

Douglas A. Ducey
Governor



Andy Tobin
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE

1400 WEST WASHINGTON ST • SUITE b200
PHOENIX, ARIZONA 85007
(602) 542-1500

Date: 8/26/2022
Sent Via E-mail to: Mike@azsbr.com

Skyline Builders & Restoration, Inc.
2401 North 24th Avenue
Phoenix, AZ 85009
Attention: Michael N Lee

RE: Award Contract No. CTR061839 General Contractor Job Order Contracting Statewide

Dear Michael:

Thank you for submitting a response to the Request for Qualifications to solicitation number BPM004397. I am pleased to inform you that your company's offer has been selected for award. The initial contract term shall begin on 9/1/2022. The State intends to award your firm Regions 1, 2, 3, 4, 5, 6 & 7.

All offers received were evaluated in accordance with the evaluation criteria set forth in the solicitation document. The procurement file for this solicitation, including evaluation documents and resultant contracts, will be available for public viewing within three days of award via the State's e-Procurement system.

In accordance with Special Terms and Conditions of the contract and prior to beginning any work under the contract, your company is required to submit a current Certificate of Insurance (COI) after contract award and throughout the term(s) of the contract. All required policies as described in your contract must be in effect at or prior to commencement of work. All certificates and endorsements are to be e-mailed for approval to the Contract Manager on file. Currently that Contract Manager is me, dustin.deason@azdoa.gov.

Here is some information that might be helpful and contact your Insurance Broker if you have additional questions:

Use this link to learn more about the State of Arizona Insurance Requirements Suppliers' expectations.
<https://360.articulate.com/review/content/41308ba3-93f6-4212-ae42-d39dee8f77b5/review>

Certificate of Insurance Requirements:

The following checklist is provided to assist you in gathering your insurance requirements; you are advised to refer to your contract Risk and Liability section (RFP documents) for specific policy limits and requirements.

- **Contract number** should be listed on the Certificate of Insurance in the Description of Operations.
- **All required policies and with appropriate limits** as stated by your contract.

Insurance Endorsements: A copy of each Insured Endorsement page(s) must be attached to the COI, otherwise the certificate will be considered incomplete.

- **Additional Insured** - All policies, except Workers' Compensation and Professional Liability shall name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured.
- **Waiver of Subrogation** - All policies, except Professional Liability shall contain a Waiver of Subrogation endorsement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

Please note:

The Arizona Procurement Portal (APP) will record the provided COI with the earliest expiration date listed; you are responsible for providing a new COI upon expiration of the earliest date shown on the COI provided.

This Certificate of Insurance checklist is provided to assist the contractor obtain the required information. It does not change or waive any of the terms and conditions of the Contract with the State.

Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of their Contract with the State.

If you have any questions regarding your company's contract, please contact me. Thank you for your response and for your continued interest in doing business with the State of Arizona.

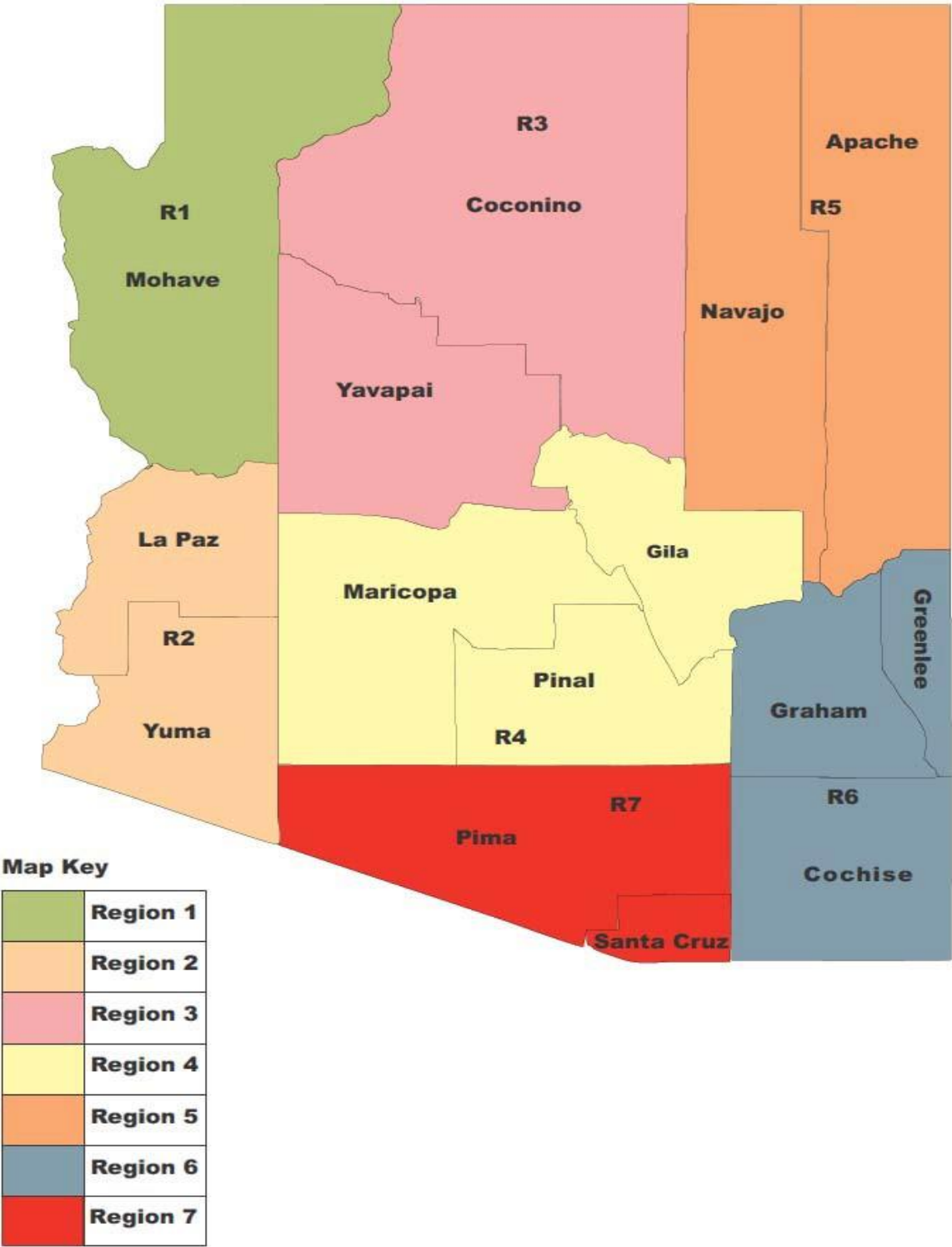
Sincerely,

A handwritten signature in blue ink, appearing to read "Dustin Deason".

Procurement Manager
dustin.deason@azdoa.gov
480-772-3446



PART 11
EXHIBIT I
Regions Map



Solicitation No. BPM004397 General Contractor Job Order Contracting Statewide

PRICING- Adjustment Factors

1. These instructions are intended to assist Offeror with calculating their Adjustment Factors, to be used in conjunction with Gordian Big Note in the Construction Task Catalog.
2. The Adjustment Factors will be negotiated between the State and Offeror.
3. The negotiated Adjustment Factors will become part of Offeror's Contract, if Offeror is selected by the State.
4. Refer to the Solicitation documents, Instructions to Offers, Section 5.6 Negotiations
5. Adjustment Factors are to include the following based on the type of contract user:

CONTRACT USER TYPES:

FEE

State Agencies Approved to Self Perform 1% eGordian Contractor Use License Fee

Other State Agencies 1% eGordian Contractor Use License Fee
5% eziQC Administrative Fee

Non-State Agencies 1% eGordian Contractor Use License Fee
5% eziQC Administrative Fee
1% Cooperative Program User Fee

6. Offerors selected for Negotiations shall set forth their Adjustment Factors in legible figures in the table below. **Failure to submit all Adjustment Factors in Regions where Offeror has stated in their qualifications they will perform work may result in Offer being considered non-responsive and their Offer rejected.** The Offeror shall perform the Tasks required by each individual Job Order and pay the Gordian and State Fees as described in the Solicitation and in the Table below using the following Adjustment Factors:
7. Adjustment Factors shall be submitted for categories 1. through 4. Contractors shall complete categories 1. through 4., Regions shall match those stated in the qualifications.
8. Offerors who submit separate Adjustment Factors for separate Unit Prices shall be considered non-responsive and their Offer rejected.
9. Adjustment factors shall be in the format "1.xxxx" to include four (4) decimal places. Use conventional rounding methodology- if the number in the 5th decimal place is 0-4, the number in the 4th decimal place remains unchanged. If the number in the 5th decimal place is 5-9, the number in the 4th decimal place is rounded up. Failure to submit Adjustment Factors as shown shall result in Offer being considered non-responsive and their Offer rejected.
10. Before submitting Adjustment Factors, Offeror is directed to the Construction Task Catalog to review the explanation of costs included in the Unit Prices and the Adjustment Factors. Except for Non-Prepriced Tasks, the only compensation to be paid to a Contractor shall be the total of all of the Unit Prices multiplied by the quantities multiplied by the Adjustment Factor plus any reimbursable items such as permits, bonds and sales tax. No additional payments will be made whatsoever. Except for reimbursable items such as permits, bonds, and sales tax, ALL costs not included in the Unit Prices must be part of the Adjustment Factors.
11. This Excel file, with no adjustments to the form, shall be used by Offeror as their Adjustment Factor submission. Other document formats shall not be accepted.
12. The State reserves the right to revise all arithmetic errors in calculations for correctness.
13. The State selected and awarded The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution (Gordian JOC Solution) for their JOC program. The Gordian JOC Solution included Gordian's proprietary eGordian and Bid Safe JOC Applications and Construction Task Catalog, which shall be used by the Offeror to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified by the State. The Offeror shall be required to execute Gordian's JOC System License and Fee Agreement, and be required to pay the Gordian and State License and Contract use fees as described above in the Adjustment Factor calculations. Gordian and State License and Contract use fees are required to be included in the Adjustment Factors and shall not be a separate line item on the Price Proposal. By submitting the Offer of Adjustment Factors to the State, Contractor acknowledges and agrees to the above statements.
14. Offerors shall complete all three (3) adjustment factors in each region and category for State Agencies Approved to Self Perform, State Agencies, and Non-State Agencies.

