00	\$ 9,500.00
2	C-105-6.1	Mobilization (Schedule I) (6% Max)	1	LS	\$ 17,000.00	\$ 17,000.00
3	GTP-10.01.1	Location of Underground Utilities (Schedule I)	1	ALLOW	\$ 5,000.00	\$ 5,000.00
4	GTP-20.06.1	Airfield Barricading, Safety, and Security (Schedule I)	1	LS	\$ 7,500.00	\$ 7,500.00
5	GTP-40-01.1	Tied Concrete Block Mat Channel Lining with Non-Woven Geotextile	11,159	SF	\$ 15.40	\$ 171,848.60
6	P-151-4.1	Clearing & Grubbing	1.5	AC	\$ 1,250.00	\$ 1,875.00
7	P-152-4.1	Unclassified Excavation	3,703	CY	\$ 23.00	\$ 85,169.00
8	T-901-5.1	Seeding with Hydromulch	1.2	AC	\$ 8,000.00	\$ 9,600.00

Base Bid (Schedule I) Items 1-8	Total:	\$ 307,492.60
Total In Words: <u>Three hundred seven thousand, four hundred ninety two dollars and sixty cents</u>		



Eloy Municipal Airport
Airfield Drainage Improvements (Phase II)
ADOT Grant No. E2S2C01C

BID PROPOSAL (SCHEDULE II – ADDITIVE ALTERNATE BID)

CONTRACTOR Rummel Construction, Inc.

Bids shall be on a unit price basis as indicated below.

LINE No.	ITEM No.	DESCRIPTION	APPROX QTY	UNIT	UNIT PRICE	TOTAL PRICE
9	C-102-6.2	Stormwater Pollution Prevention Plan (Schedule II)	1	LS	\$ 4,500.00	\$ 4,500.00
10	C-105-6.2	Mobilization (Schedule II) (6% Max)	1	LS	\$ 11,800.00	\$ 11,800.00
11	GTP-10.01.2	Location of Underground Utilities (Schedule II)	1	ALLOW	\$ 5,000.00	\$ 5,000.00
12	GTP-20.06.2	Airfield Barricading, Safety, and Security (Schedule II)	1	LS	\$ 12,500.00	\$ 12,500.00
13	GTP-30.01.1	Salvage and Stockpile Existing Millings	21	CY	\$ 50.00	\$ 1,050.00
14	GTP 30.01.2	Salvage and Stockpile Existing Riprap	76	CY	\$ 30.00	\$ 2,280.00
15	GTP-30.02.1	Remove and Salvage Security Fence	162	LF	\$ 20.50	\$ 3,321.00
16	GTP-40-01.1	Tied Concrete Block Mat Channel Lining with Non-Woven Geotextile	5437	SF	\$ 15.75	\$ 85,632.75
17	GTP-40.02.1	Riprap or Salvaged Riprap w/ Geosynthetic Filter Fabric (D50=6", Thickness=12")	40	SY	\$ 38.35	\$ 1,534.00
18	GTP-40.03.1	Concrete Cut-Off Wall (MAG STD DET 552-MOD)	143	LF	\$ 270.00	\$ 38,610.00
19	P-151-4.1	Clearing & Grubbing	0.3	AC	\$ 6,250.00	\$ 1,875.00
20	P-152-4.2	Channel Regrading/Reshaping	909	SY	\$ 13.00	\$ 11,817.00
21	F-162-5.1	6' Security Fence (Det 3, DWG GG3.02)	143	LF	\$ 240.00	\$ 34,320.00

Additive Alternate Bid (Schedule II) Items 9-21	Total:	\$	214,239.75
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Total In Words: Two hundred fourteen thousand, two hundred thirty nine dollars and seventy five cents



Eloy Municipal Airport
Airfield Drainage Improvements (Phase II)
ADOT Grant No. E2S2C01C

Bid Schedule Summary	
Base Bid (Schedule I)	\$ 307,492.60
Additive Alternate Bid (Schedule II)	\$ 214,239.75
Total	\$ 521,732.35

Total In Words (Base Bid + Additive Alternate Bid): Five hundred twenty one thousand, seven hundred thirty two dollars and thirty five cents

Eloy Municipal Airport Airfield Drainage Improvements (Phase II) (2022001)

List of Proposed Subcontractors

1. Fence | American Fence



Eloy Municipal Airport Airfield Drainage Improvements (Phase II) (2022001)

List of Proposed Suppliers

1. Concrete Block Channel Lining | Hanes Geo Components
2. Rip Rap | Salvaged Rip Rap from Airport

BIDDER QUALIFICATION STATEMENT

Rummel is a locally owned and operated 'S' Corporation that has focused exclusively on providing civil construction services for 29 years and counting. Our continued success is a result of our combination of technical expertise and exceptional people who have an unparalleled focus on building trust through excellent customer service. With nearly 800 employees and 450 pieces of company-owned equipment, we have the financial security and depth of resources to meet the needs of your most difficult and demanding project goals; but at the same time, we are still a local partner that will maintain an intimate relationship and serve you with flexibility, responsiveness, and a can-do attitude.

AVIATION EXPERIENCE

Rummel also has direct relevant experience working day and night shifts on phased and un-phased projects in both airside and landside aviation environments: including projects at Class I, FAA Part 139 certified airports. To date, we have performed aviation projects under CMAR, price & qualifications, traditional hard-bid, and JOC master contracts.



PHOENIX-MESA GATEWAY AIRPORT INFIELD DRAINAGE SYSTEM PH2

Project Description: Rummel performed construction of a 28,495 CY basin, 2 concrete spillways, installation of 18" and 24" inlet pipes, along with demolition and reconstruction of a 1,292SY asphalt service road. All work was within the infield bounded by Runway 12R/30L, Runway 12C/30C, Taxiway K, and Taxiway L; it was outside the Runway Safety Area (RSA) but within the Runway Object Free Area (ROFA). This project (Detention Basin Mid, PH2) was part of the Airport Master Drainage plan established to meet FAA requirements to prevent infield runoff from crossing the critical Taxiway K & Runway 12R/30L intersection and County requirements to impound runoff from a 100-year storm.

Role: Prime Contractor (Quals & Price)

Owner: Phoenix-Mesa Gateway Airport Authority

Project Cost: \$609K



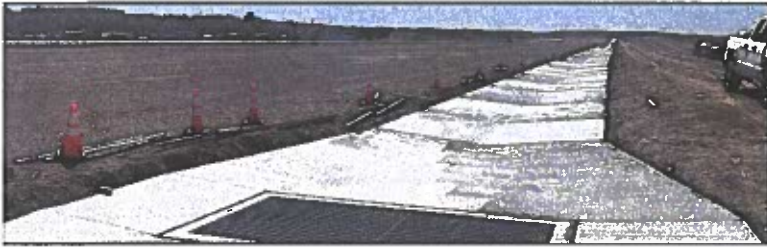
SCOTTSDALE AIRPORT RUNWAY 03 EROSION PROTECTION / WILDLIFE MITIGATION PH1

Project Description: Rummel performed the installation of erosion protection and wildlife mitigation measures in the Runway 3 Safety Area (RSA) at Scottsdale Airport. Work included 53,600SY of crushed aggregate and 5,800 SY of asphalt millings placed over prepared subgrade as shoulder and slope protection, and 560 SY of rip-rap placed around storm drain structures. Rummel was responsible for airfield safety and traffic control in accordance with the airport's Construction Safety and Phasing Plan (CSSP). The majority of the work was completed at night and NOTAM's were issued for planned runway closures during known low traffic periods.

Role: Prime Contractor (Quals & Price)

Owner: City of Scottsdale

Project Cost: \$429K



LAUGHLIN BULLHEAD AIRPORT RSA GRADING & DRAINAGE IMPROVEMENTS

Project Description: This project involved 54 acres of clearing, fencing and pavement removal, 328K CY of drainage/embankment excavation (40K CY of RSA fill placed at night), 417K SY of finish grading, structural excavation/backfill, 1,400 LF of HDPE storm drain, concrete headwalls, aprons, catch basins, drop inlets, stilling wells, manholes, 13,670 SY of RSA swale, 1,700 SY of PCCP, 7,000 TNS of ABC, grouted rip rap, relocation of lighted windcone and segmented circle, 32K LF of SWPPP wattles, 1,000 LF of FAA 8' chainlink fence, and a new airport access gate.

Role: Prime Contractor (Quals & Price)

Owner: Mohave County Airport Authority, Inc.

Project Cost: \$4.6M



SCOTTSDALE AIRPORT RUNWAY 03 EROSION PROTECTION / WILDLIFE MITIGATION PH2

Project Description: Rummel continued the installation of erosion protection and wildlife mitigation measures started in Phase 1 by extending to the southern portion of the Airport Operations Area (AOA) at Scottsdale Airport. Work in this phase included 27,500SY of crushed aggregate placed over prepared subgrade that was treated with preemergent herbicide, and 6 utility pull-box adjustments. The work, combined with the work completed in the previous phase, provided complete protection from the runway to the perimeter fence line. The project was phased to minimize operational impact to the users of the airport.

Role: Prime Contractor (Quals & Price)

Owner: City of Scottsdale

Project Cost: \$195K



WICKENBURG AIRPORT MIDFIELD APRON & ACCESS ROAD CONSTRUCTION

Project Description: Rummel performed all clearing, grubbing, mass excavation, and finish grading to construct a new midfield apron and access road at Wickenburg Airport. Work took place within the Taxi Safety Area (TSA) of Taxiway A, requiring close coordination with airport operations to schedule the taxiway shutdown between exits A-3 and A-5. To mitigate night work risks, all borrow and haul operations were limited to daylight hours. Activities were completed in compliance with FAA technical provisions M-100 (Maintenance and Protection of Traffic), P-151 (Clearing and Grubbing), and P-152 (Excavation and Embankment).

Role: Subcontractor (Hard Bid)

Owner: Town of Wickenburg

Project Cost: \$271K



CITY OF PHOENIX AVIATION CIVIL CONSTRUCTION SERVICES JOC

Rummel has completed the following JOA projects at Phoenix Sky Harbor Airport:

- » Terminal 3 Storm Drain Blockage
- » Superstructure Sign & Sign Base Maintenance
- » Swift Ramp Sanitary Sewer Rehab
- » T4 Sewer Lining
- » Airfield Compliance Survey & Training
- » Taxiway Romeo Service Road Sealcoat
- » Taxiway Alpha POFZ Basin Stabilization
- » EB Sky Harbor Blvd
- » (T3-T4) 8 inch Sewer Repair
- » East Cell Phone Lot Sealcoat
- » 7R 25L Runway Closure Striping and Light Can Repair
- » Airport Wide Hydrant Repair
- » Airfield Pre-Formed Thermo Plastic Indents
- » GYR Taxiway A Catch Basin Repair
- » T3 Outer Curb Cuts
- » T4 N1 Gate A26 Panel Repair



Contracts and Specifications

One ADOT in service to all

Katie Hobbs, Governor

Jennifer Toth, Director

Greg Byres, State Engineer

Steve Boschen, Division Director

June 06, 2024

RECEIVED JUN 13 2024

RUMMEL CONSTRUCTION, INC
7520 E ADOBE DRIVE
SCOTTSDALE, AZ 85255

RE: PREQUALIFICATION

At a meeting of the Prequalification Board on June 06, 2024, your Application for Prequalification was reviewed. In your Application you requested the following types of work:

All Classes of Construction

The Prequalification Board approved your Company for the following types of work:

All Classes of Construction

The Prequalification Board approved a prequalification amount of \$100,000,000.00. You are prequalified until March 31, 2025.

Please note that your company name must be placed on the bid proposal exactly as it appears on your Prequalification application. If you have any questions, please contact us at (602) 712-7221.

Sincerely,

DocuSigned by:

Barry Crockett

SB5417E2A33B404
Barry Crockett, Chairman
Prequalification Board

Eloy Municipal Airport Airfield Drainage Improvements (Phase II) (2022001)

Project References

Job Name: Eloy Airport Improvements

Client: City of Eloy

Contact: Tammy Valadez Paz | Public Works Project Engineer | 520.464.3166

Contract Value: \$4,183,077

Description: The scope included the demolition and reconstruction of a new taxiway re-aligned approximately 300FT from its original location. This work on Taxiway A called for electrical vault modifications, 118 new electrical edge lights, and striping of the taxiway and apron. The team excavated 44,349 CY of soil; 30,787 SY of P-208 ABC; and 30,787 SY of P-403 asphalt concrete. The project wrapped up with installing 5,005 LF of fencing; 937 LF of elliptical RGRCP; and seeding 22 AC.

Job Name: Laughlin Bullhead Airport RSA Grading & Drainage Improvements

Client: Mead & Hunt \ Mohave Country Airport Authority, Inc.

Contact: Jeremy Keating | Airport Director | 714.726.6566

Contract Value: \$4,302,713

Description: This airside project completed at Laughlin/ Bullhead International Airport included major drainage improvements along runway 16-34 from the edge of the paved runway shoulder to the perimeter fence inclusive of the RSA and ROFA areas. Scopes included excavation and grading, storm drainpipe, concrete drop inlet structures, concrete headwalls, weirs and low water crossings. The project also included relocation of the segmented circle and wind cone, reconstruction of the airport perimeter road and security fencing. Portions of work were completed during the night shift to accommodate airport operations.

Job Name: Hayden Concentrator Runoff Pond

Client: ASARCO, LLC

Contact: Abdel El Imrani | Director of Projects | AElimrani@asarco.com

Contract Value: \$2,740,979

Description: Remediation work on tailings within the Hayden town site. Project included grading the existing tailings for proper drainage, channel grading, storm drainpipe installation, borrow to cover tailings, concrete headwalls, flex-a-mat installation in channels, rock mulch on disturbed slopes, perimeter fencing and hydro-seeding.

IMPORTANT NOTICE

YOU MUST:

- 1.) REPORT DISSOCIATION OF QUALIFYING PARTY IN WRITING WITHIN 15 DAYS. [SEE A.R.S. §32-1154(A)(18)]
- 2.) REPORT A CHANGE OF ADDRESS IN WRITING WITHIN 30 DAYS. [SEE A.R.S. § 32-1122(B)(1)]
- 3.) REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY [SEE A.R.S. § 32-1151.01]
- 4.) REPORT ANY CHANGE IN LEGAL ENTITY, SUCH AS ANY CHANGE OF THE OWNERSHIP IN A SOLE PROPRIETORSHIP OR CHANGE OF A PARTNER IN A PARTNERSHIP OR THE CREATION OF A NEW CORPORATE ENTITY [SEE A.R.S. § 32-1124 (B)(F) § RULE R-4-9-110]

Rummel Construction Inc

7520 East Adobe Drive
Scottsdale, AZ 85255

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- 3.) REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY [SEE A.R.S. § 32-1151.01]
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Rummel Construction Inc

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Scottsdale, AZ 85255

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Rummel Construction Inc

7520 East Adobe Drive
Scottsdale, AZ 85255

THIS IS YOUR IDENTIFICATION CARD
DO NOT DESTROY



LICENSE EFFECTIVE THROUGH:
STATE OF ARIZONA

Registrar of Contractors CERTIFIES THAT
May 31, 2026



Rummel Construction Inc
CONTRACTORS LICENSE NO.