Solicitation No. BPM004397 General Contractor Job Order Contracting Statewide									
Adjustment Factor Table									
OFFEROR NAME:		DATE:		ADJUSTMENT FACTORS (specify to 4 decimal places, X.XXXX)					
CATEGORIES OF ADJUSTMENT FACTORS	Contract User	<u> X </u> First Submittal or Rev # <u> </u>	REGION 1	REGION 2	REGION 3	REGION 4	REGION 5	REGION 6	REGION 7
1. Normal Working Hours for Owner Funded Projects	State Agencies Approved to Self Perform	eGordian Contractor Use License Fee	1.3270	1.3270	1.2220	1.1370	1.3770	1.3520	1.2220
	State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee	1.3770	1.3770	1.2720	1.1870	1.4270	1.4020	1.2720
	Non-State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee + Cooperative Program User Fee	1.3870	1.3870	1.2820	1.1970	1.4370	1.4120	1.2820
2. Other Than Normal Working Hours or All Working Hours at Secure Locations for Owner Funded Projects	State Agencies Approved to Self Perform	eGordian Contractor Use License Fee	1.3770	1.3770	1.2520	1.1682	1.4270	1.4020	1.2520
	State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee	1.4270	1.4270	1.3020	1.2182	1.4770	1.4520	1.3020
	Non-State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee + Cooperative Program User Fee	1.4370	1.4370	1.3120	1.2282	1.4870	1.4620	1.3120
3. Normal Working Hours for Federally Funded Projects	State Agencies Approved to Self Perform	eGordian Contractor Use License Fee	1.3770	1.3770	1.2620	1.1782	1.4270	1.4020	1.2620
	State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee	1.4270	1.4270	1.3120	1.2282	1.4770	1.4520	1.3120
	Non-State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee + Cooperative Program User Fee	1.4370	1.4370	1.3220	1.2382	1.4870	1.4620	1.3220
4. Other Than Normal Working Hours or All Working Hours at Secure Locations for Federally Funded Projects	State Agencies Approved to Self Perform	eGordian Contractor Use License Fee	1.4270	1.4270	1.2920	1.2182	1.4670	1.4470	1.2920
	State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee	1.4770	1.4770	1.3420	1.2682	1.5170	1.4970	1.3420
	Non-State Agencies	eGordian Contractor Use License Fee + EZIQC Administrative Fee + Cooperative Program User Fee	1.4870	1.4870	1.3520	1.2782	1.5270	1.5070	1.3520

15. The State will evaluate Adjustment Factors in accordance to the following weighting:

ADJUSTMENT FACTORS	Weight
1. Normal Working Hours for Owner Funded Projects	40%
2. Other Than Normal Working Hours or All Working Hours at Secure Locations for Owner Funded Projects	20%
3. Normal Working Hours for Federally Funded Projects	20%
4. Other Than Normal Working Hours or All Working Hours at Secure Locations for Federally Funded Projects	20%



Request for Qualifications

Solicitation No. BPM004397

General Contractor Job Order Contracting Statewide

Arizona Department of Administration
General Services Division
1400 W. Washington St., Ste. B200
Phoenix, AZ 85007

Offer and Acceptance Form

SUBMISSION OF OFFER: Undersigned hereby offers and agrees to provide **Job Order Contracting System Administrator** services in compliance with the Solicitation indicated above and our Offer indicated by the latest dated version below:

Initial Offer:	06/16/22			
	Date	Signature		
Revised Offers:				
	Date	Signature	Date	Signature
Best and Final Offer:				
	Date	Signature		

Skyline Builders & Restoration, Inc.

Offeror company name

2401 North 24th Avenue

Address

Phoenix, AZ 85009

City | State | ZIP

86-0574065

Federal tax identifier (EIN or SSN)

Signature of person authorized to sign Offer

Michael N Lee, President

Printed name and title

Michael N Lee, President

Contact name and title

Mike@azsbr.com

Contact Email Address

(602) 404-0842

Contact phone number

CERTIFICATION: By signature in the above, Offeror certifies that it:

- will not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, [Arizona] State Executive Order 2009-9 or A.R.S. § 41-1461 through 1465;
- has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause will result in rejection of the Offer. Signing the Offer with a false statement will void the Offer, any resulting contract, and may be subject to legal penalties under law;
- complies with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance; ad
- is not debarred from, or otherwise prohibited from participating in any contract awarded by federal, state, or local government.

ACCEPTANCE OF OFFER: State hereby accepts the initial Offer, Revised Offer, or Best and Final Offer identified by the latest date and number at the top of this form (the Accepted Offer). Offeror is now bound (as Contractor) to carry out the Work under the attached Contract, of which the Accepted Offer forms a part. Contractor is cautioned not to commence any billable work or to provide any material or perform any service under the Contract until Contractor receives the applicable Order or written notice to proceed from the Procurement Officer.

State's Contract Number is: CTR061839

Contract Effective Date: 9/1/2022



8/26/2022

Procurement Officer Signature

Award Date

Dustin Deason

Procurement Manager

Procurement Officer Name

Title



Request for Qualifications

Solicitation No.

BPM004397

Description:

General Contractor Job Order Contracting Statewide

Arizona Department of

Administration

General Services Division

1400 W. Washington St., Ste. B200

Phoenix, AZ 85007

ATTACHMENT 2

Boycott of Israel Disclosure

Please note that if any of the following apply to this Solicitation, Contract, or Contractor, then the Offeror shall select the "Exempt Solicitation, Contract, or Contractor" option below:

- The Solicitation or Contract has an estimated value of less than \$100,000;
- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. §35-393.01, public entities are prohibited from entering into contracts "unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

Under A.R.S. §35-393:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) Based in part on the fact that the entity does business in Israel or in territories controlled by Israel.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
3. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

The certification below does not include boycotts prohibited by 50 United States Code Section 4842 or a regulation issued pursuant to that section. See A.R.S. §35-393.03.

In compliance with A.R.S. §§35-393 *et seq.*, all offerors must select one of the following:

- ☒ The Company submitting this Offer does not participate in, and agrees not to participate in during the term of the contract, a boycott of Israel in accordance with A.R.S. §§35-393 *et seq.* I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.
- ☐ The Company submitting this Offer does participate in a boycott of Israel as described in A.R.S. §§35-393 *et seq.*
- ☐ **Exempt Solicitation, Contract, or Contractor.**

Indicate which of the following statements applies to this Contract:

- ☐ Solicitation or Contract has an estimated value of less than \$100,000;
- ☐ Contractor is a sole proprietorship;



Request for Qualifications

Solicitation No.

BPM004397

Description:

General Contractor Job Order Contracting Statewide

**Arizona Department of
Administration**

General Services Division

1400 W. Washington St., Ste. B200
Phoenix, AZ 85007

- ☐ Contractor has fewer than ten (10) employees; and/or
☐ Contractor is a non-profit organization.

Skyline Builders & Restoration, Inc.

Company Name

Signature of Person Authorized to Sign

2401 North 24th Avenue

Address

Michael N Lee

Printed Name

Phoenix

City

AZ

State

85009

Zip

President

Title



Request for Qualifications

Solicitation No.

BPM004397

Description:

General Contractor Job Order Contracting Statewide

Arizona Department of
Administration

General Services Division

1400 W. Washington St., Ste. B200
Phoenix, AZ 85007

ATTACHMENT A: SECTIONS A & B BONDING & ORG CHART

DOWNLOAD, SAVE, AND UPLOAD COMPLETED DOCUMENT

Section A. General.

1. Current Bonding Capacity.
2. Current Bond Rating.
3. Longevity. Indicate how many sureties the Submitter has used in the last 3 years.
4. Describe any claims made against or legal action taken against the Submitter in the last 5 years.

A. GENERAL

(See instructions above)

1. CURRENT BONDING CAPACITY	2. BOND RATING	3. LONGEVITY
\$30,000,000.00	"A"	Skyline has been w/ the same surety since '03

4. CLAIMS OR LITIGATION IN THE LAST 5 YEARS. If necessary, attach another page to answer this question. If submitted as a separate file, enter file title here.

Skyline Builders & Restoration, Inc. has had no claims or litigations within the last 5 years

CREST

May 4, 2022

Arizona Department of Administration
100 N. 15th Avenue
Phoenix, AZ 85007

RE: Skyline Builders & Restoration, Inc.- RFQ ADOA statewide contract

To Whom It May Concern:

Skyline Builders & Restoration, Inc. has established a bonding line of credit with Merchants Bonding Company. Merchants Bonding Company is an 'A' rated company by A.M. Best and is a federally approved surety by the United States Department of the Treasury.

The bonding line of credit for Skyline Builders & Restoration, Inc. has been established at \$10,000,000 single project and \$30,000,000 aggregate program which has been set to meet the day to day needs of this company. This line of credit should not be considered the maximum amount of surety credit available, but rather a working line of credit to meet the anticipated needs of the company's daily operations. Requests for surety credit above this line are welcomed and reviewed on a case-by-case basis. As always, any future requests for surety credit are based on the current underwriting information available at the time of the request.

We are pleased to give our highest recommendation on behalf of Skyline Builders & Restoration, Inc. and appreciate any courtesy you may extend to this valued client.

Best regards,

Jeri Lynn Thompson
Attorney-in-Fact
Merchants Bonding Company

/jlt



Request for Qualifications

Solicitation No.

BPM004397

Description:

General Contractor Job Order Contracting Statewide

Arizona Department of
Administration

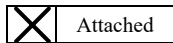
General Services Division

1400 W. Washington St., Ste. B200
Phoenix, AZ 85007

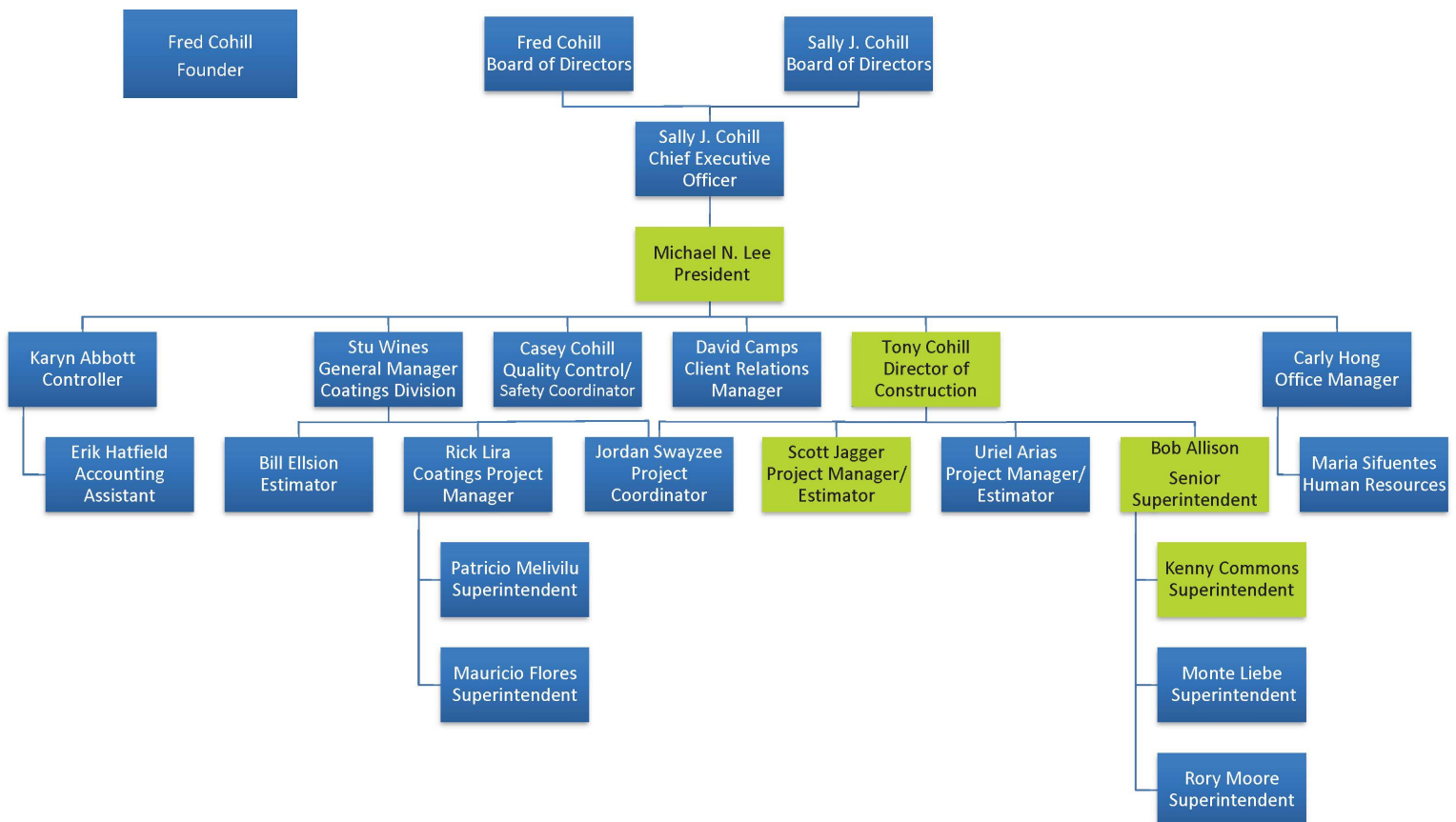
Section B. Organizational Chart of Submitter's Key Personnel.