CLASS

ROC 114845

A

General Commercial
General Engineering
THIS CARD MUST BE
PRESENTED UPON DEMAND

Tom Cole, Director

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Tom Cole, Director

ELOY MUNICIPAL AIRPORT DRAINAGE IMPROVEMENTS (PHASE II) – BASE BID SCHEDULE I BID TABULATION																
LINE No.	ITEM No.	DESCRIPTION	APPROX. QTY.	UNIT	UNIT PRICE	AMOUNT (Engineer)	UNIT PRICE	AMOUNT (Combs)	UNIT PRICE	AMOUNT (Action Direct)	UNIT PRICE	AMOUNT (Rummel)	UNIT PRICE	AMOUNT (Total Maintenance)	UNIT PRICE	AMOUNT (Hawk Contracting)
1	C-102-6.1	Stormwater Pollution Prevention Plan (Schedule I)	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 10,000.00	\$ 10,000.00	\$ 22,000.00	\$ 22,000.00	\$ 9,500.00	\$ 9,500.00	\$ 24,788.25	\$ 24,788.25	\$ 40,000.00	\$ 40,000.00
2	C-105-6.1	Mobilization (Schedule I) (6% Max)	1	LS	\$ 18,000.00	\$ 18,000.00	\$ 24,000.00	\$ 24,000.00	\$ 22,000.00	\$ 22,000.00	\$ 17,000.00	\$ 17,000.00	\$ 21,500.00	\$ 21,500.00	\$ 30,000.00	\$ 30,000.00
3	GTP-10.01.1	Location of Underground Utilities (Schedule I)	1	ALLOW	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
4	GTP-20.06.1	Airfield Barricading, Safety, and Security (Schedule I)	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 73,500.00	\$ 73,500.00	\$ 15,000.00	\$ 15,000.00	\$ 7,500.00	\$ 7,500.00	\$ 27,548.50	\$ 27,548.50	\$ 75,247.00	\$ 75,247.00
5	GTP-40-01.1	Tied Concrete Block Mat Channel Lining with Non-Woven Geotextile	11,159	SF	\$ 10.00	\$ 111,590.00	\$ 13.80	\$ 153,994.20	\$ 13.50	\$ 150,646.50	\$ 15.40	\$ 171,848.60	\$ 10.22	\$ 114,044.98	\$ 19.00	\$ 212,021.00
6	P-151-4.1	Clearing & Grubbing	1.5	AC	\$ 2,500.00	\$ 3,750.00	\$ 3,600.00	\$ 5,400.00	\$ 4,870.00	\$ 7,305.00	\$ 1,250.00	\$ 1,875.00	\$ 6,555.30	\$ 9,832.95	\$ 5,000.00	\$ 7,500.00
7	P-152-4.1	Unclassified Excavation	3,703	CY	\$ 40.00	\$ 148,120.00	\$ 36.30	\$ 134,418.90	\$ 29.00	\$ 107,387.00	\$ 23.00	\$ 85,169.00	\$ 60.75	\$ 224,957.25	\$ 40.00	\$ 148,120.00
8	T-901-5.1	Seeding with Hydromulch	1.2	AC	\$ 2,500.00	\$ 3,000.00	\$ 8,150.00	\$ 9,780.00	\$ 35,000.00	\$ 42,000.00	\$ 8,000.00	\$ 9,600.00	\$ 8,795.24	\$ 10,554.29	\$ 9,000.00	\$ 10,800.00
				SCH I	TOTAL	\$ 296,460.00	TOTAL	\$ 416,093.10	TOTAL	\$ 371,338.50	TOTAL	\$ 307,492.60	TOTAL	\$ 438,226.22	TOTAL	\$ 528,688.00

ELOY MUNICIPAL AIRPORT DRAINAGE IMPROVEMENTS (PHASE II) – ADDITIVE ALTERNATE BID SCHEDULE II BID TABULATION																
LINE No.	ITEM No.	DESCRIPTION	APPROX. QTY.	UNIT	UNIT PRICE	AMOUNT (Engineer)	UNIT PRICE	AMOUNT (Combs)	UNIT PRICE	AMOUNT (Action Direct)	UNIT PRICE	AMOUNT (Rummel)	UNIT PRICE	AMOUNT (Total Maintenance)	UNIT PRICE	AMOUNT (Hawk Contracting)
1	C-102-6.2	Stormwater Pollution Prevention Plan (Schedule II)	1	LS	\$ 1,500.00	\$ 1,500.00	\$ 7,800.00	\$ 7,800.00	\$ 8,000.00	\$ 8,000.00	\$ 4,500.00	\$ 4,500.00	\$ 14,788.56	\$ 14,788.56	\$ 10,000.00	\$ 10,000.00
2	C-105-6.2	Mobilization (Schedule II) (6% Max)	1	LS	\$ 9,000.00	\$ 9,000.00	\$ 15,900.00	\$ 15,900.00	\$ 16,000.00	\$ 16,000.00	\$ 11,800.00	\$ 11,800.00	\$ 6,285.72	\$ 6,285.72	\$ 15,000.00	\$ 15,000.00
3	GTP-10.01.2	Location of Underground Utilities (Schedule II)	1	ALLOW	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
4	GTP-20.06.2	Airfield Barricading, Safety, and Security (Schedule II)	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 65,245.00	\$ 65,245.00	\$ 29,490.00	\$ 29,490.00	\$ 12,500.00	\$ 12,500.00	\$ 10,455.20	\$ 10,455.20	\$ 50,000.00	\$ 50,000.00
5	GTP-30.01.1	Salvage and Stockpile Existing Millings	21	CY	\$ 180.00	\$ 3,780.00	\$ 175.00	\$ 3,675.00	\$ 121.00	\$ 2,541.00	\$ 50.00	\$ 1,050.00	\$ 71.30	\$ 1,497.30	\$ 170.00	\$ 3,570.00
6	GTP 30.01.2	Salvage and Stockpile Existing Riprap	76	CY	\$ 180.00	\$ 13,680.00	\$ 82.00	\$ 6,232.00	\$ 49.00	\$ 3,724.00	\$ 30.00	\$ 2,280.00	\$ 78.25	\$ 5,947.00	\$ 90.00	\$ 6,840.00
7	GTP-30.02.1	Remove and Salvage Security Fence	162	LF	\$ 10.00	\$ 1,620.00	\$ 9.65	\$ 1,563.30	\$ 19.00	\$ 3,078.00	\$ 20.50	\$ 3,321.00	\$ 22.01	\$ 3,565.62	\$ 16.00	\$ 2,592.00
8	GTP-40-01.1	Tied Concrete Block Mat Channel Lining with Non-Woven Geotextile	5,437	SF	\$ 10.00	\$ 54,370.00	\$ 14.75	\$ 80,195.75	\$ 14.00	\$ 76,118.00	\$ 15.75	\$ 85,632.75	\$ 12.76	\$ 69,376.12	\$ 19.00	\$ 103,303.00
9	GTP-40.02.1	Riprap or Salvaged Riprap w/ Geosynthetic Filter Fabric (D50=6", Thickness=12")	40	SY	\$ 17.00	\$ 680.00	\$ 122.00	\$ 4,880.00	\$ 166.00	\$ 6,640.00	\$ 38.35	\$ 1,534.00	\$ 154.62	\$ 6,184.80	\$ 135.00	\$ 5,400.00
10	GTP-40.03.1	Concrete Cut-Off Wall (MAG STD DET 552-MOD)	143	LF	\$ 250.00	\$ 35,750.00	\$ 400.00	\$ 57,200.00	\$ 525.00	\$ 75,075.00	\$ 270.00	\$ 38,610.00	\$ 108.65	\$ 15,536.95	\$ 160.00	\$ 22,880.00
11	P-151-4.1	Clearing & Grubbing	0.3	AC	\$ 2,500.00	\$ 750.00	\$ 7,800.00	\$ 2,340.00	\$ 15,000.00	\$ 4,500.00	\$ 6,250.00	\$ 1,875.00	\$ 6,555.30	\$ 1,966.59	\$ 5,000.00	\$ 1,500.00
12	P-152-4.2	Channel Regrading/Reshaping	909	SY	\$ 8.00	\$ 7,272.00	\$ 8.00	\$ 7,272.00	\$ 26.00	\$ 23,634.00	\$ 13.00	\$ 11,817.00	\$ 21.63	\$ 19,661.67	\$ 10.00	\$ 9,090.00
13	F-162-5.1	6' Security Fence (Det 3, DWG GG3.02)	143	LF	\$ 100.00	\$ 14,300.00	\$ 134.00	\$ 19,162.00	\$ 171.00	\$ 24,453.00	\$ 240.00	\$ 34,320.00	\$ 122.02	\$ 17,448.86	\$ 175.00	\$ 25,025.00
				SCH I	TOTAL	\$ 152,702.00	TOTAL	\$ 276,465.05	TOTAL	\$ 278,253.00	TOTAL	\$ 214,239.75	TOTAL	\$ 177,714.39	TOTAL	\$ 260,200.00

ELOY MUNICIPAL AIRPORT														
"FINAL" FAA/ADOT ACIP (2022-2026)														
PREPARED BY: COFFMAN ASSOCIATES														
PREPARED: AUGUST 6, 2020														
FISCAL YEAR		PROJECT NUMBER		PROJECT		QUANTITY		TOTAL COST		FEDERAL SHARE (1)		STATE SHARE		CITY SHARE
2018		AIP #14		Land Acqusition (Taxiway Relocation and Drainage Improvements)		± 15.0 Acres		\$494,180		\$450,000		\$22,090		\$22,090
				Subtotal (FY 2018)				\$494,180		\$450,000		\$22,090		\$22,090
2019		AIP #15		Relocation of Taxiway "A", New MITL, and Floodplain Improvements (Design Only)		LS		\$471,513		\$429,360		\$21,077		\$21,077
				Subtotal (FY 2019)				\$471,513		\$429,360		\$21,077		\$21,077
2020		#E0S2W01C		Drainage Improvements - Phase 1 (Construct)		LS		\$1,200,000		\$0		\$1,080,000		\$120,000
2020		#E0S2V01C		Runway Lighting Rehabilitation (Design and Construction)		LS		\$450,000		\$0		\$405,000		\$45,000
2020		AIP #16		Relocation of Taxiway "A" and new MITL		±23,000 SY		\$4,726,204		\$4,726,204		\$0		\$0
				Subtotal (FY 2020)				\$6,376,204		\$4,726,204		\$1,485,000		\$165,000
2021		21-1		Master Plan Update (Including AGIS Survey)		LS		\$400,000		\$364,240		\$17,880		\$17,880
				Subtotal (FY 2021)				\$400,000		\$364,240		\$17,880		\$17,880
2022		22-2		Drainage Improvements - Phase 2 (Design & Construct)		LS		\$750,000		\$0		\$675,000		\$75,000
				Subtotal (FY 2022)				\$750,000		\$0		\$675,000		\$75,000
2023		23-1		Environmental Assessment (Land Acquistion and Runway Extension)		LS		\$300,000		\$273,180		\$13,410		\$13,410
				Subtotal (FY 2023)				\$300,000		\$273,180		\$13,410		\$13,410
2024		24-1		Land Acquistion (SW Runway Extension)		±20 Acres		\$400,000		\$364,240		\$17,880		\$17,880
2024		24-2		SW Runway Extension - 650 feet (Design Only)		LS		\$400,000		\$364,240		\$17,880		\$17,880
2024		24-3		Drainage Improvements - Phase 3 (Design & Construct)		LS		\$850,000		\$0		\$765,000		\$85,000
				Subtotal (FY 2024)				\$1,650,000		\$728,480		\$800,760		\$120,760
2025		25-1		Construct SW Runway Extension - 650 feet (Including Parallel Taxiway "A", MIRL, MITL)		LS		\$4,000,000		\$3,642,400		\$178,800		\$178,800
				Subtotal (FY 2025)				\$4,000,000		\$3,642,400		\$178,800		\$178,800
2026		26-1		Install AWOS		LS		\$300,000		\$273,180		\$13,410		\$13,410
				Subtotal (FY 2026)				\$300,000		\$273,180		\$13,410		\$13,410
				TOTAL ACIP (FY2021 - FY2026)				\$7,400,000		\$5,281,480		\$1,699,260		\$419,260

1. Assumes Federal Funding at 91.06% except for CARES Act Projects (AIP #16) which are funded at 100%.

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CITY OF ELOY
ELOY MUNICIPAL AIRPORT

**Arizona Department of Transportation
Multimodal Planning Division
Aeronautics Group**

Airport Development Reimbursable Grant Agreement

Part I

THIS AGREEMENT is entered into May 24, 2022, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, through its Multimodal Planning Division (the "State") and the **City of Eloy**, a political subdivision of the State of Arizona (the "Sponsor"), for a grant of State funds for the purpose of aiding in financing a Project of **Construct Drainage Improvements Phase 2** (the "Project"), for the improvement of the **Eloy Municipal Airport** (the "Airport").

WITNESSETH

Recitals:

- 1) The Sponsor desires, in accordance with the authority granted by Arizona Revised Statutes (A.R.S.) Section 28-8413, funds from the State for the purpose of airport planning and/or development.
- 2) The Arizona State Transportation Board, as approved on **December 17, 2021** and the Director of the Arizona Department of Transportation, in accordance with the authority granted by Sections 28-304, 28-363, and 28-401 and A.R.S. Title 28, Chapter 25, have authorized reimbursement to the Sponsor of funds expended for airport planning and/or development.

Now, therefore, in consideration of the foregoing recitals and of the covenants and agreements made by the parties herein to be kept and performed, the parties agree as follows:

Sponsor's Responsibility

- 1) The Sponsor shall accept this Agreement within 4 months of the date of the grant offer cover letter: **February 3, 2022**. This Grant offer, if not accepted by the Sponsor, shall expire at the end of the 4-month period.
- 2) The Sponsor shall commence the Project within 6 months of the date the grant was executed by the State. This Project will consist of the airport improvements as described in Exhibit C. The Sponsor shall proceed with due diligence and complete the Project in accordance with the provisions of this Agreement. The Sponsor shall provide and maintain competent supervision to complete the Project in conformance with the plans, specifications and work completion schedule incorporated as part of this Agreement.

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- 3) The Sponsor shall submit completed Project Reimbursement and Milestone schedules, which shall be attached hereto, as Exhibit C, Schedules Two and Three respectively and shall complete the Project within that schedule. Any change to the schedule shall be submitted in writing and be approved by the State. A time extension beyond the State's obligation to provide funds herein must be reflected by formal Amendment to this Agreement.
- 4) The Sponsor shall comply with the Sponsor Assurances and abide by and enforce the General Provisions and Specific Provisions incorporated herein as Exhibits A, B and C respectively.

Obligations

- 1) The minimum funding participation from the Sponsor shall be **Zero (0%)** as determined by the State.
- 2) The maximum reimbursement available from the State to the Sponsor for this Agreement shall be **Seven Hundred Fifty Thousand Dollars (\$750,000.00)**.
- 3) Except as otherwise provided herein for the State's obligation to provide funds hereunder expires upon completion of the project required herein or **June 3, 2026**, whichever is earlier.
- 4) The State may, after agreeing to provide said funds to the Sponsor, withdraw/terminate the grant if the Project has not been initiated as evidenced by a Notice to Proceed within 6 months of the date the grant was executed by the State or has not progressed as scheduled over a period of 12 months or if the State determines that Sponsor is not otherwise complying with the terms of this Agreement. If it becomes necessary to terminate a grant at any time, the State will reimburse expenses of the Sponsor, approved by the State, up to the time of notification of cancellation provided Sponsor is not in default hereunder.
- 5) Sponsor acknowledges that in the event of a late payment or reimbursement by the State, the State shall have no obligation to pay a late payment fee or interest and shall not otherwise be penalized.
- 6) Notwithstanding anything to the contrary herein, in the case where funds are no longer available or have been withdrawn or not appropriated, or the Project is no longer in the State's best interest, the State shall have the right of termination at its sole option. The State shall not reimburse any costs incurred after receipt of the notice of termination. The Governor pursuant to A.R.S. Section 38-511 hereby puts all parties on notice that this Agreement is subject to cancellation.