The organizational chart shall also present a clear, graphic depiction of the lines of communication between project functions. Include all Key Personnel indicated in Section C.

B. ORGANIZATIONAL CHART OF SUBMITTER'S KEY PERSONNEL



(See instructions above)



Michael Lee, Owner



Mike began his career at Skyline Builders as Office Manager. Soon after, Mike turned to project management, followed by General Manager, Executive Vice President and was promoted to President in January, 2015. As such, Mike is ultimately responsible for each project and JOC that Skyline is involved with.

Due to the different positions held at Skyline, Mike has expertise in customer satisfaction, job order contracting, contractual agreements, management of daily operations, human resources and employee relations, job cost control, scheduling and project closeout.

As President, Mike strives for quality workmanship, superior service and complete customer satisfaction.

Qualifications / Education

Education:

Arizona State University
BS, Secondary Education

Number of years in profession:

18 years with Skyline Builders

Licenses / Certifications:

Arizona State University, Del
Webb School of Construction
Project Management Certificate
NX Level for Entrepreneurs
Certificate of Completion
RS Means Cost Works Training
Seminar

Certificate of Completion
Hanley Wood University
Master Certificate, Business
Management
Alliance for Construction
Excellence
JOC Accredited Professional

Affiliations:

Center for JOC Excellence
Treasurer
Vistage International
Executive Member

Location:

Phoenix, AZ

Significant Projects

State of Arizona

General Job Order Contract
#ADSP011-013768
\$2,400,000 annually
October 2011 - May 2017

1GPA/Paradise Valley Unified School

District National Job Order Contract
#17-10PV-08
\$2,250,000 annually
June 2015 - May 2023

Arizona State University

Campus Wide Paint Job Order Contract
#231401 \$1,500,000 annually
October 2013 - October 2019

National IPA (formally TCPN)

Job Order Contract # R130214
\$750,000 annually
June 2013 - May 2018

Tempe Elementary School - SAVE

Paint Job Order Contract # 14-21-18
\$1,000,000 annually
December 2016 - June 2022

Phoenix Union High School District

Trevor Browne PAC
\$800,000.00

Deer Valley Unified School District

2021 Summer Paint Projects
\$1,325,643.79

Alhambra Elementary School District

Alhambra Choice Interior Renovations
\$736,712.66

City of Scottsdale

City Hall Restroom Renovations & ADA
Improvements
\$376,647.44

Tony Cohill, Project Manager/Estimator



For the last 29 years Tony has worked in many areas of construction management. He began his career as a Superintendent in the residential sector.

After working his way to Superintendent of commercial projects, he moved to project management. Tony now oversees all scheduling, project budgets and estimating, along with providing customer service and dispute resolution.

Qualifications / Education

Number of years in profession:
Over 20+ years

Licenses / Certifications:

Associate General Contractor of America, Superintendent Training Program

Certificate of Completion

Alliance for Construction Excellence, Construction Management Program

Certificate of Completion

Painting & Decorating Contractors of America, Estimating Program

Certificate of Completion

OSHA 10

Location:

Phoenix, AZ

Significant Projects

State of Arizona

General Job Order Contract

#ADSP011-013768

\$2,400,000 annually

October 2011 - May 2017

Deer Valley Unified School District

Boulder Creek High School

Aeronautical Engineering Building

Addition

\$1,412,393.34

Deer Valley Unified School District

Sandra Day O'Connor High School

Building Addition

\$2,071,320.00

Deer Valley Unified School District
2017 District Wide Security Upgrades
\$869,326.00

Deer Valley Unified School District

Boulder Creek High School

Library Alterations

\$162,608.49

Phoenix Union High School District

Trevor Browne PAC

\$800,000.00

Deer Valley Unified School District

2021 Summer Paint Projects

\$1,325,643.79

Alhambra Elementary School District

Alhambra Choice Interior Renovations

\$736,712.66

City of Scottsdale

City Hall Restroom Renovations & ADA

Improvements

\$376,647.44

Deer Valley Unified School District

District Wide Marquees

\$1,126,397.00

Deer Valley Unified School District

Bellair Elementary School

Modernization

\$5,618,067.00

Scott Jagger – Project Manager/Estimator



Scott joined the Skyline Builders & Restoration, Inc. team in 2019 as the Project Engineer. Prior to his work at Skyline, he gained extensive background with finish trades and customer service. During his time as a Project Manager in a finish trade, he spent a lot of time creating and syncing different schedules for his projects as well as the company's projects, ensuring quality work was completed, and managing staff.

Additional requirements of Scott include securing contracts for work, updating project information, material ordering, job cost control, quality control, Toolbox Talks (safety meetings) and customer satisfaction.

Qualifications / Education

Education:

Associates degree in General Studies - Paradise Valley Community College

Number of years in profession:

5 years in the profession
3 year with Skyline Builders
5 years in customer service

Licenses / Certifications:

CPR Certified

Location:

Phoenix, AZ

Significant Projects

State of Arizona

General Job Order Contract
#ADSP011-013768
\$2,400,000 annually
October 2011 - May 2017

Phoenix Union High School District

Metro Tech Cafeteria Renovation
\$197,325.00

Phoenix Elementary School District

Multiple Projects:
Emerson
Heard
\$545,38.00

Phoenix Union High School District

Trevor Browne PAC
\$800,000.00

Alhambra Elementary School District

Alhambra Choice Interior Renovation
\$736,712.66

Robert Allison, Senior Superintendent



During his 22 years of military service, Bob held positions of Instructor, Trainer, Assistant Manager, Assistant Operations Manager and Organizational Manager. Bob obtained extensive experience in administrative and personnel management to including training, customer service, employee development and career development counseling.

In 2011 Bob joined Skyline Builders as a superintendent. The diversity of projects Bob has managed helped him enhance his construction management skills. Bob has been invaluable to Skyline with his training and teaching of field personnel.

As superintendent, Bob ensures on-time completion, quality workmanship and customer service.

Qualifications / Education

Education:

Troy University
*BS, Human Resources
Management*
Troy University
AS, Social Science
Grand Canyon University
MBA/Leadership

Number of years in profession:

14 years
11 years with Skyline Builders

Licenses / Certifications:

Victory University
*Company Business Management
Certificate*
Training and Doctrine Command
Advance Non-Commissioned
Officer Course
Management Diploma
Small Group Leader
Instructor Course
Certificate of Completion

Location:

Phoenix, AZ

Significant Projects

State of Arizona

General Job Order Contract
#ADSP011-013768
\$2,400,000 annually
October 2011 - May 2017

Deer Valley Unified School District

Boulder Creek High School
Aeronautical Engineering Building
Addition
\$1,412,393.34

Deer Valley Unified School District

Sandra Day O'Connor High School
Building Addition
\$2,071,320.00

Deer Valley Unified School District
2017 District Wide Security Upgrades
\$869,326.00

Deer Valley Unified School District

Boulder Creek High School
Library Alterations
\$162,608.49

Deer Valley Unified School District

District Wide Marquees
\$1,126,397.00

Alhambra Elementary School District

Alhambra Choice Interior Renovations
\$736,712.66

Kenneth Commons, General Superintendent



Kenny has been in the construction trades for the past 31 years. Prior to joining Skyline Builders in 2010, Kenny's experience included surveying & layout, carpentry foreman, leadman and project superintendent.

As Skyline's General Superintendent, Kenny spends a lot of his time outside of the Phoenix Metro area. Not only has Kenny built professional relationships with various clients throughout the State, he has also gotten to know them on personal levels as well.

His responsibilities include superintendent, sales, subcontractor scheduling, customer satisfaction and Toolbox Talks (safety meetings). With Kenny's knowledge he is able to assess complex projects and foresee most problems prior to construction, thus maintaining cost and schedule control.

Qualifications / Education

Number of years in profession:

31 years

12 years with Skyline Builders

Licenses / Certifications: Practical Planning & Scheduling of Small & Medium-Sized Projects

Certificate of Completion
Construction Field & Project Management Systems

Certificate of Completion Rigging & Signaling

Certificate of Completion
Printreading for Residential & Light Commercial Construction

Certificate of Completion

OSHA 10

Operator Safety Training Program for Manual Propelled, Self Propelled & Boom Supported Safety Training

HILTI Qualified Operator – Powder Actuated Tools

HILTI Firestop Systems Training

Location:

Phoenix, AZ

Significant Projects

State of Arizona

General Job Order Contract

#ADSP011-013768

\$2,400,000 annually

October 2011 - May 2017

Deer Valley Unified School District

2017 District Wide Security Upgrades

\$869,326.00

Deer Valley Unified School District

Sandra Day O'Connor Classroom Building Addition Construction Manager at Risk

\$2,098,300

Deer Valley Unified School District

Boulder Creek High School Aeronautical Engineering Building Addition

\$1,412,393.34

Phoenix Union High School District

Trevor Browne PAC

\$800,000.00

City of Scottsdale

City Hall Restroom Renovations & ADA Improvements

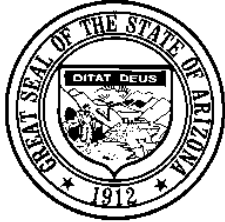
\$376,647.44

Deer Valley Unified School District

Bellair Elementary School

Modernization

\$5,618,067.00



Request for Qualifications

Solicitation No.

BPM004397

Description:

General Contractor Job Order Contracting Statewide

Arizona Department of
Administration

General Services Division
1400 W. Washington St., Ste. B200
Phoenix, AZ 85007

D. EXAMPLE PROJECTS BEST ILLUSTRATING SUBMITTER'S QUALIFICATIONS FOR THIS CONTRACT

(Present as many projects up to 5 projects. Complete one Section D for each project.)

1. EXAMPLE PROJECT KEY NUMBER <i>See Instructions</i>	1	2. PROJECT TITLE	Phoenix Union High School District Trevor Browne PAC
3. YEAR COMPLETED		4. LOCATION (City and State)	Phoenix, AZ
5. CONTRACT / JOB ORDER AMOUNT	a. Initial: \$800,000.00 b. Final: \$800,000.00		
6. PROJECT DELIVERY METHOD	LOW-BID	<input checked="" type="checkbox"/> JOC	CM-at-RISK OTHER
7. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(See Form Instructions)</i>			

Skyline Builders & Restoration, Inc. provided a detailed scope of work to the Owner that included all labor, equipment and materials to remodel the performing arts center at Trevor Browne High School. Skyline removed and replaced stage rigging, VCT, carpet, epoxy flooring, and aisle seating light fixtures. We installed new IFR drapes, life safety harnesses, rigging points, and new legs and borders on the fly bridge. Skyline fully repainted the stage walls and orchestra pit, and sanded and refinished stage wood flooring. Additional work in the lobby was completed by owner request of similar nature to the auditorium area – repainting, electrical work, reflooring, and plumbing.

During this project, renovations occurred during a high use season for the performing arts. Portions were completed and the entire site was made safe to accommodate performers to use the space while renovations were in progress as to not interrupt their season.

This project is projected to complete on time with its schedule, having an award date of 01/28/2022, construction start of 03/10/2022, and final completion on 05/27/2022.

The owner's objective of modernizing their performing arts center with current safety standards and aesthetics was met by Skyline through a coordinated and cohesive construction plan to bring all elements of the auditorium and accompanying lobby into their desired image.

8. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER Phoenix Union High School District	b. POINT OF CONTACT NAME Manny Vasquez	c. POINT OF CONTACT E-MAIL mvasquez@phoenixunion.org	d. POINT OF CONTACT PHONE NO. (602) 748-7930
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9. KEY PERSONNEL *(from Section C)*

NAME	ROLE	NAME	ROLE
Michael Lee	Owner/Contract Director		
Tony Cohill	Project Manager/Estimator		
Scott Jagger	Project Manager/Estimator		
Kenny Commons	Superintendent		



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D. EXAMPLE PROJECTS BEST ILLUSTRATING SUBMITTER'S QUALIFICATIONS FOR THIS CONTRACT

(Present as many projects up to 5 projects. Complete one Section D for each project.)

1. EXAMPLE PROJECT KEY NUMBER <i>See Instructions</i>	2	2. PROJECT TITLE	Deer Valley Unified School District 2021 Summer Paint Projects
3. YEAR COMPLETED	2021	4. LOCATION (City and State)	Phoenix, AZ
5. CONTRACT / JOB ORDER AMOUNT	a. Initial: \$1,325,643.79 b. Final: \$1,325,643.79		
6. PROJECT DELIVERY METHOD	LOW-BID	<input checked="" type="checkbox"/> JOC	CM-at-RISK OTHER
7. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(See Form Instructions)</i>			

Skyline Builders & Restoration, Inc. provided a detailed scope of work to the Owner that included all labor, equipment and materials to paint four interior and seven exterior elementary, middle and high schools complete campuses.

During this project, Skyline had to coordinate projects across 11 different job locations with labor, materials, and supervision tailored to each location and their administrative staff overseen by district officials. Having a strong project management team communicating with foremen dedicated to each location to manage and organize the labor force and streamline the materials ordering process was vital to assure all project locations were completed within the timeframe that worked best for the district, individual school staff, and did not interfere with other summer programs occurring on the campuses.

This project was completed on time with its schedule, having an award date of 02/12/2021, substantial completion on 06/30/2021, and final completion on 08/24/2021.

The owner's objective of having a complete repaint of the exterior or interior of 11 schools was met by Skyline through a coordinated effort that shows our ability to manage a large number of projects for a single client within shortened time frames to meet their needs.

8. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER Deer Valley Unified School District	b. POINT OF CONTACT NAME Jeff Long	c. POINT OF CONTACT E-MAIL Jeff.long@dvusd.org	d. POINT OF CONTACT PHONE NO. (602) 467-5021
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9. KEY PERSONNEL *(from Section C)*

NAME	ROLE	NAME	ROLE
Michael Lee	Owner/Contract Director		
Tony Cohill	Project Manager/Estimator		
Kenny Commons	Superintendent		



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D. EXAMPLE PROJECTS BEST ILLUSTRATING SUBMITTER'S QUALIFICATIONS FOR THIS CONTRACT

(Present as many projects up to 5 projects. Complete one Section D for each project.)

1. EXAMPLE PROJECT KEY NUMBER <i>See Instructions</i>	3	2. PROJECT TITLE	Alhambra Elementary School District Alhambra Choice Interior Renovations
3. YEAR COMPLETED	2022	4. LOCATION (City and State)	Phoenix, AZ
5. CONTRACT / JOB ORDER AMOUNT	a. Initial: \$736,712.66 b. Final: \$736,712.66		
6. PROJECT DELIVERY METHOD	LOW-BID	JOC	CM-at-RISK OTHER
7. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(See Form Instructions)</i>			

Skyline Builders & Restoration, Inc. provided a detailed scope of work to the Owner that included all labor, equipment and materials to fully remodel interior spaces at the Alhambra Choice school. Skyline removed and replaced existing acoustic ceiling tiles and framing, VCT carpet, drywall with stud, backing and insulation, millwork, blinds, HVAC mechanical systems, signage and murals, and accompanying plumbing and electrical work. New windows, rolldown doors, and swinging doors with hardware and electrical systems were installed alongside block work for new openings, finalized with a complete repaint.

During this project, Skyline shows our ability to self-perform demolition, framing, drywall installation, tape, texture, paint, and acoustical ceiling work as well as coordinate in-house efforts alongside our team of subcontractors. This project further illustrates our ability to work in occupied space as this building was in complete operation throughout the course of this project.

This project was completed on time with its schedule, having an award date of 06/10/2021, substantial completion on 09/30/2021, and final completion on 11/30/2021.

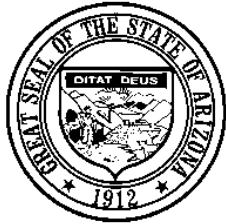
The owner's objective of renovating the interior spaces of their academy was met by Skyline through a coordinated effort to get ahead of lead time with smart ordering practices and utilizing in-house teams and subcontractors to all work together in a way that maximized time efficiency and minimized the need for punch items by performing constant self-checks and walkthroughs by foremen, superintendents, and project managers.

8. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER Alhambra Elementary School District	b. POINT OF CONTACT NAME Matt Shields	c. POINT OF CONTACT E-MAIL mattshields@alhambrasd.org	d. POINT OF CONTACT PHONE NO. (602) 336-2979
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9. KEY PERSONNEL *(from Section C)*

NAME	ROLE	NAME	ROLE
Michael Lee	Owner/Contract Director		
Tony Cohill	Project Manager/Estimator		
Scott Jagger	Project Manager/Estimator		
Bob Allison	Senior Superintendent		



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D. EXAMPLE PROJECTS BEST ILLUSTRATING SUBMITTER'S QUALIFICATIONS FOR THIS CONTRACT

(Present as many projects up to 5 projects. Complete one Section D for each project.)

1. EXAMPLE PROJECT KEY NUMBER <i>See Instructions</i>	4	2. PROJECT TITLE	City of Scottsdale City Hall Restroom Renovations & ADA Improvements	
3. YEAR COMPLETED		4. LOCATION (City and State)	Scottsdale, AZ	
5. CONTRACT / JOB ORDER AMOUNT	a. Initial: \$376,647.44			
	b. Final: \$376,647.44			
6. PROJECT DELIVERY METHOD	LOW-BID	JOC	CM-at-RISK	OTHER
7. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(See Form Instructions)</i>				

Skyline Builders & Restoration, Inc. provided a detailed scope of work to the Owner that included all labor, equipment and materials to fully renovate all restrooms in the city hall building to bring them up to ADA standards as well as refreshing the spaces with new and improved amenities. Skyline demoed existing spaces allowing for the potential of abatement activities, removed and replaced plumbing and fixtures, doors with appropriate hardware, electrical systems, flooring, drywall, millwork, HVAC mechanical systems, ceiling tile and grids, glass and mirrors, partitions, all accompanying features, and finalized with a complete repaint all in line with architect plans, current ADA standards for restroom facilities, and the owner's vision for the space.

During this project, Skyline illustrates our ability to work with an end user to; assess a problem, develop a scope, set a budget, and then ultimately provide turnkey service to the client as well as our capacity to work in occupied space as this building was in complete operation throughout the course of this project.

This project is projected to completed on time with its schedule, having an award date of 01/10/2022, construction start date of 03/14/2022, and final completion expected on 06/17/2022.

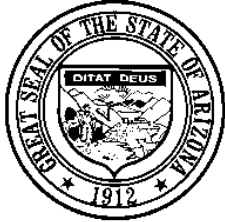
The owner's objective of renovating all city hall restrooms to bring them all up to current ADA standards will be met by Skyline through the coordination of in-house and subcontractor teams to meet deadlines and work with client specific needs to assure timely and accurate project completion in line with preconstruction objectives and set goals to be met and achievable through adapting to changing site and economic conditions to assure contract completion under set terms.

8. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER City of Scottsdale	b. POINT OF CONTACT NAME Tim McMahon	c. POINT OF CONTACT E-MAIL tmcMahon@scottsdaleaz.gov	d. POINT OF CONTACT PHONE NO. (480) 390-5350
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9. KEY PERSONNEL *(from Section C)*

NAME	ROLE	NAME	ROLE
Michael Lee	Owner/Contract Director		
Tony Cohill	Project Manager/Estimator		
Scott Jagger	Project Manager/Estimator		
Kenny Commons	Superintendent		



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D. EXAMPLE PROJECTS BEST ILLUSTRATING SUBMITTER'S QUALIFICATIONS FOR THIS CONTRACT

(Present as many projects up to 5 projects. Complete one Section D for each project.)

1. EXAMPLE PROJECT KEY NUMBER <i>See Instructions</i>	5	2. PROJECT TITLE	State of Arizona General Job Order Contract #ADSP011-013768
3. YEAR COMPLETED		4. LOCATION (City and State)	
5. CONTRACT / JOB ORDER AMOUNT	a. Initial:		
	b. Final: 428 projects for \$12,132,115.11		
6. PROJECT DELIVERY METHOD	LOW-BID	JOC	CM-at-RISK OTHER
7. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(See Form Instructions)</i>			

Skyline Builders & Restoration, Inc. held this State General Job Order Contract for 5 years from 2011 to 2017 and completed 428 jobs on this contract, averaging approximately 85 jobs annually. The contract was awarded as a one-year term with the possibility of yearly renewals of up to a total of five years. Skyline's contract was extended each year to the full five-year term. Skyline Builders & Restoration, Inc. completed various construction services on this contract for many different owners across the State of Arizona, including the Arizona Department of Administration, Arizona Department of Transportation, and various other State and local municipalities in every county in the State of Arizona.

Skyline has completed projects on this contract ranging in size from approximately \$100 to \$500,000, providing end users with scopes of work that include each of the 16 construction divisions. For each and every one of these projects, Skyline worked with an end user to develop a scope of work and budget and ultimately provided turnkey service to complete the project on time.

This contract shows Skyline's commitment to the State of Arizona. This contract illustrates the fact that we are capable of serving any and all of the seven regions specified in the Request for Qualification. We are proud of the 428 different projects we completed on this project throughout the State of Arizona. Skyline has been completing work for the State of Arizona since 1991 when we were awarded our first term contract. We have worked hard to earn the opportunity to continue our relationship with State and are committed to continue our efforts well into the future.

8. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER State of Arizona	b. POINT OF CONTACT NAME Tim McMahon	c. POINT OF CONTACT E-MAIL tmcMahon@scottsdaleaz.gov	d. POINT OF CONTACT PHONE NO. (480) 390-5350
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9. KEY PERSONNEL *(from Section C)*

NAME	ROLE	NAME	ROLE
Michael Lee	Owner/Contract Director		
Anthony Cohill	Project Manager/Estimator		
Scott Jagger	Project Manager/Estimator		
Bob Allison	Senior Superintendent		
Kenny Commons	Superintendent		



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E. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

1. NAMES OF KEY PERSONNEL (From Section C, Block 1)	2. ROLE IN THIS CONTRACT (From Section D, Block 9)	3. EXAMPLE PROJECTS LISTED IN SECTION D (Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)				
		a	b	c	d	e
Michael Lee	Owner/Contract Director	X	X	X	X	X
Anthony Cohill	Project Manager/ Estimator	X	X	X	X	X
Scott Jagger	Project Manager/ Estimator	X		X	X	X
Bob Allison	Senior Superintendent			X		X
Kenny Commons	Superintendent	X	X		X	X

4. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION D)
a	Phoenix Union High School District Trevor Browne PAC
b	Deer Valley Unified School District 2021 Summer Paint Projects
c	Alhambra Elementary School District Alhambra Choice Interior Renovation
d	City of Scottsdale City Hall Restroom Renovations & ADA Improvements
e	State of Arizona General Job Order Contract #ADSP011-013768

Section E. Key Personnel Participation in Example Projects.



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SECTION F

Failure to fully address all information requested may cause the SOQ to be determined non-responsive.

Response must demonstrate your comprehension of the objectives and services of this solicitation. Do not merely duplicate the description of work described in this Request for Qualifications (RFQ). The Contractor Performance Evaluation Scorecard is included in this Solicitation and the following questions are formatted based on how firms will be scored on their projects. **Firms shall provide responses directly below the numbered questions in this attachment.**

F. MANAGEMENT PLAN

1. Safety and Compliance:

- Please describe methods for complying with contract safety requirements including details from your firm's site safety program, program guidelines to address subcontractor safety, and MSDS (material safety data sheets) program.
- How often is your firm's safety plan updated?
- Has your firm had a formal safety deficiency on past or current project? If so, how was this addressed to the satisfaction of the client?

At Skyline Builders & Restoration, Inc., safety is a principal method that is practiced and evaluated on a daily basis, on every job, to prevent injuries or death to our valued personnel. Skyline's Project Safety Engineer, Casey Cohill, is in charge of safety and instills safety in the minds of our employees because it is a part of our company culture. Safety is a part of what Skyline does every day. Skyline Builders & Restoration, Inc. uses a systematic approach to each project to make sure every precaution is taken to eliminate hazards and reduce the chance of injury. The following items must be on all projects:

- a. First Aid Kit(s)
- b. Hard Hats for each individual
- c. Eye Protection
- d. Safety Harnesses, Lanyards, and secure anchorage for each employee working on a walking or working surface nine (9) feet or more above a lower level.
- e. Material Safety Data Sheets (project specific)

Skyline Builders & Restoration, Inc has a goal of zero accidents per year and we work diligently as a team to achieve this goal. It is this zero-accident goal, that forms the basis of all of our safety procedures.

Skyline Builders & Restoration, Inc. is fundamentally conscious of accident prevention as it involves the safety and well-being of all our employees as well as the preservation of our equipment and materials. Skyline makes practice of updating our safety plan quarterly. Every individual who supervises, directs, or controls the work of others is responsible for safety of persons, equipment, and materials under his/her supervision and direction. It is our policy that all employees are entitled to a safe and healthful workplace. To this end, every effort will be made in the interest of accident prevention, fire protection, and health preservation. Skyline Builders & Restoration Inc. shall provide safe working equipment, necessary personnel protections, and in case of injury, provide emergency first-aid and other necessary medical services as the situation might dictate.

It is the desire of Skyline Builders & Restoration Inc., that all employees recognize the value of practicing and adhering to a sound safety program. Our firm shall assume the responsibility and make every effort to ensure that all on-site activities, equipment, and facilities conform fully with the standards contained within the "Safety and Health Requirements Manual". In addition, no employee of Skyline Builders & Restoration Inc., the Subcontractors, or their Suppliers shall be required to work under conditions which may be unsanitary, hazardous, or dangerous to the employees' health or safety. Furthermore, Skyline Builders & Restoration, Inc. will conform to all regulations, as they



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pertain to the construction industry and more specifically to all projects completed on this contract. In addition, Skyline also complies with nationally recognized standards of the Occupational Safety and Health Act (OSHA). Every Skyline employee will conform to all regulations as they pertain to the construction industry and, more specifically, to projects on this contract. Moreover, Subcontractors and Suppliers of Skyline Builders & Restoration Inc., shall also be required to comply with all health and safety requirements as set forth herein, in an effort to eliminate injuries to employees who come under Skyline's jurisdiction.

All new employees of Skyline Builders & Restoration Inc., and its Subcontractors are issued a written notice containing the pertinent provisions of Skyline Builders & Restoration Inc.'s Safety Program. These notices indicate the general safety policy, procedures and regulations applicable to the project work environment. Additionally, the notice indicates procedures for reporting injuries, obtaining first-aid and other medical care, if needed. All employees are required to acknowledge the receipt of this notice through written acknowledgment. These written acknowledgments will be on file at Skyline Builders & Restoration Inc.'s office and shall be available for review by the Owner's Representative.

All field operations and project administration are overseen by Skyline's Project Safety Engineer, Casey Cohill. All projects performed on this contract will have its assigned supervisory personnel. Projects performed on this contract will have the following assigned personnel scheduled to visit daily or weekly as determined by the on-site Superintendent:

- a. Project Manager
- b. Project Superintendent
- c. Corporate Safety Officer
- d. Project Quality Control Supervisor
- e. Project On-Site Safety Engineer

Skyline Builders & Restoration Inc. will also have on-site foremen for each of the major functions, which we shall perform with our own personnel. The names of these on-site foremen shall be provided at the start of each project on this contract.

All personnel assigned to a project on this contract shall be directly responsible for implementing each element of the Skyline Builders & Restoration, Inc. Safety Program and Policies.

The specific duties and responsibilities for members of the safety organization are as follows:

Management shall provide the means to accomplish the safety program and policy, enforce the program and policies and discharge any employee willfully disregarding it. In addition, management shall require all Subcontractor's and Supplier's adherence to the program and policy; require Subcontractor to conform to policy and document any violations for future reference; conduct safety inspections and file reports; investigate or cause to have investigated any and all accidents and file reports on each occurrence; establish procedures for treatment of injuries; encourage safety training for personnel; work closely with all Skyline personnel to assure full compliance with these policies and programs; interact with the Superintendent and Safety Officer to encourage good safety practices and provide necessary safety training and instruction; make regular visits to the job site to conduct safety inspections and file with management and the project Owner appropriate reports; follow-up and investigate any and all accidents and process all required documentation and reports; meet as required, with Skyline Builders & Restoration Inc. representatives, insurance company personnel, and Safety Inspectors to assure compliance with applicable federal and state safety standards; be familiar with the laws pertaining to safety and their basic requirements and participate, as required, in regularly scheduled safety meetings.

Project Superintendent and/or Field Engineer shall be responsible for direct supervision of all construction activities relating to this project; shall have the authority to make any decisions regarding the field construction including "field changes" which do not change the contract amount or completion time; shall have authority and responsibility over



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on-site Foremen, Subcontractors, Suppliers, Delivery Companies, Subcontractor personnel, etc.; shall have authority over all production related-operations only; shall be responsible to assist the "Project Safety Engineer" with all on-site safety and the implementation thereof; shall be responsible for conforming to all safety requirements as directed by the Safety Engineer. In the event of a conflict between "production" and "safety", safety will always take precedence over production.

Project Safety Engineer or Superintendent shall be responsible for project safety. Project Safety Engineers or Project Superintendents, shall be completely responsible for all on-site safety; make available to all necessary personnel protective equipment, job safety materials, and first-aid equipment and supplies; provide orientation for all personnel prior to start of work phase as to their duties, company policies, and hazards relating to their work operation. During this orientation process, all personnel shall be advised as to the location of the project site in relation to the entire vicinity. Indoctrination and training shall be based on the prescribed Safety Policy and Program of Skyline Builders & Restoration Inc. and the requirements of the Project Owner and shall include but not be limited to:

- a. General safety policy.
- b. Requirements for employee and project safety.
- c. Employee's responsibilities for property and safety of others.
- d. Employee's responsibilities for reporting all accidents.
- e. Medical facilities and required treatment.
- f. Procedures for reporting or correcting unsafe conditions and practices.
- g. Safe clearance procedures.
- h. Fire prevention, firefighting, and other emergency procedures.
- i. Job hazards and activity analysis and accident prevention plan.
- j. Alcohol/drug abuse policy.
- k. Segregation of vehicular and pedestrian traffic.

Furthermore, the Project Safety Engineer or Project Superintendent shall instruct the foreman that safe practices are to be followed and maintained throughout the job; require all Subcontractors to conform to all safety regulations; review all accidents and near accidents with personnel and file required reports and ensure corrective action is taken immediately. The Project Superintendent and Safety Officer shall notify Skyline Builders & Restoration Inc.'s representative in the event of a lost-time accident, and submit the requirement reports no later than 24 hours after an accident occurs; responsible for conducting weekly/monthly safety meetings. Weekly toolbox safety meetings are to be held with all personnel on the project every Monday morning prior to commencement of work activities and shall with the Project Superintendent, conduct monthly Supervisor/ Foremen meetings. Day and time shall be determined by the Safety Officer and the Superintendent.

The Project Safety Engineer or Superintendent shall have available copies of Federal and State regulations at the job site and be familiar with the laws pertaining to safety and their basic requirements.

Foreman (Skyline Builders & Restoration Inc.) and Subcontractors shall see that the entire Safety Policy and Program is carried out at the work level; see that personnel commit no unsafe practices; attempt to eliminate unsafe condition; insure that necessary protective equipment is on hand and used; instruct all employees of safe procedures and job safety requirements; follow-up and insist on compliance; discuss safety in person contacts with personnel on every operation; participate in weekly safety meetings; participate in monthly Supervisors safety meetings; see that all injuries are cared for immediately, properly, and reported promptly and shall possess and maintain current American Red Cross First-Aid Certificate (eight hour course equivalent).

All Subcontractor Supervisors/Foremen shall be oriented as to Skyline's Safety Policy prior to starting work on the project. All Subcontractor Supervisors shall be responsible for his crew or section of work. All Subcontractors will be provided a copy of the approved Skyline Safety Policy and Program. Subcontractor personnel will be required to



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attend and participate in all weekly toolbox safety meetings and Subcontractor Supervisors shall attend and participate in the monthly Supervisor/Foremen meetings.

The Safety Engineer/Field Engineer and/or Project Superintendent shall be responsible for conducting a daily review of all operations to evaluate all phases of construction as they relate to the Construction Safety Standards required by Skyline Builders & Restoration Inc. These daily reviews will be noted on the daily reports. Any safety deficiencies will be indicated plus the corrections that were recommended to performed will be so indicated. No construction activity will be allowed to continue if a deficiency exists that would compromise the safe operation of the activity. All such deficiencies must be attended to immediately by the Subcontractor or personnel of that crew involved in the deficiency. All corrections of deficiencies shall be to the approval of the Safety Engineer and/or the Owner.