Preliminary Work Provision

Any preliminary work, for which costs for this Project were incurred after **July 28, 2021**, shall be considered eligible for reimbursement provided that said costs are directly related to the Project on which this Agreement is written. The State shall review related records and determine eligibility at its sole discretion.

The Sponsor shall approve and attach to this agreement a resolution, or Motion, or Board Action by its governing body that certifies as follows:

- 1) The Sponsor has the legal power and authority:
 - a) to do all things necessary, in order to undertake and carry out the Project;
 - b) to accept, receive and disburse grant funds from the State in aid of the Project.
- 2) The Sponsor now has on deposit, or is in a position to secure Zero (\$0.00), or an equivalent amount represented by Sponsor's proposed labor and equipment costs, for use in defraying Sponsor's share of the costs of the Project. The present status of these funds is as follows:

(Enter local funding type and location)

- 4) The Sponsor has on file with ADOT the following vendor identification and address for project payments:

Sponsor Vendor Id #: IV0000011261
Sponsor Vendor Address: 628 N Main St.
Eloy, AZ 85131

The following Exhibits are incorporated herewith and form a part of this Agreement.

Exhibit A - Sponsor Assurances

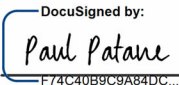
Exhibit B - General Provisions

Exhibit C - Specific Provisions and Project Schedules

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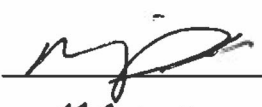
STATE:

State of Arizona
Department of Transportation
Multimodal Planning Division

By: 
Title: Paul Patane, Division Director
Date: 5/24/2022

SPONSOR:

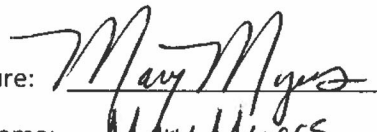
PINAL COUNTY
ELOY MUNICIPAL AIRPORT

By: 
Title: MAYOR
Date: 4-11-2022

WITNESSED BY:

Signature: 
Print Name: Margie Cerda, Airport Grants Manager
Date: 5/24/2022

WITNESSED BY:

Signature: 
Print Name: Mary Myers
Date: 4/11/2022

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EXHIBIT A

Sponsor Assurances

Upon acceptance of the grant offer by the Sponsor, these assurances will become a part of this Agreement. The Sponsor hereby covenants and agrees with the State as follows:

General

- 1) That the Project is consistent with plans (existing at the time of approval of the Project) of political jurisdictions authorized by the State to plan for the development of the area surrounding the Airport and has given fair consideration to the interest of communities in or near where the Project is to be located. In making a decision to undertake any airport development Project under this Agreement the Sponsor insures that it has undertaken reasonable consultation with affected parties using the Airport at which the Project is proposed. All appropriate development standards of Federal Aviation Administration (FAA) Advisory Circulars, Orders, or Federal Regulations shall be complied with. All related state and federal laws shall be complied with.
- 2) That these covenants shall become effective upon execution of this Agreement for the Project or any portion thereof, made by the State and shall remain in full force and effect throughout the useful life of the facilities or the planning project's duration developed under the grant, but in any event, not less than twenty (20) years from the date of acceptance of the grant offer by the Sponsor.
- 3) The Sponsor certifies in this Agreement that it is a political subdivision of the State and is the public agency with control over a public-use Airport and/or on behalf of the possible future development of an Airport and is eligible to receive grant funds for the development or possible development of an Airport under its jurisdiction.
- 4) The Sponsor further agrees it holds good title, satisfactory to the State, to the landing area of the Airport or site thereof, or will give assurance satisfactory to the State that good title will be acquired.
- 5) That the Sponsor is the owner or lessee of the property or properties on which the Airport is located and that the lease guarantees that the Sponsor has full control of the use of the property for a period of not less than twenty (20) years from the date of this Agreement. All changes in airport ownership or to an airport lease shall be approved by the State.
- 6) The Sponsor agrees that it has sufficient funds available for that portion of the project costs which are not to be paid by the State (or the United States).
- 7) The Sponsor agrees to provide and maintain competent supervision to complete the Project in conformance with this Agreement.
- 8) Preserving Rights and Powers: The Sponsor agrees it shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions and assurances in this Agreement without written permission from the State, and shall act promptly to acquire, extinguish or modify any outstanding rights or claims of right by others which would interfere with such performance by the Sponsor. This will be done in a manner acceptable to the State. The Sponsor shall not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property shown on the airport property map included in the most recent FAA-approved Airport Layout Plan, or to that portion of the property upon which State

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funds have been expended, for the duration of the terms, conditions and assurances in this Agreement without approval by the State. If the transferee is found by the State to be eligible under Title 49, United States Code, to assume the obligations of this Agreement and to have the power, authority and financial resources to carry out such obligations, the Sponsor shall insert in the contract or document transferring or disposing of Sponsor's interest and make binding upon the transferee all the terms, conditions and assurances contained in this Agreement.

- 9) **Public Hearings:** In Projects involving the location of an Airport, an airport runway or a major runway extension, the Sponsor has afforded the opportunity for public hearings for the purpose of considering the economic, social and environmental impacts of the Airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the State, submit a copy of such hearings to the State.

Financial

Pursuant to A.R.S. 35-326, the Sponsor may elect to utilize the Local Government Investment Pool ("LGIP") maintained by the state treasurer. The Sponsor shall request written approval from the State to use the LGIP. Thereafter, the State may deposit the funds authorized by the grant into the Sponsor's account. After approval of the reimbursements by the state, the funds shall be disbursed through the LGIP account to the Sponsor. The disbursements shall be made pursuant to the applicable laws and regulations.

The Sponsor shall establish and maintain for each Project governed by this Agreement, an adequate accounting record to allow State personnel to determine all funds received (including funds of the Sponsor and funds received from the United States or other sources) and to determine the eligibility of all incurred costs of the Project. The Sponsor shall segregate and group project costs into cost classifications as listed in the Specific Provisions of Exhibit C.

Record Keeping

The Sponsor shall maintain accurate records of all labor, equipment and materials used in this Project and that upon reasonable notice, shall make available to the State, or any of their authorized representatives, for the purpose of audit and examination all records, books, papers or documents of the recipient relating to work performed under this Agreement. For airport development Projects, make the Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the State upon reasonable request.

Airport Based Aircraft Reporting

The Sponsor shall furnish to the State on a quarterly basis, a current detailed listing (including: Registration/N Number, Name, Address and Phone Number of Owner) of all based aircraft on the Airport in a form approved by the State.

Airport Layout Plan

- 1) The Sponsor shall maintain a current signed/approved Airport Layout Plan (ALP) of the Airport, which shows building areas and landing areas, indicating present and planned development and to furnish the State an updated ALP of the Airport as changes are made.
- 2) The Sponsor shall be required to prepare an ALP for update or revalidation in accordance with current FAA and State standard guidelines. The ALP will indicate any deviations from FAA design standards as outlined in current FAA

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Advisory Circulars, orders or regulations. A copy of the signed/approved ALP in electronic format shall be forwarded to the State after authentication by FAA or the State.

- 3) The Sponsor shall assure that there are no changes to the airport property boundaries, together with any off-site areas owned or controlled by the Sponsor which support the Airport or its operations as a part of this project.
- 4) If a change or alteration is made at the Airport which the State determines adversely affects the safety, utility or efficiency of the Airport, or any State funded property on or off Airport which is not in conformity with the ALP as approved by the State, the Sponsor will, if requested by the State, eliminate such adverse affect in a manner approved by the State.

Immediate Vicinity Land Use Restriction

The Sponsor shall restrict the use of land, adjacent to or in the immediate vicinity of the Airport, to activities and purposes compatible with normal airport operations and to take appropriate action including the adoption of appropriate zoning laws. In addition, if the Project is for noise compatibility or to protect the 14 CFR Part 77 imaginary surfaces of the Airport, the Sponsor will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the Airport, of the noise compatibility program measures or the imaginary surfaces of the Airport upon which State funds have been expended.

Airport Operation

- 1) The Sponsor shall promote safe airport operations by clearing and protecting the approaches to the Airport by removing, lowering, relocating, marking and/or lighting existing airport hazards and to prevent, to the extent possible, establishment or creation of future airport hazards. The Sponsor shall take appropriate action to assure such terminal airspace as is required to protect instrument and visual operations to the Airport (including established minimum flight altitudes) will be adequately cleared and protected by preventing the establishment or creation of future airport hazards. The Sponsor shall promptly notify airmen of any condition affecting aeronautical use of the Airport.
- 2) The Sponsor further agrees to operate the Airport for the use and benefit of the public and to keep the Airport open to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes; provided that the Sponsor shall establish such fair, equal and nondiscriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; and provided further, that the Sponsor may prohibit any given type, kind or class of aeronautical use of the Airport if such use would create unsafe conditions, interfere with normal operation of aircraft, or cause damage or lead to the deterioration of the runway or other airport facilities.
- 3) In any agreement, contract, lease or other arrangement under which a right or privilege at the Airport is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport, the Sponsor shall insert and enforce provisions requiring said person, firm or corporation:
 - a) to furnish services on a reasonable and not unjustly discriminatory basis to all users thereof and charge reasonable and not unjustly discriminatory prices for each unit or service;
 - b) and be allowed to make reasonable and nondiscriminatory discounts, rebates or similar types of price reductions to volume purchasers;

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- c) each Fixed Based Operator (FBO) and Air Carrier at the Airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other FBOs and Air Carriers making the same or similar uses of the Airport and utilizing the same or similar facilities;
 - d) each Air Carrier using such Airport shall have the right to service itself or to use any FBO that is authorized or permitted by the Airport to serve any Air Carrier at the Airport.
- 4) The Sponsor shall not exercise or grant any right or privilege which operates to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including but not limited to maintenance, repair and fueling) that it may choose to perform. In the event the Sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by a commercial aeronautical operator authorized by the Sponsor under these provisions.
- 5) The Sponsor shall suitably operate and maintain the Airport and all facilities thereon or connected therewith which are necessary for airport purposes and to prohibit any activity thereon which would interfere with its use for aeronautical purposes and to operate essential facilities, including night lighting systems, when installed, in such manner as to assure their availability to all users of the Airport; provided that nothing contained herein shall be construed to require that the Airport be operated and maintained for aeronautical uses during temporary periods when snow, flood or other climatic conditions interfere substantially with such operation and maintenance.
- 6) The Sponsor shall not permit an exclusive right for the use of the Airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, providing services at an Airport by a single FBO shall not be construed as an "exclusive right" if:
- a) it would be unreasonably costly, burdensome or impractical for more than one FBO; and
 - b) if allowing more than one FBO to provide such services would require a reduction of space leased pursuant to an existing agreement between a single FBO and the Airport.

Note: Aeronautical activities that are covered by this paragraph include, but are not limited to: charter flights, pilot training, aircraft rental, sightseeing, air carrier operations, aircraft sales and services, aerial photography, agricultural spraying, aerial advertising and surveying, sale of aviation petroleum products whether or not conducted in conjunction with any other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity.

- 7) The Sponsor shall terminate any exclusive right to conduct an aeronautical activity now existing at the Airport before any grant of assistance from the State. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the Airport is used as an Airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with State funds.
- 8) Airport Pavement Preservation Program: The Sponsor certifies that they have implemented an effective pavement preservation management program at the Airport in accordance with Public Law 103-305 and with the most current associated FAA policies and guidance for the replacement, reconstruction or maintenance of pavement at the Airport. The Sponsor assures that it shall use and follow this program for the useful life of the pavement

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constructed, reconstructed or repaired with financial assistance from the State and that it will provide such reports on pavement condition and pavement management programs as may be required by the State.

Sponsor Transactions

The Sponsor shall refrain from entering into any transaction which would deprive the Sponsor of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency eligible to assume such obligations and having the power, authority and financial resources to carry out such obligations; and, if an arrangement is made for management or operation of the Airport by an agency or person other than the Sponsor, the Sponsor shall reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants or insure that such an arrangement also requires compliance therewith.

Airport Revenues

The Sponsor shall maintain a fee and rental structure for the facilities and services at the Airport which will make the Airport as self-sustaining as possible under the circumstances existing at the particular Airport, taking into account such factors as the volume of traffic and economy of collection. All revenues generated by the Airport (and any local taxes established after Dec 30, 1987), will be expended by it for the capital or operating costs of the Airport; the local airport system; or the local facilities which are owned or operated by the owner or operator of the Airport and which are directly or substantially related to the actual air transportation of passengers or property, on or off the Airport.

Disposal of Land

- 1) For land purchased under a grant for airport development purposes (it is needed for aeronautical purposes, including runway protection zones, or serve as noise buffer land; and revenue from the interim use of the land contributed to the financial self-sufficiency of the Airport), the Sponsor shall apply to the State and FAA for permission to dispose of such land. If agreed to by the State and/or FAA, the Sponsor shall dispose of such land at fair market value and make available to the State and FAA an amount that is proportionate to the State and FAA's share of the cost of the land acquisition. That portion of the proceeds of such disposition, which is proportionate to the share of the cost of acquisition of such land, shall be (a) reinvested in another eligible airport development Project or Projects approved by the State and FAA or (b) be deposited to the Aviation Trust Fund if no eligible Project exists.
- 2) Disposition of such land shall be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the Airport.

EXHIBIT B

General Provisions

Employment of Consultants

The term consultant, as used herein, includes planners, architects and/or engineers. If a consultant is to be used for this Project, the Sponsor agrees to consider at least three (3) consultant firms. If the Sponsor has contracted with or will contract with a consultant on a retainer basis, the Sponsor assures to the State that prior to entering such a contract, at least three (3) consultants were or will be considered. The Sponsor shall submit to the State, for review and approval, a copy of the request for proposals and/or request for qualifications, and the proposed consultant contract prior to its execution and upon award of the contract, a fully executed copy. All requests for qualifications and requests for proposals shall be in accordance with A.R.S. 34, Chapters 1, 2 and 6, and shall include a list of projects and project locations to be awarded project contracts.