All accidents which occur incident to this project or facility will be investigated, reported, and analyzed as prescribed by the Skyline Builders & Restoration Inc. All accidents will be investigated to determine the cause. If an accident is caused through the personal negligence of any employee, that person will be given the opportunity to explain their actions. If the explanation is not satisfactory, the employee shall be subject to discharge. Safety meetings will be held for employees who are involved in specific accidents to discuss and determine measures to prevent the reoccurrence of the accident or one of a similar nature.

All diagnosed occupational illnesses and injuries that result in fatality or a lost work day shall be investigated and reported to Skyline Builders & Restoration Inc. in accordance with the requirements of the agency having jurisdiction.

2. Quality – Compliance With Contract Documents:

- Please describe your firm's methods for quality assurance in complying with contract documents (submittals, plans, specifications, etc.).
- Describe your firm's process for ensuring materials and finishes are correct and in accordance with the contract.
- Please include method or examples for addressing defective or incorrect work i.e. such as the wrong product or manufacturer installed or item was shipped to the site damaged.

Skyline Builders & Restoration, Inc. holds a strong commitment to quality assurance in complying with contract documents. Skyline understands that information management is crucial when it comes to performing on a Job Order Contract. We utilize Sage 100 Contractor, which allows us to track every piece of information on projects from inception to completion. By maintaining complete control of every piece of information, including: budgets, cost, submittals, plans, specifications, RFI's and schedules, Skyline Builders & Restoration, Inc. can ensure a quality project completed on time and on budget. Furthermore, Sage 100 Contractor allows Skyline Builders & Restoration, Inc. to keep control of all key documents easily. At weekly project meetings, we can reference these key documents and transmit them to the appropriate people, as needed. With the utilization of Sage 100 Contractor, Skyline has the ability to manage all project records in one location, allowing detailed reports showing the project as a whole, or smaller aspects that allow us to know which carpenter is on your project on a specific day. While not all of this information may be important to the contract users, all of this information will be available; including shop drawings and "as built" drawings.

One aspect of our reports that contract users might find beneficial are up to date status reports from our weekly meetings. We keep detailed minutes of all outstanding issues, including: RFI's, schedules, ASI's, proposal requests, supplemental task orders and submittal logs. Should the members require information between meetings, it will be made readily available as well.

Skyline Builders & Restoration, Inc.'s methods for quality assurance and compliance with contract documents is, all submittals, plans, specifications, etc. shall go exclusively through our Project Coordinator. We follow the standard Division 1 submittal procedures when complying with contract documents.



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With a combined 100 years of construction experience, the administrative team at Skyline Builders & Restoration, Inc. will prove to be a valuable asset to the contract users. We understand that time is one of your most valuable resources. Our team will ensure the information you receive is on time and correct, the first time.

As stated above, your time is one of your most valuable resources. Skyline Builders & Restoration, Inc. understands that Facilities Managers are busy and do not have time to recheck our work. This is why we have a qualified individual walk every job, so that we can minimize the need for any "go-backs," prior to walking the job with our customers. In addition to performing a pre-punch walk on every project Skyline performs, we take an even more proactive approach to quality. Skyline Builders & Restoration, Inc. employs a full-time team of Quality Control Coordinators lead by, Casey Cohill. As Quality Control Coordinators, Casey and his team implement the program over a broad geographic area by visiting and inspecting each and every job we perform, a minimum of twice per week within the Phoenix metro area and a minimum of once per week throughout the State of Arizona. Their objective is to inspect the quality of the work at various stages as the job progresses. They sign off on progress hold points such as: framing completion, rough electrical and plumbing, drywall installation, and texture to ensure the proper quality has been maintained throughout the project.

Still, with all of Skyline's quality control measures, there are instances when defective or incorrect work is performed on a project. If a product is deemed defective and is an item that can be replaced with an in-stock product, Skyline Builders & Restoration, Inc. will replace the product as soon as we are aware of the defect. If the product is a specialty item, Skyline will order the item as soon as we are aware of a defect and schedule with the Owner to install the replacement product once we receive the specialty item. This also pertains to the performance of work incorrectly. Skyline believes that no project is complete until the customer is completely satisfied. Furthermore, we believe that our relationship with the Owner is more important than any issue that arises. Therefore, we will do whatever it takes to make the Owner completely satisfied and ensure the project is completed to their complete satisfaction.

3. Organization – Work Plan and Management:

- Please describe your firm's method for creating and updating the project schedule from pre-construction through project completion.
- Discuss what strategies your firm utilizes to keep jobs on schedule and how your firm applies or adjusts their strategies.
- Please include your firm's method for selecting staff and supervision for JOC projects.
- Please include your firm's method for submitting and coordinating requests for information and submittals.

Skyline Builders & Restoration, Inc. has been performing construction service contracts since 1991. In the last 31 years, we have built our company around completing job order contracts and delivering the prompt service that these contracts demand. We typically complete over 480 projects per year, which means that we complete an average of 9 projects per week. These numbers would not be possible if we had not set up our entire company and all of its procedures to excel in the parameters of Job Order Contracting. Job Order Contracting is based on the principle that quality and timely results will lead to repeat business, and we are proud to boast a 92% repeat customer base.

To ensure jobs remain on budget and on schedule, Skyline will provide a schedule prior to the start of each job. Each week, our Project Manager and Superintendents meet in our office with our President. During this meeting, many of the critical issues of a project are discussed, along with the schedule for every project. We spend the extra time to ensure that the project is on budget and schedule and try to project any potential budget or scheduling issues. In the unlikely event that we do fall behind schedule, we take immediate action to correct the problem; such as working extra hours or expanding the crew size.

In order to guarantee a prompt response to the requirements of this contract Skyline will dedicate one individual as the primary contact. This individual will have the authority to act on behalf of Skyline Builders & Restoration, Inc. to meet the needs of this contract. By providing one central contact, Owners will be able to develop a relationship with



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one individual who can handle all of their needs and then delegate duties to the appropriate Skyline staff. While all of Skyline's superintendents are qualified to perform work on any given project, we try to pair superintendents to projects that allow them to excel, by tailoring the superintendent's strengths to projects best suited for them.

At Skyline, we understand that Owners may often need multiple projects to be completed at the same time. We understand this and with our in-house staff and extended team of qualified subcontractors we are able to mobilize quickly to ensure that all projects receive the proper supervision and commitment to quality.

Skyline Builders & Restoration, Inc.'s method of document control when submitting and coordinating requests for information and submittals is to develop a detailed scope of work, with the help of the Owner, from the very beginning of the project, in the hope of eliminating additional paperwork and saving time throughout the project's progress.

4. Execution – Work Performance:

- Please describe your firm's method of executing the work. Include various types of reporting that your firm uses to keep clients informed of work status.
- Please include specific practices for maintaining the schedule, addressing subcontractor performance, compliance with site rules and Agency-specific criteria (such as working in Secure Areas), submitting information and documents such as supplemental Task Orders in a timely manner, submitting complete closeout documentation, completion of punch list and addressing warranty items (include escalation procedures for non-responsive subcontractors).

Skyline Builders & Restoration, Inc. is a full service, self-performing General Contractor specializing in Job Order Contracting. Our in-house team is made up of highly qualified individuals dedicated to providing quality workmanship, superior service, and complete customer satisfaction.

Skyline Builders & Restoration, Inc. held the previous State General Job Order Contract # ADSP011-013768 for the full five-year term. We successfully completed 428 projects on that contract, averaging approximately 85 projects annually. In order to perform on the contract successfully, Skyline appreciates the need for a thorough understanding of the importance of customer timelines and how to execute the work on a Job Order Contract. Because of our understanding, we ensure we meet the demands and requirements needed to perform work on the current State contract. Furthermore, we recognize the importance of delivering a developed, updated and detailed project schedules to the contract user for every project performed on this contract.

We take a proactive approach to solving job site challenges. Every week, our President holds progress meetings with our Project Managers, Superintendents, and Foremen to take a two week look ahead at all projects. The focus of this meeting is to discuss potential challenges that could arise on the job before they become problems. After each weekly meeting, updated project schedules are distributed to the Owners.

Skyline has been completing projects in occupied and secure areas since it began in 1981. We are confident that working in occupied and secure areas is one of our core competencies and a strategic differentiator between us and other contractors. Our success in working on occupied and secure areas comes down to three key points; working with highly skilled, background checked individuals and subcontractors, a proactive approach to solve potential challenges, and open communication with all affected parties.

Each and every employee that works for Skyline Builders & Restoration, Inc. including those of our subcontractors are required to obtain DPS Level 1 Fingerprint Clearance Card. Our employees and subcontractors have experience in working on occupied and secured areas and understand our "zero-tolerance" policy with regards to; communicating with personnel, utilizing personnel restrooms, the use of any tobacco on on-site, the use of foul language, and the exposure of inappropriate tattoos. Every employee is required to wear a company issued Safety colored shirt so that they can be easily identified by any member of your staff.



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The final step in working in an occupied or secured area is clear and open communication. We will provide a clear schedule to all necessary parties as well as the necessary on-site staff. In addition, we will provide a two week look ahead to all affected parties with reminders when we are working in critical areas. As necessary we will move certain aspects of the project to nights and/or weekend at no additional cost to the Owner.

Skyline has completed projects for school districts, jails, prisons, city, county and state offices throughout the State of Arizona. By combining our experience with Job Order Contracting and working for the school districts, jails, prisons, city, county and State offices of Arizona we are the best candidate for this contract.

Skyline Builders & Restoration, Inc. holds a strong commitment to quality assurance in complying with contract documents. We utilize Sage 100 Contracting, which allows us to track every piece of information on projects from inception to completion. Sage 100 Contracting allows Skyline Builders & Restoration, Inc. to keep control of all key documents easily. At weekly project meetings, we can reference these key documents and transmit them to the appropriate people, as needed. With the utilization of Sage 100 Contracting, Skyline has the ability to manage all our project records in one location, allowing detailed reports showing the project as a whole, or smaller aspects that allow us to know which carpenter is on your project on a specific day. While not all of this information may be important to the contract users, all of this information will be available; including shop drawings and "as built" drawings.

One aspect of our reports that contract users might find beneficial are up to date status reports from our weekly meetings. We keep detailed minutes of all outstanding issues, including: RFI's, schedules, ASI's, proposal requests, supplemental task orders and submittal logs. Should the members require information between meetings, it will be made readily available, as well.

With a combined 100 years of construction experience, the administrative team at Skyline Builders & Restoration, Inc. will prove to be a valuable asset to the contract users. We understand that time is one of your most valuable resources. Our team will ensure the information you receive is on time and correct, the first time.

To ensure jobs remain on budget and on schedule, Skyline will provide a schedule before the start of each job. Each week our Project Manager and Superintendents meet in the office with the President. During this time, many of the critical issues of a job are discussed, along with the schedule for every job. We spend the extra time to ensure that the job is on budget and schedule and try to project any potential budget or scheduling issues. In the unlikely event that we do fall behind schedule, we take immediate action to correct the problem; such as working extra hours or expanding the crew size.

In an effort to better serve our customers we have a company philosophy to stay ahead of the local trends. This is evident by the fact that we are one of the first companies in the Valley to offer our customers Job Order Contracting, even before it became a mainstream delivery method. We continually seek to improve ourselves through educational seminars on the latest industry trends. Michael Lee, our President, and Tony Cohill, our Vice President of Construction completed a Job Order Contracting Certification course. This comprehensive 16-week course was offered through a partnership of Arizona State University and the Alliance for Construction Excellence. The course concluded with a certification exam, allowing Skyline to be one of the first Certified Job Order Contracting Companies in the state.

Skyline Builders & Restoration, Inc. understands as a customer, every job you have is important regardless of size. That is why we strive to provide detailed proposals within 48 hours, whenever possible. On smaller jobs, we are able to provide pricing and mobilize in this same time frame. With our established team, we will be able to react quickly to complete the project in the window of time available to us.



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As any company does, Skyline Builders & Restoration, Inc. sets goals on a daily, weekly, monthly, and yearly basis. Like many businesses, some of these goals must revolve around costs, operating within budget, and profitability. The way we truly set goals and measure success is by customer satisfaction. At Skyline, we truly believe our customers are our #1 priority and the only reason we are in business. We feel confident that if you are happy with the services we provide, the costs, budgets, and profits will take care of themselves.

5. Administration – Contractor Performance:

- Please describe your firm's process for creating JOC proposals, invoicing and other related correspondence and communication that shows compliance with the JOC Manual.
- Please demonstrate how your firm cooperates and collaborates with the Owner and other Team Members to the benefit of the project.
- Please describe your firm's method to resolve disputes.
- Please describe how your firm handles personnel requirements as it varies in volume, both in-house and for subcontractors.
- Please demonstrate that your firm accepts full responsibility for the scope and extent of the Contract.
- Please also demonstrate ability to work with Architect and/or Engineer to avoid conflicts and coordinate the work.

Skyline Builders & Restoration, Inc. is an expert in providing detailed scopes of work for a JOC because Skyline held the previous State General Job Order Contract # ADSP011-013768 for its full 5-year term. We successfully completed 428 projects on that contract, averaging approximately 85 projects annually with each project requiring a detailed JOC proposal, invoice and other correspondence to comply with the JOC Manual.

Our process for creating JOC proposals, invoicing and other related correspondence and communication that shows compliance with the JOC Manual is as follows:

The project comes to the office by the Owner or through the Gordian Group. If the project is brought to Skyline by the Owner, the project will be entered into the Gordian proposal interface, ezIQC by Skyline or the Gordian Group. Through a combined partnership, with the Owner, Skyline and the Gordian Group, a job walk is scheduled. After the job site walk is complete, a detailed scope of work and if needed, any incidental designs are created by Skyline Builders & Restoration, Inc. Next the detailed scope of work is given to the Owner for approval. Once approval is received by Skyline, we will provide a written cost estimate within the agreed upon time frame to the Owner. In addition to giving the cost estimate to the Owner, one will also be provided to the Gordian Group for review. Upon review, the final estimate is presented to the Owner. Once the Owner receives the detailed scope of work from Skyline, they will have the ability to make comments, ask questions or make revisions to the scope of work. After the Owner is satisfied with the detailed scope of work, the Owner provides a purchase order to Skyline Builders & Restoration, Inc. Once Skyline receives the Owner generated purchase order, the project will enter the preconstruction phase. Skyline will build the project, following the approved detailed scope of work; ensuring safety and quality, while maintaining communication with the Owner regarding the agreed upon schedule. At the conclusion of the project, Skyline will pre-punch the project to permit our expert eyes to catch any deficiencies prior to our final walk through with the Owner. After the pre-punch walk, Skyline will schedule a final project walk through with the Owner. When the Owner is completely satisfied, the project will enter the close out phase. Skyline will submit final documents, supply close out documents and "as-built" drawings to the Owner. The final step in this process is invoicing the Owner, per the contract requirements. With Skyline's invoice, we also include a performance review survey for the Owner to complete. This performance review survey allows the Owner to provide feedback to Skyline so we can continue to improve our process ensuring complete customer satisfaction.

In order to perform on the current contract successfully, Skyline appreciates the need for a thorough understanding of the importance of customer timelines and how to execute the work on a Job Order Contract. Because of our understanding, we ensure we meet the demands and requirements needed to perform work on the current State



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contract. Furthermore, we recognize the importance of delivering a developed, updated and detailed project schedules to the contract user for every project performed on this contract. Our estimators Tony Cohill, Scott Jagger, and Michael Lee are proficient in using unit price books and at creating detailed proposals.

Skyline Builders & Restoration, Inc. takes a very proactive approach to dispute resolution. We strive to maintain clear communications with the Owner from the first day we look at the project until the final punch list item is completed. We feel that with clear communication we can resolve problems before they occur. In the unlikely event that an Owner becomes dissatisfied with any member of the Skyline Team or with Skyline as a whole, the Owner can rest assured that they can contact our President who has the authority to act on behalf of the company to solve any and all customer disputes.

Skyline Builders & Restoration, Inc. has been working in the valley performing contracting work since 1981 and JOC work since 1991. This experience gives us a good working knowledge of the local market, trade subcontractors, and suppliers. We work with these people every day. As a customer of Skyline Builders & Restoration, Inc., you will benefit from all our years of experience. Our experience allows us to offer our customers the best value in the state, because we know who to go to in order to best meet the needs of our customers. On Statewide Job Order Contract, subcontractor relationships are vitally important. We understand that we will be called upon by Owners throughout the State of Arizona. Skyline Builders & Restoration, Inc. has held some form of the State Contract with the State of Arizona since 1991. We are proud to say that we have completed projects in every county in the State of Arizona. In the last 31 years, we have amassed relationships with local subcontractors in every county in the State. These contractors have proven time and time again not only that they can complete quality projects on time and under budget, but they understand the Job Order Contracting delivery method. By selecting Skyline Builders & Restoration, Inc., it will ensure all of your members gain access to the relationships we have spent 31 years developing.

Skyline maintains an average labor force of 15-20 qualified tradesmen throughout the year. Our affiliations with local trade associates allow us to radically increase that number as high as 100 tradesmen in less than two weeks if the need arises. In addition to tradesmen and the management team listed below, we also employ:

- Five Superintendents and three Project Managers in the Construction Division.
- Three Superintendents and one Project Manager in the Paint Division.
- A full-time Quality Control Coordinator that monitors the day-to-day quality of all Projects.
- A full-time Safety Coordinator that works with our management to ensure that safety is a priority on all jobs.

We continually train our employees throughout the year. Each and every one of our field employees has a DPS fingerprint clearance card, as well as a minimum of OSHA 10 training. Our field employees have also been trained in: lift operation, respirator training, lead awareness, fall prevention, confined space entry, and general first aid and CPR.

Skyline currently employs an office staff of highly trained individuals who will work hard to ensure that all administrative requirements such as; schedules, submittals, RFIs, closeout documents, and billing is submitted on time and accurate. We empower our staff to work in the best interest of our customers, always keeping their interests in mind. Karyn Abbott is our Office Controller and is capable of handling any and all questions in terms of the administrative aspects of our company.

We are "Professionals at your service" and understand that Owners are looking for professionals to handle their projects, this is why Skyline accepts full responsibility for the scope and extent of the contract. We are a full service, self-performing General Contractor specializing in Job Order Contracting. Our in-house team is made up of highly qualified individuals dedicated to providing quality workmanship, superior service, and complete customer satisfaction.



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Skyline Builders & Restoration, Inc. has collaborated with a variety of Architects and Engineers throughout the State of Arizona. We pride ourselves on having long standing relationships with several firms and take a team approach to avoid conflicts and coordinate the work. Skyline will constantly work towards the best interest of the Owner throughout the project.

6. Based on your firm's understanding of Job Order Contracting, discuss how your firm will approach job order work and changes in job order work, whether initiated by the Owner or by your firm, differently from or similarly to other types of projects such as invitation to bid, tenant improvements or construction manager at risk.

Skyline Builders & Restoration, Inc. does not request supplemental task orders unless there is an Owner generated change in scope. In this case, the scope change would be written up using the same agreed upon pricing coefficient as the original scope of work on the contract. Skyline held the State's previous General Job Order Contract # ADSP011-013768 and has extensive experience developing, pricing, scheduling and performing the supplemental scopes of work.

7. Provide your approach in offering design, engineering, maintenance and/or operations services. Describe those services and indicate if in-house staff or subcontractors have provided them.

Skyline Builders & Restoration, Inc. recognizes throughout the course of this contract the necessity for design, engineering, maintenance and operations services will arise. Therefore, Skyline offers incidental and conceptual drawings at no additional cost to the Owner. For the past several years, Skyline has provided these services to our customers throughout the State of Arizona.

If the Owner requires more extensive or engineered drawings, Skyline Builders & Restoration, Inc. has long, established relationships with some of the top Architectural and Engineering firms throughout the State of Arizona. These relationships permit Skyline to offer design and engineering services to all seven regions identified in this contract. The cost of these services can be added into the price proposal as a "pass-through" line item to the Owner. This method allows a cost savings to the Owner, with the additional benefit of members from both design and construction firms, working collectively from the beginning of the project.

Skyline Builders & Restoration, Inc.'s in-house team, as well as members of our established subcontractor team can work with Owners to offer all aspects of maintenance and operations services. These services include but are not limited to: budget estimating, the development of deferred maintenance plan, options analysis, life cycle analysis, and value engineering.

8. Discuss your firm's method for training owners on standard and specialty equipment.

During the closeout process of projects on this contract, Skyline Builders & Restoration, Inc. will coordinate a meeting with the providers of the standard and specialty equipment and the Owners, at a time most convenient for the Owner. During the training, an appropriate amount of time will be spent providing training on the standard and specialty equipment. In our 41 years of experience, we have often found that, even with the best training, questions typically arise after an Owner starts to utilize the equipment. This is why we will follow up with the Owner after 48 hours, to ensure there are no further questions. We will also provide contact information should any further questions arise.



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Section G. Submitters shall answer the following questions.

G. SUBCONTRACTOR SELECTION PLAN

(Submitters shall submit a proposed subcontractor selection plan that selects subcontractors based on qualifications alone or on a combination of qualifications and price and does not select subcontractors based on price alone.)

1. Provide your subcontractor selection plan including the qualification-based selection criteria your firm plans on implementing for this contract. (Note: Subcontractor selection plans may be based on qualifications alone or on a combination of qualifications and price, but shall not be based upon price alone).

Skyline Builders & Restoration, Inc. is continually seeking to work with the best subcontractors in the State of Arizona. We work hard to develop relationships with them so that they understand our expectation as well as the expectation of our customers. We do not think of our subcontractors as an outside entity but rather as a member of the Skyline Builders & Restoration team.

As part of the Skyline team, we look for and retain firms that share our core values: quality workmanship, superior service, and complete customer satisfaction. We believe that quality of work and complete customer satisfaction are far greater measures of a firm than price. We do, however, realize that this is a competitive industry, and as such, price must be a factor as well. Skyline completely cost estimates all major projects, confirming all estimates with the bids received from our valued team of subcontractors.

At Skyline, we have never required our subcontractors to supply payment and performance bonds. We do, however, require all subcontractors to supply lien releases for both labor and material. All subcontract firms are required to:

1. Be licensed by the State of Arizona.
2. Carry a minimum of \$2,000,000 liability insurance.
3. Name Skyline Builders and Restoration, Inc. as an additional insured.
4. Carry the \$500,000 worth of worker's compensation insurance.