Contracts

- 1) The Sponsor as an independent entity and not as an agent of the State may obtain the services required in order to fulfill the work outlined in the Project Description as approved by the State for funding in the Airport Capital Improvement Program. All contracts awarded to accomplish the project work described in this Agreement shall state:
 - a) The name of the consultant authorized to perform the work and to communicate on behalf of the Sponsor;
 - b) The Sponsor must insure that contracts issued under this Agreement comply with the provisions of Arizona Executive Order 75-5 as amended by Arizona Executive Order 2009-9, relating to equal opportunity;
 - c) The terms for termination of the contract either for failure to perform or in the best interest of the Sponsor;
 - d) The duly authorized representatives of the State shall have access to any books, documents, papers and records of the consultant and/or contractor which are in any way pertinent to the contract for a period of five years, in accordance with A.R.S. 35-214, for the purpose of making inspections, audits, examinations, excerpts and transcriptions.
- 2) All contracts shall stipulate and make clear:
 - a) The responsibilities of the consultant to gain authorization for changes on the Project which may have an affect on the contract price, scope, or schedule;
 - b) That all construction contractors and sub-contractors hired to perform services, shall be in compliance with A.R.S. 32, Chapter 10.
 - c) That any materials, including reports, computer programs or files and other deliverables created under this Agreement are the sole property of the Sponsor. That these items shall be made available to the public. The Contractor/Consultant is not entitled to a patent or copyright on these materials and may not transfer the patent or copyright to anyone else.

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- d) That any travel shall be reimbursable by the State only within the rules and costs in accordance with the State of Arizona Travel Policy.

Conflict of Interest

Each consultant submitting a proposal shall certify that it shall comply with, in all respects, the rules of professional conduct set forth in Arizona Administrative Code R4-30-301. In addition, a conflict of interest shall be cause for disqualifying a consultant from consideration; or terminating a contract if the conflict should occur after the contract is made. A potential conflict of interest includes, but is not limited to:

- 1) Accepting an assignment where duty to the client would conflict with the consultant's personal interest, or interest of another client.
- 2) Performing work for a client or having an interest which conflicts with this contract.

Reports

The Sponsor shall submit monthly status reports during planning, shall submit monthly status reports during design, and shall submit weekly reports during construction. All reports shall reflect, at a minimum, the progress accomplished in relation to the Grant and Project schedules and milestones, the reasons for any changes, and the recommended corrections of problems encountered. Upon completion of the Project, the Sponsor shall submit a letter to the State specifying that the Project has been completed to their satisfaction and that the consultant and the contractor have completed their contractual responsibilities.

Changes

Any changes to the consultant contract, authorized by the Sponsor, that include additional funds, time and/or scope, shall be by amendment and shall be approved by the State prior to being made in order to be eligible for reimbursement. Approval of a change by the State shall not obligate the State to provide reimbursement beyond the maximum funds obligated by this Agreement. Any increase to the amount of funds authorized hereunder, to the expiration date of this agreement, or to the scope of work included in this agreement must be by formal amendment, and signed by all parties.

Any changes to the contract documents, authorized by the Sponsor, must be approved by the State prior to any changes being made in order to be eligible for reimbursement.

Audit

Upon completion of the Project, the Sponsor agrees to have an audit performed. The audit examination may be a separate project audit or in accordance with the Single Audit Act of 1984 (Single Audit). If the Sponsor is required under law to have a Single Audit, this Project shall be considered for inclusion in the scope of examination.

The Sponsor shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the Project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the Project supplied by other sources, and such other financial records pertinent to the Project. The accounts and records will be kept in accordance with A.R.S. 35-214.

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In any case in which an independent audit is made of the accounts of a Sponsor relating to the disposition of the proceeds of a grant relating to the Project in connection with which the grant was given or used, it shall file a certified copied of such audit with the State not later than six (6) months following the close of the fiscal year in which the audit was made.

The Sponsor shall make available to the State or any of their other duly authorized representatives, for the purpose of audit and examination, any books, documents, papers and records of the recipient that are pertinent to the grant. The Sponsor further agrees to provide the State a certified copy of the audit report. The State is to determine the acceptability of this audit.

Suspension

If the Sponsor fails to comply with any conditions of this Agreement, the State, by written notice to the Sponsor, may suspend participation and withhold payments until appropriate corrective action has been taken by the Sponsor. Costs incurred during a period of suspension may not be eligible for reimbursement by the State.

Failure to Perform

If the Sponsor fails to comply with the conditions of this Agreement the State, may by written notice to the Sponsor, terminate this Agreement in whole or in part. The notice of termination will contain the reasons for termination, the effective date, and the eligibility of costs incurred prior to termination. The State shall not reimburse any costs incurred after the date of termination.

Termination for Convenience

When the continuation of the Project will not produce beneficial results commensurate with the further expenditure of funds or when funds are not appropriated or are withdrawn for use hereunder, the State may terminate this Agreement. In the case where continuation of the Project will not produce beneficial results, the State and the Sponsor shall mutually agree upon the termination either in whole or in part. In the case where funds are no longer available or have been withdrawn or not appropriated, or the Project is no longer in the State's best interest, the State shall have the right of termination as its sole option. The State shall not reimburse any costs incurred after receipt of the notice of termination. The Governor pursuant to A.R.S. Section 38-511 hereby puts all parties on notice that this Agreement is subject to cancellation.

Waiver by State

No waiver of any condition, requirement or right expressed in this Agreement shall be implied by any forbearance of the State to declare a default, failure to perform or to take any other action on account of any violation that continues or repeats.

Compliance with Laws

The Sponsor shall comply with all Federal, State and Local laws, rules, regulations, ordinances, policies, advisory circulars, and decrees that are applicable to the performance hereunder.

Arbitration

In the event of a dispute, the parties agree to use arbitration to the extent required by A.R.S. Section 12-1518.

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Jurisdiction

Any litigation between the Sponsor and the State shall be commenced and prosecuted in an appropriate State court of competent jurisdiction within Maricopa County, State of Arizona.

Excess of Payments

If it is found that the total payments to the Sponsor exceed the State's share of allowable project costs, the Sponsor shall promptly return the excess to the State. Final determination of the State's share of allowable costs shall rest solely with the State. Any reimbursement to the Sponsor by the State not in accordance with this Agreement or unsubstantiated by project records will be considered ineligible for reimbursement and shall be returned promptly to the State.

State Inspectors

At any time and/or prior to final payment of funds for work performed under this Agreement, the State may perform an inspection of the work performed to assure compliance with the terms herein and to review the workmanship of the Sponsor's contractors and/or consultants. No inspector is authorized to change any provisions of this Agreement or any provisions of Agreements between the Sponsor and the Sponsor's contractor and/or consultant.

Indemnification

The State of Arizona, acting by and through the Arizona Department of Transportation, does not assume any liability to third persons nor will the Sponsor be reimbursed for the Sponsor's liability to third persons resulting from the performance of this Agreement or any subcontract hereunder.

The Sponsor shall indemnify and hold harmless the State, any of their departments, agencies, officers and employees from any and all liability, loss or damage the State may suffer as a result of claims, demands, costs or judgments of any character arising out of the performance or non-performance of the Sponsor or its independent contractors in carrying out any provisions of this Agreement. In the event of any action, this indemnification shall include, but not be limited to, court costs, expenses of litigation and reasonable attorney's fees.

Required Provisions Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Agreement shall 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 Agreement shall forthwith be physically amended to make such insertion or correction.

Property of the Sponsor and State

Any materials, including reports, computer programs or files and other deliverables created under this Agreement are the sole property of the Sponsor. The Contractor/Consultant is not entitled to a patent or copyright on these materials and may not transfer the patent or copyright to anyone else. The Sponsor shall give the State unrestricted authority to publish, disclose, distribute and otherwise use at no cost to the State any of the material prepared in connection with this grant. At the completion of the project, the Sponsor shall provide the State with an electronic copy, in a format useable by the State, and one hard copy in a format useable by the State, of final plans, specifications, reports, planning documents, and/or other published materials as produced as a result of this project.

EXHIBIT C

Specific Provisions and Project Schedules

Provisions for Design/Construction

Financial Cost Categories

The Sponsor shall segregate and group project costs in categories as follows:

- 1) "Design/Engineering Services" (as applicable), including topographic surveys/mapping, geometric design, plans preparation, geotechnical and pavement design, specifications, contract documents.
- 2) "Construction" (must be accounted for in accordance with approved work items as presented in the bid tabulation).
- 3) "Construction Engineering" (as applicable), including contract administration, inspection/field engineering, materials testing, construction staking/as-built plans and other.
- 4) "Sponsor Administration" directly associated with this Project (not to exceed 5% of project costs).
- 5) "Sponsor Force Account" contribution (if applicable).
- 6) "Contingencies" (not to exceed 5% of construction costs).
- 7) "Other" with prior approval of the State.

Design Review – Plans, Specifications and Estimates

Plans, specifications and estimates shall be accomplished by, or under the direct supervision of a qualified engineer registered by the State of Arizona. The Sponsor shall conduct a Concept Design Review meeting with the State and Sponsor's consultant at approximately the thirty percent (30%) completion point in the design of the Project, and a Final Design Review at one hundred percent (100%) plan completion.

These mandatory reviews shall be completed before the Sponsor will be permitted to proceed with the Project. The State shall issue an approval to proceed with final design upon satisfactory completion of the 30% review. The State shall issue an approval of the 100% plans, specifications and estimates upon satisfactory completion of the 100% review. Upon State approval, the Sponsor may proceed to advertising if construction is included in the scope of the Project, or must close the Project and submit a final grant reimbursement request if the grant is for design only.

Any modification to the approved plans, specifications and estimates authorized by the Sponsor shall also be subject to approval of the State. **Changes made to approved plans, specifications, and estimates at any time must be authorized by the State prior to executing the changes in order to be eligible for reimbursement by the State.**

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The National Environmental Policy Act (NEPA) documentation must be complete and approved by the State and/or FAA prior to construction. The Sponsor shall submit a copy of the documentation to the State.

FAA Notice of Proposed Construction

The Sponsor agrees to submit an FAA Form 7460-1, Notice of Proposed Construction or Alteration before construction, installation or alteration of any Project under this Agreement that falls under the requirements of Subpart B to Part 77, Objects Affecting Navigable Airspace.

Bidding - Alternate Bidding Methods

Design, Bid, Build is the standard and preferred method for project delivery for State airport development grant projects. Alternative contracting methods (Design Build, Construction Manager at Risk, Task Order Contract) may be used in accordance with A.R.S. Title 34, Chapters 1, 2 and 6. **Use of an alternative contracting method shall be reviewed and approved by the State prior to the Sponsor executing a contract for the work.** If a project is approved for an alternative contracting method, the Sponsor must comply with all Federal, State, and Local policies, regulations, rules, and laws, as well as all requirements of this grant agreement within that method.

Based on Bids

If a Sponsor has requested a match to a Federal construction grant that was based on bids (the project was already advertised by the Sponsor with no existing State airport development grant for the design work), then all design coordination with the State required by this agreement must have been met during the design process for any prior design work to be considered eligible for reimbursement by the State. The State shall review any documentation and work done prior to bidding and, at its sole discretion, determine the eligibility of the work. Only work items necessary to complete the Project as stated in Exhibit C, Schedule One, Project Description, may be considered eligible.

Contractor Allowance

This item may only be used to cover costs of unknown, unforeseen circumstances within the scope of the grant that are necessary for Project completion. (For example: if unknown underground utilities must be removed or relocated to accomplish the Project) **This item must have prior approval of the State for each use of the item during construction in order to be eligible for reimbursement by the State.** The bid item shall be clearly defined in the contract documents with concise language describing when it may be utilized. It shall also be specified that the item may not be used at all. The allowance may only be used for unforeseen items directly related to the Project.

Contingencies

Contingencies are to be used as an estimating tool during the preliminary phases of Project development. They are intended to allow room in the grant funding level for reasonable price increases or approved added items during design. Contingencies are not eligible for reimbursement by the State as bid items in a construction contract.

Itemized Allowance

Use of an itemized allowance items may only be included in a contract with prior approval of the State. Any use of an itemized allowance bid item as part of a grant must be for a clearly defined portion of the project. (For example: cabinet allowance – cabinets in terminal storage room as shown on plans to be selected by Sponsor, or carpet allowance – industrial Berber carpet for 200 SF lobby to be selected by Sponsor) Each contract allowance item must be approved by

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the State in order to be included in the bid package. The State will not approve use of an item to cover expenses not directly related to the item. (For example: Left over funds from cabinet allowance cannot be used to purchase light fixtures)

Construction Inspection

Airport planning, design, project estimates, bidding, and construction inspection are the direct responsibility of the Sponsor and may be accomplished by the Sponsor's staff or by a qualified consultant. The Sponsor shall provide and maintain competent technical supervision throughout the Project to assure that the work conforms to the plans, specifications and schedules approved by the State and the Sponsor.

Construction inspection shall be accomplished by, or under the direct supervision of a qualified engineer registered by the State of Arizona.

The Sponsor shall subject the construction work and any related documentation on any Project contained in an approved Project application to inspection and approval by the State and the FAA. The State shall, if in accordance with regulations and procedures, prescribe such work as needed for the Project.

Change Orders

The Sponsor shall notify the State in advance of the need for a change. Such notification shall clearly define the changed or added bid items, the locations of changed work, the quantities and costs of changed work, and the time required for the change. Justification for the change must be provided to the State by the Sponsor. Change orders may be approved by the State only if they are clearly necessary to accomplish the original grant scope. If approval is granted by the State, the Sponsor shall follow up with the written change order for the State's review and approval in a timely manner. The Sponsor may not request reimbursement for the work done under a change order until the change order is approved by the State.

Construction Contract Documents

Any changes to the construction contract documents (including scope, time and amount), authorized by the Sponsor, must be approved by the State prior to being implemented by the Sponsor in order to be eligible for reimbursement under the grant. All changes, as well as any notifications and approvals related to the changes, shall be documented in the final contract documents, change orders, and as built plans provided to the State at the end of the contract. Verbal requests and approvals are not sufficient as documentation for reimbursement. Final reimbursements will not be made until all documentation is received by the State.

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Design/Construction Project Schedules

The Schedule Forms are intended to identify and monitor project scope, costs, and basic milestones that will be encountered during various phases of the Project. The Sponsor shall complete these three schedules showing the project description and total costs, project reimbursements (cash flow) schedule and project milestones.

Schedule One shows the total Project estimated costs associated with each share - State and Federal and Local. Schedule Two shows a projected cash flow for State funds only. The Sponsor is to estimate requests to the State for Project reimbursement. Schedule Three shows anticipated dates of Project milestones. These schedules will be used to keep track of the Project's progress. Be sure to develop realistic schedules.

As the project progresses, and the original reimbursement schedule and or milestone dates change, the Sponsor must submit a revised Schedule to the State for approval.

Schedule One
Design/Construction Project Description and Funding Allocation

Detailed Project Description:

Construct Drainage Improvements Phase 2

Project Cost Category	Total Estimated Project Cost	Estimated Local Share	Estimated Federal Share	Estimated State Share*
Design/Engineering Services	\$ 166,250	\$	\$	\$ 166,250
Construction	\$ 478,750	\$	\$	\$ 478,750
Construction Engineering	\$ 100,000	\$	\$	\$ 100,000
Sponsor Administration**	\$ 5,000	\$	\$	\$ 5,000
Sponsor Force Account Work***	\$	\$	\$	\$
Contingencies	\$	\$	\$	\$
Total Project Costs	\$ 750,000	\$	\$	\$ 750,000

*Total of this column to be used in Schedule Two.

** Sponsor Administration is not eligible for reimbursement above 5% of the project costs.

*** All force account work is to be approved by the State prior to the grant agreement being signed.

NOTE: The Sponsor must attach a project plan based upon the ALP that clearly shows the scope and the limits of the work.

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Schedule Two
Design/Construction Project Reimbursement Schedule

The Sponsor must complete this Project Reimbursement Schedule showing the projected cash flow of State grant funds only for this Project. Projections must include all consultant and contractor services. The reimbursement schedule should be a realistic schedule and will be used to keep track of a project's progress. Reimbursement requests must be submitted regularly by the Sponsor while the grant is active. The cash flow should reflect when a request is submitted to the State, not when invoices are paid by the Sponsor.

Instructions:

- 1) For "Total State Funds" below, enter the Total Project Costs/Estimated State Share from Schedule One.
- 2) For each month/year, indicate the projected reimbursement request amount for State Funds Only (use whole dollars only, e.g. \$540 or \$1,300).
- 3) Continue the process by entering a Zero (Ø) in the month/year for which no reimbursement is anticipated and/or a dollar amount of the reimbursement, until the total State funds are accounted for in the cash flow.

Total State Funds: \$750,000.00 State Dollars

Projected Reimbursement Requests / State Cash Flow

<i>Calendar Year</i>	Jan	Feb	Mar	Apr	May	Jun
2022	\$	\$	\$	\$ 5,800	\$ 25,500	\$ 25,500
2023	\$ 5,600	\$ 950	\$ 5,500	\$ 10,500	\$ 75,500	\$ 275,500
2024	\$	\$	\$	\$	\$	\$
2025	\$	\$	\$	\$	\$	\$
2026	\$	\$	\$	\$	\$	\$
<i>Calendar Year</i>	Jul	Aug	Sep	Oct	Nov	Dec
2022	\$ 25,800	\$ 25,500	\$ 22,500	\$ 22,800	\$ 22,500	\$ 5,600
2023	\$ 184,950	\$ 10,000	\$	\$	\$	\$
2024	\$	\$	\$	\$	\$	\$
2025	\$	\$	\$	\$	\$	\$
2026	\$	\$	\$	\$	\$	\$

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Grants expire 4 years from the date of the grant offer. The Sponsor shall schedule the work to be completed within the 4 years.

Schedule Three
Design/Construction Project Milestones

Milestone Duration Guidelines

The below duration periods are intended to provide guidelines for you to consider. These are average time periods (in calendar days), but it is understood these periods may vary by Sponsor and Project, and are subject to modification. If an entry on the form is not applicable, write N/A.

- 1) The Consultant Selection Phase for all Projects, regardless of type, is approximately ninety (90) days but should not exceed one hundred eighty (180) days.
- 2) The Design/Engineering Phase is subject to the type and complexity of the Project, however, most designs can be accomplished within one hundred eighty (180) days to two hundred and seventy (270) days.
- 3) The Bidding Phase typically should be sixty (60) days or less.
- 4) The Construction Phase is dependent upon the type of Project, the airport traffic, and the available construction season, generally ninety (90) days to three hundred sixty (360) days.
- 5) The State review periods should be fifteen (15) days.

Design/Construction Milestone Schedule

Milestones	Duration	Start Date		Completion Date	
	# of Days	Proposed	Actual	Proposed	Actual
Consultant Selection Phase					
Submit Scope for State Review/Approval*	1				8/17/21
Submit Contract for State Review/Approval	1				8/17/21
Award Consultant Contract	1	2/28/22			
Design & Engineering Phase					
Sponsor Issue Notice to Proceed/Start Design	1	3/7/22			
Conduct 30% Design Review/Approval	15	6/20/22		7/8/22	
Conduct Final Design Review/Bid Set Submitted (100%) for Review/Approval	15	11/7/22		11/22/22	
Bidding Phase					
Bid Set Submitted (100%) for Review/Approval	15	11/7/22		11/22/22	
Issue Invitation for Bids	30	12/13/22		1/19/23	
Submit Bid Tab for State Review/Approval	15	1/27/23		2/10/23	
Award Construction Contract/Submit to the State	1	2/20/23		2/20/23	
Construction Phase					
Pre-Construction Meeting	1	5/27/23			
Issue NTP – Begin Construction	60	4/3/23		6/5/23	
Final Inspection	1	6/26/23		6/26/23	
Submit As-Builts & Final Documentation	1	8/25/23			
Submit Final Reimbursement Request and Sponsor Closeout Letter	1	8/25/23			

* The solicitation for qualifications and the service agreements must contain a list of projects, including this grant project, per A.R.S. 34-Chapter 6.









CITY OF ELOY

REQUEST FOR COUNCIL ACTION

Agenda Item: **VII.C.**

Date: **10/13/2025**

Date submitted:
10/02/2025

Action: Other

Subject: Consideration and possible approval of Case No. FP2025-005: Exceptional Healthcare — a request for approval of a two-lot Final Plat on approximately 9.5 acres, located at the southeast corner of East Milligan Road and South Sunshine Boulevard.

Date requested:
10/13/2025

TO: Mayor and City Council

FROM: Dan Symer, Community Development Director

RECOMMENDATION:

Staff recommends that the City Council approve Case No. FP2025-005: Exceptional Healthcare, a request for approval of a two-lot Final Plat on approximately 9.5 acres, located at the southeast corner of East Milligan Road and South Sunshine Boulevard.

DISCUSSION:

This is a request by Robert Donaldson of BMH As-Built USA, on behalf of S9942, LLC, for approval of a Final Plat to reconfigure three lots into two. The property of the proposed plat has a General Plan Land Use designation of General Industrial, and is zoned Light Industrial (I-1). Vehicular ingress and egress to the property is from East Milligan Road. Water and wastewater infrastructure is located in East Milligan Road adjacent to the property. With the development of the property, the property owner constructed street improvements, as well as water and wastewater infrastructure to serve the Exceptional Healthcare development. With the development of Lot 2, additional water and wastewater infrastructure extensions may be required in accordance with the Eloy City Code. All necessary improvements will be required to be constructed to City of Eloy standards, as determined by the City Engineer or their designee.

FISCAL IMPACT:

No fiscal impacts are anticipated with the approval of the Final Plat.

Approved as to Form:



Stephen R. Cooper, City Attorney



Final Plat Exhibit - Case No: FP2025-005
Exceptional Healthcare



Legend



Subject Properties

DEDICATION:

STATE OF ARIZONA }
COUNTY OF PINAL } SS

KNOW TO ALL MEN BY THESE PRESENTS:

THAT S9942, LLC, A WYOMING LIMITED LIABILITY COMPANY AS TO LOT NUMBER 1, AND EHC ELOY I LP, A SOUTH DAKOTA LIMITED PARTNERSHIP AS TO LOT NUMBER 2, AS OWNERS, DO HEREBY PUBLISH THIS FINAL PLAT, A SUBDIVISION OF PORTION OF PARCEL 1, OF RECORD OF SURVEY RECORDED IN SURVEY BOOK 19, PAGE 178, FEE 2006-143119, LOCATED IN SECTION 8, TOWNSHIP 8 SOUTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, AS SHOWN HERON, AND HEREBY DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH OF THE STREETS, LOTS, TRACTS AND EASEMENTS CONSTITUTING SAME, AND THAT EACH OF THE STREETS, LOTS, TRACTS AND EASEMENTS SHALL BE KNOWN BY THE NAME, NUMBER, OR LETTER GIVEN TO IT RESPECTIVELY.

S9942, LLC, A WYOMING LIMITED LIABILITY COMPANY AS TO LOT NUMBER 1, AND EHC ELOY I LP, A SOUTH DAKOTA LIMITED PARTNERSHIP AS TO LOT NUMBER 2, HEREBY DEDICATES AND CONVEYS TO THE CITY OF ELOY, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, ALL REAL PROPERTY DESIGNATED ON THIS PLAT AS "RIGHT-OF-WAY" OR "R/W" FOR USE AS PUBLIC RIGHT-OF-WAY.

S9942, LLC, A WYOMING LIMITED LIABILITY COMPANY AS TO LOT NUMBER 1, AND EHC ELOY I LP, A SOUTH DAKOTA LIMITED PARTNERSHIP AS TO LOT NUMBER 2, WARRANTS AND REPRESENTS TO THE CITY OF ELOY THAT THEY ARE THE SOLE OWNERS OF THE PROPERTY COVERED BY THIS PLAT, AND THAT EVERY LENDER, EASEMENT HOLDER OR OTHER PERSON OR ENTITY HAVING ANY INTEREST THAT IS ADVERSE TO OR INCONSISTENT WITH THE FOREGOING DEDICATION, OR ANY OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT, HAS CONSENTED TO OR JOINED IN THIS PLAT AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE PINAL COUNTY RECORDER'S OFFICE OR WHICH WSI DEVELOPMENT SUB LP, WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF:
S9942, LLC, A WYOMING LIMITED LIABILITY COMPANY AS OWNER, HAS HERETO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED OFFICER THIS ____ DAY OF _____, 2025.

THAT S9942, LLC, A WYOMING LIMITED LIABILITY COMPANY;

BY: _____ DATE: _____

ITS: _____

OWNER ACKNOWLEDGMENT:

STATE OF TEXAS }
DALLAS, TEXAS } SS

ON THIS ____ DAY OF _____ 2025, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____ WHO ACKNOWLEDGE SELF TO BE THE _____ OF THAT EHC Eloy I LP, A SOUTH DAKOTA LIMITED PARTNERSHIP, AND BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING LAND SPLIT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____ DATE

THAT EHC Eloy I LP, A SOUTH DAKOTA LIMITED PARTNERSHIP, AS OWNER, HAS HERETO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED OFFICER THIS ____ DAY OF _____, 2025.

that EHC Eloy I LP, A South Dakota Limited Partnership.

BY: _____ DATE: _____

ITS: _____

OWNER ACKNOWLEDGMENT:

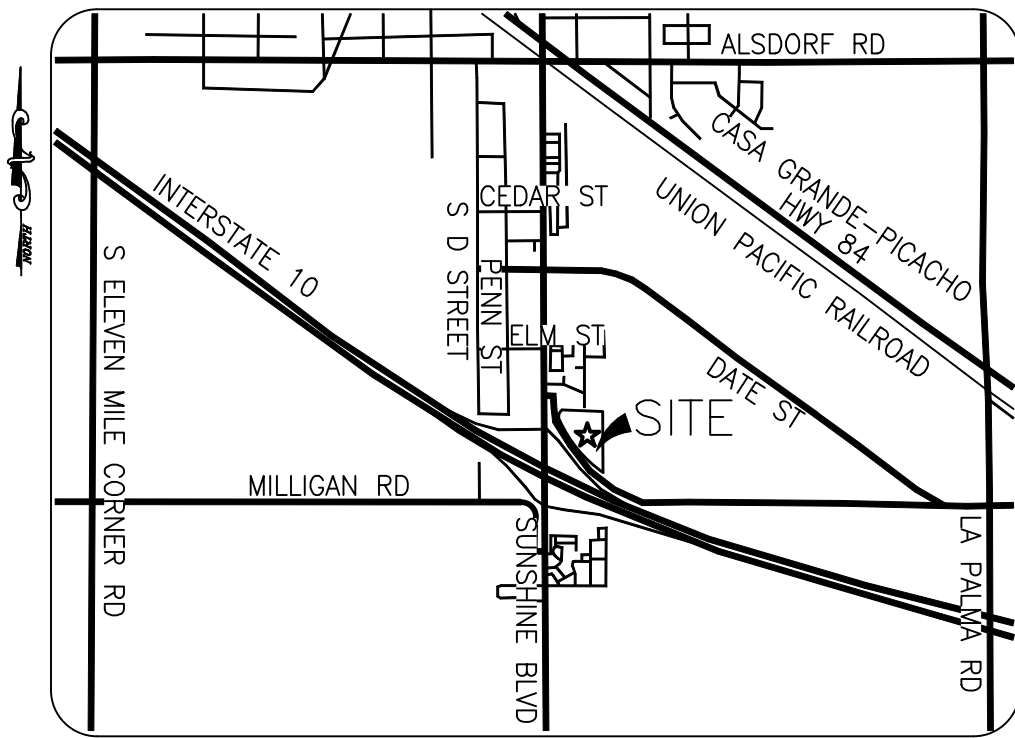
STATE OF TEXAS }
DALLAS, TEXAS } SS

ON THIS ____ DAY OF _____ 2025, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____ WHO ACKNOWLEDGE SELF TO BE THE _____ OF THAT EHC Eloy I LP, A SOUTH DAKOTA LIMITED PARTNERSHIP, AND BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING LAND SPLIT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____ DATE



VICINITY MAP

NTS

LIEN HOLDER RATIFICATION:

AS BENEFICIARY UNDER THAT CERTAIN _____
RECORDED IN THE PINAL COUNTY RECORDER'S OFFICE. PINAL COUNTY, ARIZONA, WITH THE RECORDER'S FEE NUMBER: _____
THE UNDERSIGNED HEREBY RATIFIES. AFFIRMS, APPROVES AND CONFIRMATION IS GIVEN TO SAID DEDICATIONS AS STATED IN THIS PLAT AS TO THE INTEREST OF THE UNDERSIGNED. THE PERSON SIGNING FOR BENEFICIARY WARRANTS AND REPRESENTS THEY HAVE POWER AND AUTHORITY TO DO SO.

BY: _____ DATE: _____

TITLE: _____

RATIFICATION ACKNOWLEDGMENT:

STATE OF TEXAS }
DALLAS, TEXAS } SS

ON THIS ____ DAY OF _____ 2025, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____ WHO ACKNOWLEDGE SELF TO BE THE _____ OF THAT _____
BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING LAND SPLIT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____ DATE

APPROVALS:

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ELOY, ARIZONA ON THE ____ DAY OF _____, 2025.

APPROVED BY: _____ MAYOR

ATTEST: _____ CLERK

THIS IS TO CERTIFY THAT THE AREA PLATTED HEREON IS APPROVED AND LIES WITH THE DOMESTIC WATER SERVICE AREA OF THE CITY OF ELOY WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY IN ACCORDANCE WITH A.R.S. 45-576.

CITY ENGINEER DATE

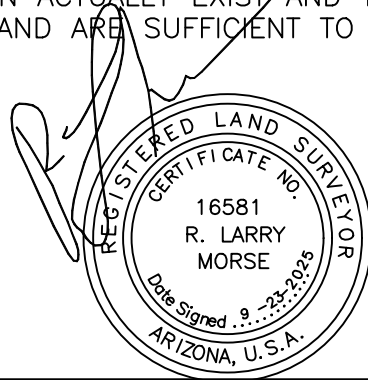
COMMUNITY DEVELOPMENT DIRECTOR DATE

FINAL PLAT for
EXCEPTIONAL HEALTHCARE

A SUBDIVISION OF PORTION OF PARCEL 1, OF RECORD OF SURVEY RECORDED IN SURVEY BOOK 19, PAGE 178, FEE 2006-143119, LOCATED IN SECTION 8, TOWNSHIP 8 SOUTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA

CERTIFICATION:

I HEREBY CERTIFY THAT THE SURVEY AND SUBDIVISION OF THE PREMISES PLATTED HEREON WAS MADE UNDER MY DIRECTION DURING THE MONTH OF APRIL, 2025; AND THIS PLAT REPRESENTS THE SURVEY MADE. I FURTHER CERTIFY ALL EXTERIOR SECTION MONUMENTS SHOWN HERON ACTUALLY EXIST AND THEIR LOCATION, SIZE AND MATERIAL ARE ACCURATELY SHOWN AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



R. LARRY MORSE RLS NO. 16581 DATE 9-23-2025

NOTE:

A.R.S. 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

LEGAL DESCRIPTION:

A PORTION OF PARCEL 1 OF RECORD OF SURVEY RECORDER IN SURVEY BOOK 19, PAGE 178, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF A PARCEL OF LAND AS DESCRIBED PER DOCUMENT 2010-016308 AND A PORTION OF 2010-030240 PINAL COUNTY RECORDERS (PCR), LOCATED IN THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 8 SOUTH, RANGE 8 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING THE SOUTHWEST CORNER OF SAID SECTION 8, BEING A BRASS CAP IN HAND HOLE AT, FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 8, BEING AN ALUMINUM CAP WHICH BEARS NORTH 00 DEGREES 30 MINUTES 00 SECONDS WEST 2,615.20 FEET;
THENCE ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 8, NORTH 00 DEGREES 30 MINUTES 00 SECONDS WEST, 1055.08 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, 155.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89 DEGREES 30 MINUTES 00 SECONDS EAST, 753.11 FEET;

THENCE SOUTH 00 DEGREES 42 MINUTES 23 SECONDS EAST, 919.80 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, FROM WHICH THE RADIUS POINT BEARS NORTH 25 DEGREES 52 MINUTES 02 SECONDS EAST, 1177.86 FEET;
THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 26 DEGREES 45 MINUTES 04 SECONDS, AN ARC DISTANCE OF 549.94 FEET;

THENCE NORTH 37 DEGREES 22 MINUTES 54 SECONDS WEST, 440.46 FEET;
THENCE NORTH 18 DEGREES 56 MINUTES 27 SECONDS WEST, 230.92 FEET TO THE POINT OF BEGINNING.

PLAT NOTES:

- CONSTRUCTION WITHIN UTILITY EASEMENTS SHALL BE LIMITED TO UTILITIES, FENCES AND DRIVEWAYS.
- ALL INDIVIDUAL LOT CORNERS SHALL BE SET WITH 1/2" REBAR AND CAP OR TAG BEARING THE REGISTRATION NUMBER OF THE SURVEYOR RESPONSIBLE FOR THEIR PLACEMENT. PROPERTY CORNERS WILL BE SET AT COMPLETION OF MASS GRADING.
- THIS DEVELOPMENT IS WITHIN THE CITY OF ELOY WATER SUPPLY (SERVICE) AREA AND HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY.

BASIS OF BEARING

THE BASIS OF BEARING IS THE MONUMENT LINE OF SUNSHINE BOULEVARD, ALSO BEING THE WEST LINE OF THE SOUTHWEST QUARTER, USING A BEARING OF NORTH 00 DEGREES 30 MINUTES 00 SECONDS WEST

CIVIL ENGINEER/SURVEYOR

ARQ ENGINEERING LLC.
2001 S. HWY. 95 STE. 11
BULLHEAD CITY, ARIZONA 86442
LARRY MORSE
(928) 758-3333 FAX (928) 758-8654

TOPOGRAPHIC SURVEY PERFORMED BY:
ARQ ENGINEERING LLC.
2001 S. HWY. 95 STE. 11
BULLHEAD CITY, ARIZONA 86442
LARRY MORSE
(928) 758-3333 FAX (928) 758-8654

SURVEY PERFORMED APRIL 2023

PREPARED FOR

S9942, LLC, A WYOMING LIMITED LIABILITY COMPANY
3514 CEDAR SPRINGS ROAD
DALLAS, TX 75215

SITE INFORMATION

ASSESSOR PARCEL NO: 41110021D
41110020D
41110017K

PLANNED ADDRESS: 340 E. MILLIGAN ROAD
ELOY, ARIZONA 85131

Zoning Classification: ZONED I-1

SITE GROSS AREA: 435,013.8 SFT OR 9.57 AC

UTILITY COMPANIES

WATER - CITY OF ELOY PUBLIC WORKS-WATER DIVISION,
1137 W HOUSER RD,
ELOY, AZ, 85131
(520) 466-3082

GAS - SOUTHWEST GAS CORPORATION
201 W 4TH ST
CASA GRANDE, AZ 85122
(877) 860-6020

SEWER - CITY OF ELOY PUBLIC WORKS-WASTEWATER DIVISION,
1137 W HOUSER RD,
ELOY, ARIZONA, 85131
(520) 464-1438

ELECTRIC - ELECTRICAL DISTRICT #4
231 S SUNSHINE BLVD, ELOY, AZ 85131
(520) 466-7336

TELEPHONE - CENTURYLINK
104 W PHOENIX AVE, ELOY, AZ 85131
(520) 200-2959

SOLID WASTE - ELOY LANDFILL
305 SOUTH TOLTEC HWY, ELOY, AZ 85231
(520) 466-3082

FIRE DISTRICT - ELOY FIRE DISTRICT STATION 521
500 S SUNSHINE BLVD, ELOY, AZ 85131
(520) 466-3544



ARQ ENGINEERING LLC
Engineering and Survey
2001 HIGHWAY 95, SUITE 11
BULLHEAD CITY, ARIZONA 86442
(928) 758-3333

CERTIFIED BY:



FINAL PLAT

A SUBDIVISION OF PORTION OF PARCEL 1, OF RECORD OF SURVEY RECORDED IN SURVEY BOOK 19, PAGE 178, FEE 2006-143119, LOCATED IN SECTION 8, TOWNSHIP 8 SOUTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA

SHEET NO.

FP01

A SUBDIVISION OF PORTION OF PARCEL 1, OF RECORD OF SURVEY RECORDED IN SURVEY BOOK 19, PAGE 178, FEE 2006-143119, LOCATED IN SECTION 8, TOWNSHIP 8 SOUTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA



- | | |
|---|---|
|  | FOUND ARIZONA DEPT. OF TRANSPORTATION R.O.W.
2017 3" ALUMINUM CAP TAGGED PLS 21782 |
|  | PROPERTY CORNER, SET 5/8" REBAR AND
CAP RLS 16581, UNLESS OTHERWISE NOTED |
|  | FOUND 1/2" REBAR AND CAP RLS 18214,
UNLESS OTHERWISE NOTED |
|  | 1/4 SECTION CORNER MONUMENT AS NOTED |
|  | SECTION CORNER MONUMENT AS NOTED |
|  | SECTION TIE |

ABBREVIATIONS

- | | |
|----------|--------------------------------------|
| (R) | RECORD |
| (M) | MEASURED |
| (C) | CALCULATED |
| SEC | SECTION |
| FN | FOUND |
| BC | BRASS CAP |
| HH | HAND HOLE |
| CNR | CORNER |
| PCO | PINAL COUNTY RECORDER |
| RLS | REGISTERED LAND SURVEYOR |
| APN | ASSESSOR PARCEL NUMBER |
| P.U.E. | PUBLIC UTILITY EASEMENT |
| ADOT | ARIZONA DEPARTMENT OF TRANSPORTATION |
| (B.O.B.) | BASIS OF BEARING |
| EX. | EXISTING |
| R.O.W. | RIGHT-OF-WAY |

NOTE:

PARENT PARCEL
435,013.8 SFT OR 9.57 AC
APN: 41110017K
ZONE LIGHT INDUSTRIAL (I-1)

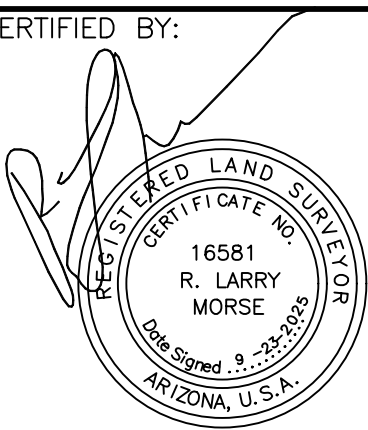
[illegible]

SHEET NO.

FP02

ARQ **ENGINEERING LLC**
Engineering and Survey
2001 HIGHWAY 95, SUITE 11
BULLHEAD CITY, ARIZONA 86442
(928) 758-3333

CERTIFIED BY:



FINAL PLAT

A SUBDIVISION OF PORTION OF PARCEL 1, OF RECORD OF SURVEY RECORDED IN SURVEY BOOK 19, PAGE 178, FEE 2006-143119, LOCATED IN SECTION 8, TOWNSHIP 8 SOUTH, RANGE 8 EAST, OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA

CITY OF ELOY

REQUEST FOR COUNCIL ACTION

Agenda Item: **VIII.A.**

Date: **10/13/2025**

Date submitted:
09/18/2025

Action: Other

Subject: Consideration and possible approval of Case No. FP2025-006: Kitt Solar — a request for approval of a one-lot Final Plat encompassing approximately 645 acres, located at the southwest corner of West Milligan Road and South Eleven Mile Corner Road.**staff**

Date requested:
10/13/2025

TO: Mayor and City Council

FROM: Dan Symer, Community Development Director

RECOMMENDATION:

Staff recommends that the City Council approve Case No. FP2025-006: Kitt Solar, a request for approval of a one-lot Final Plat encompassing approximately 645 acres, located at the southwest corner of West Milligan Road and South Eleven Mile Corner Road.

DISCUSSION:

This is a request by Jim Hickenbottom of Kier & Wright Civil Engineers and Surveyors, Inc., on behalf of MDT Investments Limited Partnership, for approval of a final plat to reconfigure three lots into one and to dedicate rights-of-way as follows: fifty-five (55) feet for West Milligan Road, fifty-five (55) feet for North Eleven Mile Corner Road, fifty-five (55) feet for South Tweedy Road, and eighty-three (83) feet for West Phillips Road.

The property of the proposed plat has a General Plan Land Use designation of Estate Density Residential and Medium Density Residential, and is zoned Estate Residential (R1-54). Vehicular ingress and egress to the property will be from West Milligan Road. Water infrastructure is located in West Milligan Road, approximately nine hundred ninety (990) feet east of the southwest corner of West Milligan Road and South Eleven Mile Corner Road. Wastewater lines are located approximately four thousand seven hundred ten (4,710) feet east of the same point. The developer of the Kitt Solar facility will construct the street improvements in accordance with the requirements outlined in the Eloy Zoning Ordinance for Solar, Utility-Scale Generation, and Battery Energy Storage System Facilities. When the property is developed for a use other than Utility-Scale Solar, the extension of water and wastewater infrastructure will be required in accordance with the Eloy City Code. All necessary improvements shall be constructed to City of Eloy standards, as determined by the City Engineer or their designee.

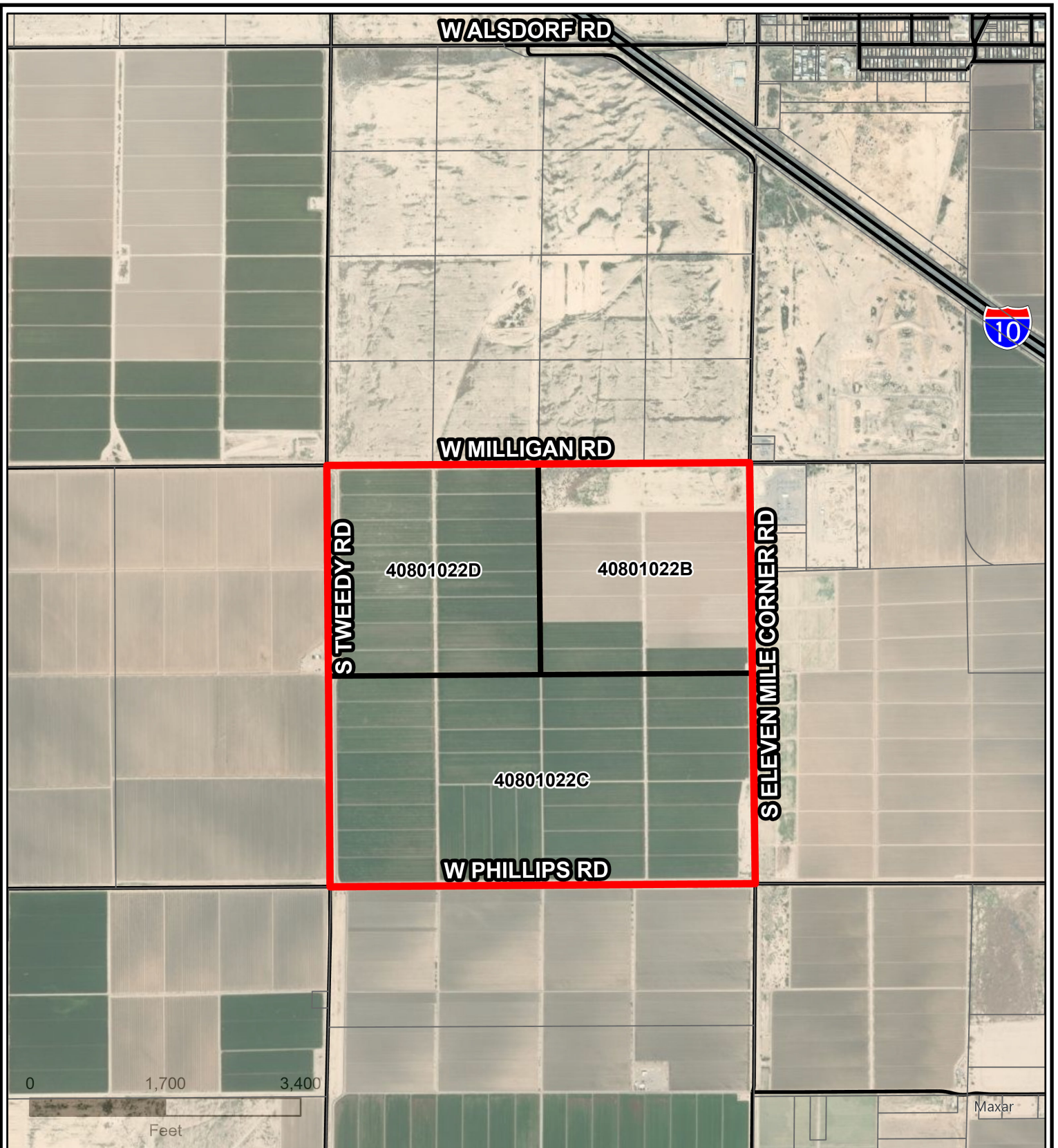
FISCAL IMPACT:

No fiscal impacts are anticipated with the approval of the Final Plat.

Approved as to Form:

A handwritten signature in blue ink, appearing to read "Stephen R. Cooper", is written over a solid black horizontal line.

Stephen R. Cooper, City Attorney



Final Plat Exhibit - Case No: FP2025-006
Kitt Solar



Legend



Subject Properties

ALL OF SECTION 13, TOWNSHIP 8 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER
BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.

STATE OF ARIZONA }
COUNTY OF PINAL } SS

FINAL MDT INVESTMENTS LIMITED PARTNERSHIP, AN ARIZONA LIMITED PARTNERSHIP, AS OWNER, DOES HEREBY PUBLISH THIS FINAL PLAT UNDER THE NAME "KITTS SOLAR" A FINAL PLAT, LOCATED IN SECTION 13, TOWNSHIP 8 SOUTH, RANGE 7 EAST OF THE GLA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, AS SHOWN HEREON, AND HEREBY DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH OF THE STREETS, LOTS AND EASEMENTS CONSTITUTING THE SAME, AND THAT EACH OF THE STREETS, LOTS AND EASEMENTS SHALL BE KNOWN BY THE NAME, NUMBER OR LETTER GIVEN TO IT RESPECTIVELY.

MDT INVESTMENTS LIMITED PARTNERSHIP, HEREBY DEDICATES AND CONVEYS TO THE CITY OF ELOY, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, ALL REAL PROPERTY DESIGNATED ON THIS PLAT AS "RIGHT-OF-WAY" OR "R/W" FOR USE AS A PUBLIC RIGHT-OF-WAY.

NOT INVESTMENTS LIMITED PARTNERSHIP, WARRANTS AND REPRESENTS TO THE CITY OF ELOY THAT IT IS THE SOLE OWNER OF THE PROPERTY COVERED BY THIS PLAT, AND THAT EVERY LENDER, EASEMENT HOLDER OR OTHER PERSON OR ENTITY HAVING ANY INTEREST THAT IS ADVERSE TO OR INCONSISTENT WITH THE FOREGOING DEDICATION, OR ANY OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT, HAS CONSENTED TO OR JOINED IN THIS PLAT AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE PINAL COUNTY RECORDER'S OFFICE OR WHICH 301 AK BME LLC, WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT WAS RECORDED.

MDT INVESTMENTS LIMITED PARTNERSHIP, AN ARIZONA LIMITED PARTNERSHIP, AS OWNER, HAS HERETO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED OFFICER THIS ____ DAY OF _____, 2025.

BY: _____ DATE: _____

ITS: _____

STATE OF ARIZONA }
COUNTY OF PINAL } SS

ON THIS ____ DAY OF _____, 2025, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____, WHO ACKNOWLEDGED SELF TO BE THE

_____ OF MDT INVESTMENTS LIMITED PARTNERSHIP, AN ARIZONA LIMITED PARTNERSHIP, AND BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING FINAL PLAT FOR THE PURPOSES THEREIN CONTAINED.

NOTARY PUBLIC _____ DATE _____

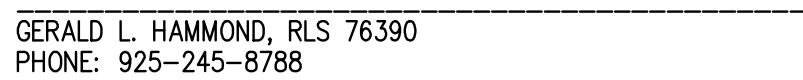
MY COMMISSION EXPIRES: _____
DATE

THE BEARINGS SHOWN HEREON ARE BASED ON NAD83 ARIZONA STATE PLANE, CENTRAL ZONE, COORDINATES DERIVED FROM AN OPUS SOLUTION USING GPS OBSERVATIONS. ALL DISTANCES SHOWN HEREON ARE IN GRID FEET AND DECIMALS THEREOF. TO OBTAIN GROUND DISTANCES, MULTIPLY DISTANCES SHOWN BY 1.00043534.

THIS SURVEY IS BASED UPON A TITLE COMMITMENT, PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY, DATED AS OF NOVEMBER 15, 2024, ORDER NUMBER NCS-907819AZ8-NRG.

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC HAS RELIED SOLELY UPON THE INFORMATION CONTAINED WITHIN SAID COMMITMENT AND SCHEDULE B DOCUMENTS PROVIDED BY A UNITED AMERICAN TITLE INSURANCE COMPANY. KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC AND GERALD L. HAMMOND (RLS) MAKE NO STATEMENTS AS TO THE ACCURACY OR COMPLETENESS OF THE SUBJECT REPORTS. NO LIABILITY IS ASSUMED FOR MATTERS OF RECORD NOT STATED IN SAID REPORT THAT MAY AFFECT THE TITLE LINES, OR EXCEPTIONS, OR EASEMENTS OF THE PROPERTY.

I HEREBY CERTIFY THAT THE SURVEY AND SUBDIVISION OF THE PREMISES PLATTED HEREON WAS MADE UNDER MY DIRECTION DURING THE MONTH OF NOVEMBER, 2024; AND THIS PLAT REPRESENTS THE SURVEY MADE. I FURTHER CERTIFY ALL EXTERIOR SECTION MONUMENTS SHOWN HEREON ACTUALLY EXIST AND THEIR LOCATIONS, SIZE AND MATERIAL ARE ACCURATELY SHOWN AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



NOTE:
A.R.S. 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

2. THIS DEVELOPMENT IS WITHIN THE CITY OF ELOY WATER SUPPLY (SERVICE) AREA AND HAS BEEN DESIGNATED AS HAVING ASSURED WATER SUPPLY PER ARIZONA DEPARTMENT OF WATER RESOURCES: 26-402148.0000.

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ELOY, ARIZONA ON THE ____ DAY OF _____, 2025.

APPROVED BY: _____
MAYOR

ATTEST: _____
CLERK

THIS IS TO CERTIFY THAT THE AREA PLATTED HEREON IS APPROVED AND LIES WITHIN THE DOMESTIC WATER SERVICE AREA OF THE CITY OF ELOY WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY IN ACCORDANCE WITH A.R.S. 45-576.

CITY ENGINEER

DATE

THIS PLAT WAS APPROVED BY THE ZONING ADMINISTRATOR.

ZONING ADMINISTRATOR

DATE

ALL OF SECTION 13, TOWNSHIP 8 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THENCE ALONG THE NORTH LINE OF SAID SECTION 13, NORTH 89° 35' 23" EAST,
2655.53 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 13;

THENCE CONTINUING ALONG SAID NORTH LINE, NORTH 89° 38' 40" EAST, 2654.78 FEET TO THE NORTHEAST CORNER OF SAID SECTION 13;

THENCE ALONG THE EAST LINE OF SAID SECTION 13, SOUTH 0° 46' 39" EAST,
2641.78 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 13;

THENCE CONTINUING ALONG SAID EAST LINE, SOUTH 0° 46' 29" EAST, 2641.66 FEET
TO THE SOUTHEAST CORNER OF SAID SECTION 13;

THENCE ALONG THE SOUTH LINE OF SAID SECTION 13, SOUTH 89° 34' 11" WEST,
2666.60 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 13;

THENCE CONTINUING ALONG SAID SOUTH LINE, SOUTH 89° 33' 53" WEST, 2666.6 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 13;

THENCE ALONG THE WEST LINE OF SAID SECTION 13, NORTH 0° 31' 37" WEST,
2643.96 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 13;

THENCE CONTINUING ALONG SAID WEST LINE, NORTH 0° 31' 41" WEST, 2643.93 FEET TO THE POINT OF BEGINNING.



SECTION 13, T8S, R7E
NOT TO SCALE

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.
2850 COLLIER CANYON ROAD
LIVERMORE, CA. 94551
CONTACT: GERRY HAMMOND, RLS
PHONE: (925)245-8788
EMAIL: GHAMMOND@KIERWRIGHT.COM

MDT INVESTMENTS LIMITED PARTNERSHIP
C/O SHERRY MURPHY, GENERAL PARTNER
2107 EAST SOLANO DRIVE
PHOENIX, AZ. 85016
PHONE: 801-809-7187
CONTACT: SHERRY MURPHY
EMAIL: SHERRYANNMURPHY@YAHOO.COM

ASSESSOR'S PARCEL NO.: 408-01-022B
408-01-022C
408-01-022D

SITE GROSS AREA: 28,131,945± SQUARE FEET OR 645.8206± ACRES

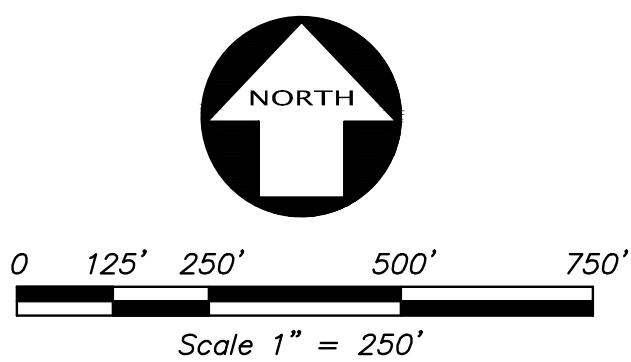
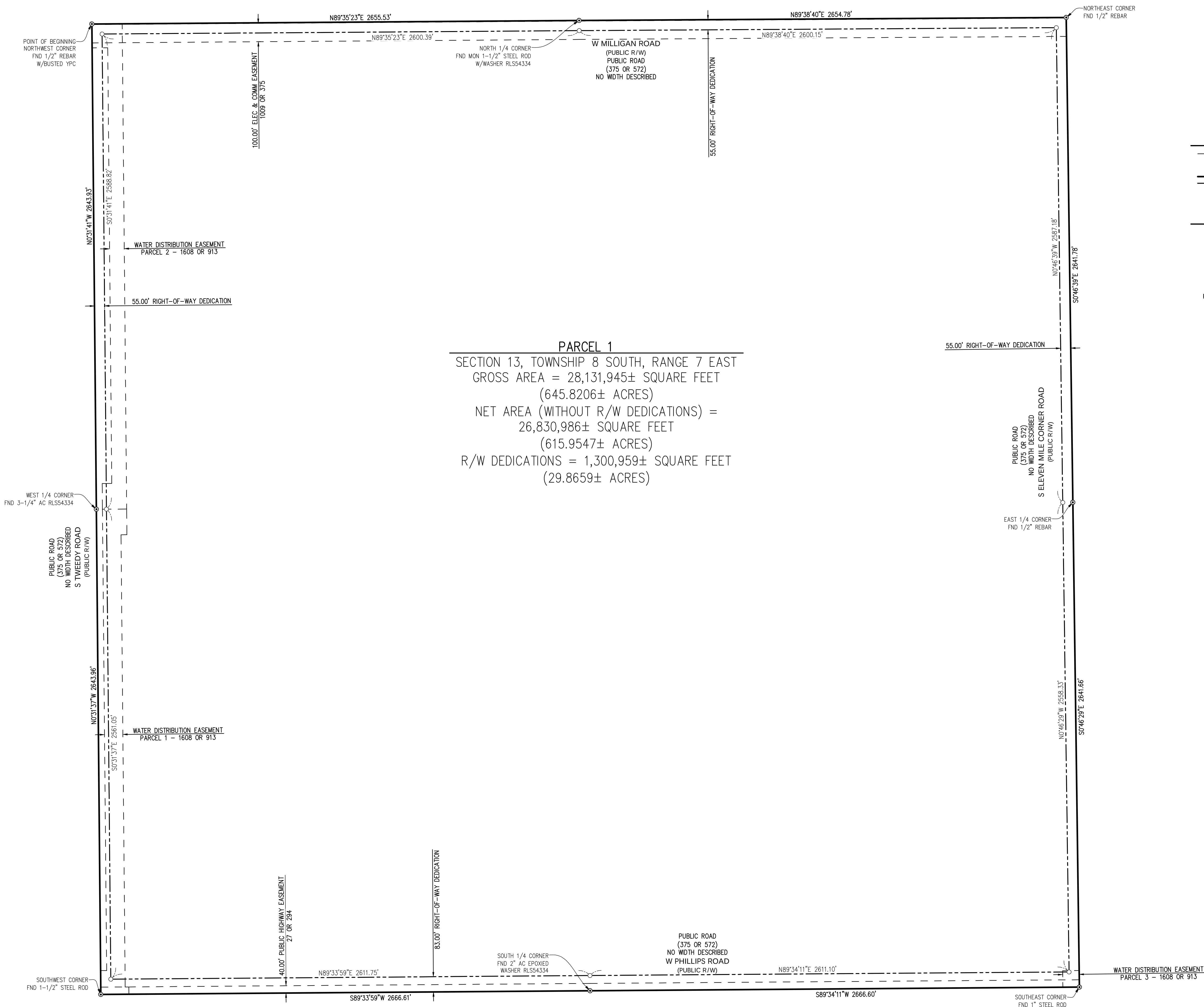
GAS: SOUTHWEST GAS
ELECTRICITY: ELECTRICAL DISTRICT NO. 4
WATER: CITY OF ELOY
SEWER: CITY OF ELOY
TELEPHONE: CENTURY LINK
POLICE: CITY OF ELOY
FIRE: ELOY FIRE DISTRICT
AMBULANCE: ELOY FIRE DISTRICT
SOLID WASTE: CITY OF ELOY

THE SUBJECT PROPERTY IS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) FOR PINAL COUNTY, CALIFORNIA, MAP NUMBER 04021C1975F FOR COMMUNITY NUMBER 04007 (COUNTY OF PINAL), WITH AN EFFECTIVE DATE OF MAY 16, 2019, AS BEING LOCATED IN FLOOD ZONE "A".

ACCORDING TO FEMA THE DEFINITION OF ZONE "ZONE A" IS: NO BASE FLOOD ELEVATIONS DETERMINED.

FINAL PLAT OF "KITTS SOLAR" ALL OF SECTION 13, TOWNSHIP 8 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA. CITY OF ELOY, PINAL COUNTY, ARIZONA		 KIER+WRIGHT 2850 Collier Canyon Road Livermore, CA 94551 Phone: (925) 245-8788 www.kierwright.com		NO.	REVISION	BY	NO.	REVISION	BY
DATE	JUNE, 2025								
SCALE	AS SHOWN								
SURVEYOR	GLH								
DRAWN BY	RJH								
JOB NO.	A24435								
SHEET		1							
OF		2		SHEET					

C:\Users\jklidenbottom\AppData\Local\Temp\AcPublish_1880A\A24435-PD-ROAD DEDICATION.dwg 9-19-25 11:36:01 AM jklidenbottom



LEGEND

---	EASEMENT LINE
⊙	FOUND MONUMENT AS NOTED
○	SET 3/4" IRON PIPE W/PLUG STAMPED "RLS 76390"
---	PROPERTY LINE
---	RIGHT OF WAY LINE

ABBREVIATIONS

AC	ALUMINUM CAP
CL	CENTER LINE
COR	CORNER
E	EAST
FND	FOUND
MON	MONUMENT
N	NORTH
OR	OFFICIAL RECORDS
PL	PROPERTY LINE
RLS/RPL	REGISTERED LAND SURVEYOR
R/W	RIGHT-OF-WAY
S	SOUTH
W	WEST
W/	WITH
YPC	YELLOW PLASTIC CAP

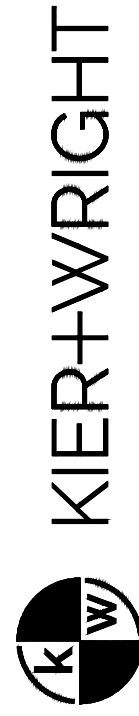
FINAL PLAT

OF

"KITI SOLAR"

ALL OF SECTION 13, TOWNSHIP 8 SOUTH, RANGE 7 EAST OF
THE GILA AND SALT RIVER BASE AND MERIDIAN, PINAL COUNTY, ARIZONA.
CITY OF ELOY, PINAL COUNTY, ARIZONA

DATE	JUNE, 2025
SCALE	AS SHOWN
SURVEYOR	GLH
DRAWN BY	RJH
JOB NO.	A24435
SHEET	2
OF	2 SHEETS



2850 Celler Canyon Road
Livermore, CA 94551
Phone: (925) 245-8788
www.kierwright.com

NO.	BY	REVISION
△		
△		
△		
△		
△		

CITY OF ELOY

REQUEST FOR COUNCIL ACTION

Agenda Item: **VIII.B.**

Date: **10/13/2025**

Date submitted:
10/02/2025

Action: Resolution

Subject: Consider the adoption of Resolution No. 25-1634 authorizing the Mayor to execute Contract No. COE-2025-014, a Site Maintenance Agreement with 301 AK 8ME LLC, Kitt Solar developer — Avaintus, LLC.

Date requested:
10/13/2025

TO: Mayor and City Council

FROM: Dan Symer, Community Development Director

RECOMMENDATION:

Staff recommends that the City Council Resolution No. 2025-1634 authorizing the Mayor to execute Contract No. COE-2025-014, a Site Maintenance Agreement with 301 AK 8ME LLC.

DISCUSSION:

Pursuant to the provisions of the Eloy Zoning Ordinance related to Solar, Utility-Scale Generation, and Battery Energy Storage System (BESS) facilities, the property owner or the owner's designee, 301 AK 8ME LLC, is required to execute a Site Maintenance Agreement with the City. This agreement stipulates that the site shall be maintained in a natural, debris-free, and weed-free condition, and that solar panels must be repaired, replaced, or removed if found to be nonfunctional or in visible disrepair. Furthermore, the agreement requires the property to be maintained in accordance with the applicable provision of the International Property Maintenance Code (IMPC) adopted by the City.

Additionally, prior to permit issuance, 301 AK 8ME LLC must provide a performance bond in the amount of seventy-five thousand dollars (\$75,000). The bond amount is the estimated cost of site maintenance over a six (6) month period and must be posted and maintained in accordance with the terms outlined in the agreement and Eloy Code.

FISCAL IMPACT:

No fiscal impacts are anticipated by approving the resolution and agreement.

Approved as to Form:



Stephen R. Cooper, City Attorney

RESOLUTION NO.: 25-1634

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF ELOY, ARIZONA, APPROVING A SITE MAINTENANCE AGREEMENT, CONTRACT NO. 2025-014-COE, BETWEEN THE CITY OF ELOY AND 301 AK 8ME, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE THE SAID AGREEMENT.

WHEREAS, the City of Eloy's Zoning Ordinance requires that property owner, or property owner's designee, 301 AK 8ME, LLC, to execute a Site Maintenance Agreement with the City to ensure ongoing compliance with maintenance responsibilities of the property as specified in the Eloy Zoning Ordinance and to provide for performance bond reflecting the costs of such maintenance for a period of six (6) months;

WHEREAS, 301 AK 8ME, LLC has agreed to enter into a Site Maintenance Agreement with the City to maintain property in a manner consistent with Eloy Zoning Ordinance and applicable provisions of the Eloy Code, and to provide a performance bond;

WHEREAS, the City Council desires to approve the Site Maintenance Agreement and authorize the Mayor to execute it on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ELOY, ARIZONA, AS FOLLOWS:

Section 1. That the Eloy City Council authorizes the Mayor, Andrew Sutton, to execute the Site Maintenance Agreement, Contract No. 2025-014-COE.

Section 2. That the City Clerk is hereby directed to record the Site Maintenance Agreement, Contract No. 2025-014-COE, in the Office of the Pinal County Recorder, Pinal County, Arizona, within ten (10) days of its execution by all parties.

PASSED AND ADOPTED by the City Council of the City of Eloy, Arizona, on October 13, 2025.

APPROVED:

Mayor Andrew Sutton

ATTEST:

Celine Kidwell, City Clerk

APPROVED AS TO FORM:

Stephen Cooper, City Attorney

When Recorded Return to:

City of Eloy
City Clerk's Office
595 North C Street
Suite 104
Eloy, Arizona 85131

Contract No.: COE-2025-014

SITE MAINTENANCE AGREEMENT
(Kitt Facility)

This **SITE MAINTENANCE AGREEMENT** (this "Agreement"), dated to be effective as of _____, 2025 (the "Effective Date"), is entered into by and between the **CITY OF ELOY**, a municipal corporation of the State of Arizona (the "City"), and **301AK 8ME LLC**, a Delaware limited liability company (the "Solar Generator"), with a principal address c/o Avantus Clean Energy, 655 West Broadway, Suite 1550, San Diego, CA 92101.

RECITALS

A. Solar Generator owns and operates the Kitt solar energy generation project located near the intersection of W Milligan Road and S Eleven Mile Corner Road-(the "Project") on the property legally described in Exhibit A.

B. City and Solar Generator desire to enter into this Agreement to reasonably and mutually outline the Solar Generator's site maintenance obligations related to the Project.

NOW THEREFORE, in consideration of the recitals set forth above, the covenants and agreements set forth herein below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Solar Generator agree as follows:

1. Site Maintenance of Project.

1.1 General Site Maintenance Obligations. From and after issuance of the initial Project building permit through completion of the Term (as hereinafter defined), Solar Generator agrees to diligently and reasonably maintain (i) the undeveloped areas of the Project in a natural, debris-free condition with reasonably implemented weed control as defined under Sections 10-30B and 21-3-1.39G of the Eloy City Code; and (ii) the developed areas of the Project in a debris-free condition with reasonably implemented weed control and shall maintain the landscaping and vegetation in the manner set forth in City of Eloy City Code, Chapter 21, Zoning

(Amendments thereto) and the landscape plans submitted by the Solar Generator and approved by the Community Development Director, or designee. Subsequent to the construction of the solar arrays at the Project, as may be reasonably needed, native low-growing vegetation will be utilized to stabilize the site for the duration of the Term (defined below herein). Reasonable weed control, mowing, or other methods of reasonable vegetation maintenance will be performed routinely by Solar Generator. The Project will observe and abide by site maintenance obligations as set forth in the City's codes and regulations. Solar panels at the Project will be repaired or replaced or removed when they are either nonfunctional or in visible disrepair.

1.2 Action Around Failure to Perform Site Maintenance Obligations.

Persistent failure after written notice received by Solar Generator from the City, over a period of six (6) months, to maintain the Project site or its improvements including landscaping and otherwise cure such deficiencies set forth in such written notice provided by the City, may result in revocation of the conditional use permit or planned area development entitlements, and may initiate the Project's decommissioning by the City. Prior to revoking a conditional use permit or zoning, and prior to initiating a partial or complete decommissioning of the Project, the City must provide the Solar Generator and any Project lender of which City has received prior written notice and a delivery address for, with official notice of the City's intent to revoke via certified mail. Such notice shall identify each specific reason for the commencement of the revocation or decommissioning process and shall provide the Solar Generator with thirty (30) calendar days to remedy the issue identified in the notice. If the remedy requires more than thirty (30) calendar days to complete, the Solar Generator, within the thirty (30) calendar day period, will respond and inform the City, identifying the scope of work and requesting a reasonable timeframe to remedy the identified issue(s). The City and Solar Generator shall mutually reasonably determine the appropriate timeframe to completely resolve the issue(s). In the event that thirty (30) calendar days pass and the issues have not been completely resolved, nor has the City received any written correspondence from the Solar Generator or a Project lender, the City may place the item on a City Council Agenda to allow public comment and input from the Solar Generator prior to considering a revocation of the conditional use permit (or other land planning entitlement on the property), commencing decommissioning of the Project, or providing the Solar Generator and any Project lender additional time to remedy the issue(s). The revocation and decommissioning process described herein may only be pursued for allegations related to violations of this Agreement and/or the International Property Maintenance Code (IPMC) adopted by the City and effective at the time of allegations.

1.3 Maintenance Bond Obligation. The City and the Solar Generator agree that a performance bond in favor of the City for the amount of Seventy-Five Thousand Dollars (\$75,000.00), which reasonably reflects the costs of the maintenance contemplated by this Agreement for a period of six (6) months, shall be posted and maintained, including the payment of all associated costs and fees, by the Solar Generator during the Term of this Agreement.

(a) The Solar Generator shall provide to the City's Zoning Administrator documentation of the performance bond certificates for review and subsequent acceptance. The performance bonds shall be in a form acceptable to the City prior to the issuance of any permit for the construction of the Project. Such forms shall include a bond issued by a surety company licensed in the State of Arizona and listed on the U. S. Department of Treasury's Listing of Approved Sureties (Department Circular 570).

2. Term of Agreement and Compliance with Law.

2.1 Term. The term of this Agreement is from the Effective Date through completion of Project decommissioning ("Term").

2.2 Compliance with Law. Solar Generator shall construct, install, operate and maintain the Project consistent with and subject to all applicable federal, state and local laws and regulations, including, without limitation, all applicable ordinances and regulations adopted by City. All activities undertaken and work performed by Solar Generator shall be performed in a manner that reasonably minimizes interference with the use of the public highways, streets or other rights-of-way for purposes of travel.

3. Termination. Solar Generator shall have the right to terminate this Agreement upon written notice to the City at any time upon termination of the Project, after completion of Project decommissioning. Subject to the notice and cure periods described herein, City shall have the right to terminate this Agreement, in the event of Solar Generator's uncured material breach of this Agreement.

4. Attorneys' Fees. In the event any declaratory or other legal or equitable action is instituted between City and Solar Generator in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party all of its reasonable costs and expenses, including court costs and reasonable attorneys' fees, and all reasonable fees, costs and expenses incurred on any appeal or in collection of any judgment.

5. Notices. Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another commercially reasonable method, and addressed to the party for whom intended, as follows:

If to City:

City of Eloy
595 North C Street, Suite 104
Eloy, Arizona 85131
Attn: City Manager

City of Eloy
595 North C Street, Suite 104
Eloy, Arizona 85131
Attn: Zoning Administrator

If to Solar Generator:

301AK 8ME LLC
c/o Avantus Clean Energy LLC
655 West Broadway, Suite 1550
San Diego, CA 92101

Attn: Transactions

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

6. Gender and Number. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

7. Entire Agreement. This Agreement and its exhibits, each of which is incorporated herein by reference as though set forth in full, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

8. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

9. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona.

10. Invalidity of Provision. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

11. Amendments. No addition to, or modification of, any provision contained in this Agreement shall be effective unless fully set forth in writing by City and Solar Generator.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. A copy of an original signature, or an electronically transmitted signature, shall be treated for all purposes as an original signature.

13. Successors and Assigns. This Agreement shall be binding on the parties hereto and their respective successors and assigns. This Agreement is intended to be freely assignable by Solar Generator, in whole or in part, with prior written notice to the City; provided, however, that Solar Generator shall remain jointly liable for any default or performance obligations existing prior to the assignment. If so assigned, Solar Generator shall notify the City in writing upon successful assignment of this Agreement. The assignment rights in this Section shall include both absolute and collateral assignments, and the provisions of this Section shall be construed and interpreted consistent with such intent.

14. Recitals and Exhibits. The Recitals set forth above and the Exhibit A attached hereto are incorporated into this Agreement by reference.

15. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

16. Interpretation. Each party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the Agreement or any earlier draft of the same.

[Signature Pages Follow]

IN WITNESS WHEREOF, City and Solar Generator have executed this Agreement to be effective as of the Effective Date.

CITY:

CITY OF ELOY,
a municipal corporation of the State of Arizona

By: _____

Name: _____

Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA

COUNTY OF PINAL

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, the _____ of the City of Eloy, a municipal corporation of the State of Arizona.

Notary Public

(SEAL)

SOLAR GENERATOR:

301AK 8ME LLC,
a Delaware limited liability company

By: [Signature]

Name: Venkatesh Inti

Its: chief development officer of
Avantis LLC, duly authorized

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF California)
) §
County of San Diego)

On September 23, 2025, before me, Jessica mason a Notary Public, personally appeared Venkatesh Inti, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

(Affix seal here)

WITNESS my hand and official seal.

[Signature]
Signature of Notary



EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

The Land referred to herein is situated in the County of Pinal, State of Arizona, and described as follows:

Section 13, Township 8 South, Range 7 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

APN: 408-01-022B, 408-01-022D, 408-01-022C

CITY OF ELOY

REQUEST FOR COUNCIL ACTION

Agenda Item: VIII.C.

Date: 10/13/2025

Date submitted:
09/12/2025

Action: Formal

**Subject: Discussion and Possible
Motion to Appoint an Acting City
Manager and Set the Starting Date and
Salary.**

Date requested:
10/13/2025

TO: Mayor and City Council

FROM: Stephen Cooper, City Attorney

RECOMMENDATION:

To direct the City Manager and City staff to proceed in accordance with the direction provided during Executive Session.

DISCUSSION:

With the resignation of the current City Manager, effective November 15th, it is essential that the City Council establish interim leadership to ensure the continued stability of municipal operations and the effective administration of City affairs. The appointment of an Acting City Manager will provide continuity of leadership while the recruitment and selection process for a permanent City Manager is underway.

Discussion

The City Council will formally discuss and consider the appointment of an Acting City Manager to serve until a permanent City Manager is selected and appointed. Considerations may include:

1. Qualifications and experience of potential candidates;
2. Scope of authority and responsibilities;
3. Compensation and terms of service; and
4. Duration of interim appointment.

The Eloy City Council shall meet in Executive Session for the purpose of discussing and/or negotiating the salary and employment terms for a public officer — specifically, the Assistant City Manager — to serve as Acting City Manager. This session may include receiving legal advice from the City Attorney.

Following the Executive Session, the Council may take action in open session regarding the appointment of an Acting City Manager and the establishment of an effective start date.

Options for Filling the Permanent City Manager Position

The City Council may consider the following options for recruitment and selection of a permanent City Manager:

1. Appoint the Acting City Manager as the City Manager Following a Period of Time to Properly Evaluate Performance, Qualifications, and Overall Suitability.

- The City Council may authorize the negotiation and execution of an employment agreement appointing the Acting City Manager as the permanent City Manager.

2. Conduct an Internal Recruitment Process

- Allow other qualified City personnel who may be interested in the position to apply.

3. Initiate an External/Nationwide Recruitment Process

- Broaden the candidate pool and attract a wide range of experienced applicants.

Recruitment Options:

- **Professional Executive Search Firm:**
 - Typical cost range: **\$30,000–\$50,000**
 - Services include professional brochures/flyers, advertising, outreach, and applicant screening.
 - Example firms: *Baker Tilly Executive Recruitment, Bob Murray & Associates, CPS HR Consulting.*
 - *Note:* The Arizona League of Cities and Towns no longer provides this service.
- **City-Led Recruitment (HR Department):**
 - Advertising through the Arizona and California Leagues of Cities and Towns, ICMA/ACMA, GovJobs.com, and LinkedIn.
 - Distribution via mass email to HR professionals and City Manager/Assistant City Manager directories throughout Arizona.

FISCAL IMPACT:

Fiscal impact dependent on the determination of the interim City Manager's salary.

Approved as to Form:

A handwritten signature in blue ink, appearing to read "Stephen R. Cooper". The signature is fluid and cursive, with the first name "Stephen" and last name "Cooper" being the most legible parts. There is a horizontal line drawn through the middle of the signature.

Stephen R. Cooper, City Attorney

**CITY OF ELOY
REQUEST FOR COUNCIL ACTION**

Agenda Item: **IX.A.**

Date: **10/13/2025**

Date submitted:
10/08/2025

Action: Formal

Subject: Pursuant to A.R.S. § 38-431.03 (A)(1), (3) and (4), the Eloy City Council shall meet in Executive Session for the purpose of discussion and/or negotiation of a salary of a public officer, Assistant City Manager to serve as Acting City Manager, including legal advice (if requested by City Council) with the City Attorney.

Date requested:
10/13/2025

TO: Mayor and City Council

FROM:

RECOMMENDATION:

I MOVE to go into Executive Session.

DISCUSSION:

N/A

FISCAL IMPACT:

N/A

Approved as to Form:



Stephen R. Cooper, City Attorney