Furthermore, Skyline requires all of our subcontractors to be in business under their current name for a minimum of three years. Additionally, we further check to ensure that they have had no claims made against their licenses or any legal disputes that would pose a potential problem to our customers. We feel that part of our responsibility as the General Contractor is to ensure that each and every subcontractor that works on the project adheres to the same standards with which we operate our own business. We strive to ensure that we maintain relationships with at least three qualified contractors for each trade.

We previously held the General Job Order Contract # ADSP011-013769 for five years. We managed the state-wide contract by dividing our subcontractors into regions and qualifying their ability to serve multiple regions before issuing them a job. Building these subcontractor relationships across all regions of Arizona allows us to perform anywhere in the state at the same level across the board. In short, Skyline has demonstrated since our beginning in 1981 that we have the skills necessary to succeed on this contract. We have been proud to work for the State of Arizona since 1991. We have worked hard to develop relationships with valued State employees throughout the State of Arizona and look forward to an opportunity to develop new relationships in the future.

2. Describe your firm's current data base of subcontractors- include documents pertaining to the overall management plan, how it is kept up to date for criteria such as performance, safety,



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quality and other factors like customer service. The documents should include evidence of the plan's purpose, scope, general requirements, procedures to pre-qualify subcontractors, evaluations for safety, and final rating for acceptance into your firm's database of subcontractors.

With over 41 years in Arizona, Skyline Builders & Restoration, Inc. has established a long list of qualified subcontractors. Our database is continually updated with new subcontractors. We regularly review our subcontractor's performance, safety record and quality control procedures with unplanned site visits from our Quality Control Coordinator, requesting of. Skyline Builders & Restoration, Inc. requires that all subcontractors be prequalified annually to be eligible to bid and contract work with our company.

Skyline request the following from each subcontractor prior to prequalifying: a signed W9, a sample insurance certificate with Skyline listed as additionally insured, OSHA forms 300A and 300 (with omitted employees names) for the past three years, the subcontractor's EMR verification for the past three years (Or comparable form or letter from their workers compensation provider), a reference letter from their bonding company stating the single and aggregate project limits (if applicable) and a third-party prepared financial statement for the most recent fiscal year end. Financial statements are required to be prequalified for projects greater than \$50,000. Once a subcontractor submits all the required documents, Skyline's Owners review them for final approval.

Skyline Builders & Restoration, Inc. looks for and retain firms that share our core values: quality workmanship, superior service, and complete customer satisfaction.

3. Describe your firm's process for recruiting and accepting new subcontractors, particularly in the local communities where work will be performed. Include documents such as a new subcontractor information or pre-qualification form.

Skyline looks for and retain firms that share our core values: quality workmanship, superior service, and complete customer satisfaction.

Since Skyline Builders & Restoration, Inc. was previously awarded the State General Job Order Contract # ADSP011-013768 in all 7 regions of Arizona, we were offered the unique opportunity to access and facilitate working relationships with subcontractors across the entire state of Arizona.

Skyline's prequalification form requests information such as, company name, physical address, phone number, fax number, number of years in business under current name, number of projects completed last year, size of largest project completed last year, number of employees in your company, number of projects currently in progress and the subcontractors scope of work.

Furthermore, we regularly partner with Owners to utilize their preferred subcontractors, whenever possible.

4. Describe your firm's process for addressing issues with subcontractor's such as lack of manpower, falling behind in the schedule, lack of planning, and/or financial problems. Please use specific examples not general statements.

Skyline Builders & Restoration, Inc. recognizes that trying to forecast unforeseen circumstances is imperative. Before each project, our Project Manager, Superintendent and Foreman meet with the subcontractor assigned to the project and review any possible issues including, but not limited to



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lack of manpower or financial difficulties. Because schedule management is critical on a Job Order Contract, each project under a Job Order Contract is important and needs to move as quickly as possible. Skyline ensures this by maintaining a culture of "time is of the essence", this means that we have an initial project "kick off" meeting prior to any work being performed and schedule daily or weekly meetings as necessary, depending on the size, scope and complexity of the project. During these meetings, we look for challenges that could disrupt the schedule, and take a proactive approach to solving the challenges before they become problems. We work with the subcontractor to find solutions to the concerns before they delay the project. Should a subcontractor be unable to avoid delaying the schedule, Skyline has a large portfolio of subcontractors across all fields we can utilize to complete the job on time with no additional cost to the Owner.

5. Describe your firm's process for educating subcontractors to the State's Job Order Contracting process and ensuring/enforcing the guidelines and rules for projects. Describe your site's communication process with their team of subcontractors to address general safety, project rules, daily check-in's, updating the schedule, document changes, questions for the Owner and/or Architect.

Working on the previous State contract for the full five-year term has provided Skyline Builders & Restoration, Inc. the ability to educate hundreds of subcontractors throughout the State of Arizona in all seven regions. We have successfully educated subcontractors to the State's Job Order Contracting process, to ensure the guidelines and rules are respected and followed for the various projects performed. Skyline's on-site Superintendents are empowered to and shall instruct on-site personnel, including subcontractors, that safe practices are to be followed and maintained throughout the job; Furthermore, all subcontracted personnel will be required to attend and participate in all daily or weekly meetings and subcontractor supervisors shall attend and participate in the monthly Supervisor/Foremen meetings to address general safety, project rules, schedule updates and any other questions that may arise throughout the duration of the project.

6. Describe your firm's ability to maintain coordinated subcontractor efforts when a project does not contractually require 100% supervision. How does your firm's up-front selection plan affect this aspect of the project?

Skyline Builders & Restoration, Inc. will provide proper supervision for every project we are awarded under this contract. If there is an instance when Skyline is awarded a project that does not contractually require 100 percent supervision, we will take the following steps: First and foremost, we will select a group from our vast subcontractor community, specifically qualified for the project. Our subcontractor selection plan ensures that all projects will be performed with qualified subcontractors that excel in working under the Job Order Contract delivery style and follow the same high standards as Skyline does. Second, Skyline will assign one of our own Superintendents to the project. They will be responsible for scheduling a pre-construction walk, quality assurance, schedule adherence, and day-to-day communication with the subcontractors, along with the project Owners. While this individual may not spend 100 percent of their time on the project, they will walk the jobsite daily and maintain constant communication with all team members on-site. As an additional touch point, our Project Safety Engineer will visit the project at least twice per week. This additional step ensures that all of the projects will be managed by Skyline personnel.

We understand that under the Job Order Contract delivery method, future work opportunities are contingent upon consistently delivering quality projects on schedule. Owners can feel confident that every project awarded to Skyline Builders & Restoration, Inc. will have the proper supervision and be manned with highly trained and highly skilled labor every time.



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ATTACHMENT A: SECTION H DISCIPLINE/REGION SELECTION

Identify where your firm will perform work if awarded a contract and for each region(s) (1 through 7, see Exhibit I Regions Map) check the appropriate box below your firm is submitting qualifications for under each region:

Region 1	<input checked="" type="checkbox"/>
Region 2	<input checked="" type="checkbox"/>
Region 3	<input checked="" type="checkbox"/>
Region 4	<input checked="" type="checkbox"/>
Region 5	<input checked="" type="checkbox"/>
Region 6	<input checked="" type="checkbox"/>
Region 7	<input checked="" type="checkbox"/>

ARIZONA DEPARTMENT OF
ADMINISTRATION

**ADOA JOB ORDER
CONTRACTING
MANUAL**

May 23, 2022

**STATEWIDE VERTICAL
JOB ORDER CONTRACTING**

OWNER

**DEPARTMENT OF ADMINISTRATION
for and on behalf of
STATE OF ARIZONA**



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SECTION 1 DEFINITIONS

- 1.1 If not specifically defined, terms, words and phrases in the Contract Documents will have their ordinary and common meanings, with undefined words, phrases and abbreviations interpreted consistent with construction and design industry standards and technical and trade meanings.
- 1.2 Each reference in a Contract Document to a section, appendix, attachment or exhibit is a reference to the respective section in appendix, attachment or exhibit attached to that Contract Document.
- A. **"Adjustment Factor"** – means the adjustment factor supplied by Contractors in the Negotiations phase of the Request for Qualifications, and as modified by amendment to be applied to the Unit Prices listed in the Construction Task Catalog®.
- B. **"Construction Start Date"** means the date specified in a Job Order for the Contractor to begin the Detailed Scope of Work.
- C. **"Contractor's Project Manager"** means the person designated as Contractor's Project Manager for the JOC program. Contractor's Project Manager is responsible for the daily oversight of the Site Manager.
- D. **"Detailed Scope of Work"** means a document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- M. **"Design Services"**. Design Services include preparation of the Drawings and Specifications for the Detailed Scope of Work. Contractor can provide Design Services in the JOC Program with prior ADOA approval.
- N. **"Estimated Annual Value"** means an estimate of the value of Job Orders that could be issued to the Contractor each year.
- O. **"JOC Program"** means Owner's job order contracting construction services program under the Contract Documents.
- P. **"Job Order"** means a written order, signed by the Owner, requiring the Contractor to complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time. Each Job Order will consist of a written Detailed Scope of Work, the Job Order Price and a purchase order from the owner to the contractor, Drawings and any other documents indicated on the Job Order Form.
- Q. **"Job Order Completion Time"** means the time frame specified in the Job Order by which the Contractor shall have started and completed the Detailed Scope of Work, including, without limitation, all deficiency, correction and incomplete items (Punch List).
- R. **"Job Order Contracting Technical Specifications"** means the standard requirement for materials, equipment, systems, and workmanship for the Work, and performance of related services. The Technical Specifications apply for all Job Orders and are hereby included by reference into all Job Orders, whether or not specifically mentioned therein. Design Professional Specifications shall supersede the Technical Specifications (Job Order Contract).
- S. **"Job Order Development Services"** means all activities of Contractor prior to the Owner issuing a Job Order for a particular project as set forth in Section 8 the Procedures to Develop all Job Orders. This will include, without limitation: (i) assisting the Owner in determining whether to complete a Project in Job Order Contracting, (ii) preparing or assisting in the preparation of a Detailed Scope of Work, (iii) and preparing or revising a Job Order Proposal. Job Order Development Services do not include performance of the Detailed Scope of Work.

- T. **“Job Order Price”** means the fixed price appearing in the Job Order that the Contractor will be paid by the Owner for the successful completion of the Detailed Scope of Work within the Job Order Completion Time.
- U. **“Job Order Price Proposal”** means a price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- V. **“Job Order Proposal”** means a set of documents including at least: (a) Job Order Price Proposal; (b) required drawings, sketches, or layouts; (c) list of anticipated Subcontractors; (d) Construction schedule; (e) technical data or information on proposed materials or equipment, and (f) other requested documents.
- W. **“Job Order Proposal Request”** means a written request to the Contractor to prepare a Job Order Proposal for the Detailed Scope of Work referenced therein.
- X. **“Joint Scope Meeting”** means a site meeting to discuss the Work before the Detailed Scope of Work is finalized.
- Y. **“Management Plan”** means the management plan submitted in the Contractor’s SOQ, with such modifications as are negotiated and agreed to by the Owner at time of contract award, unless otherwise modified in writing by mutual agreement.
- Z. **“Non Prepriced Task ”** means an item of Work required by the Detailed Scope of Work but not included in the Construction Task Catalog®.
- AA. **“Non-State Agency Project”** – means a Project completed for a non-State agency where the Contractor is required to pay both the ezIQC® License Fee and the State Administrative Fee. On the pricing document, the Adjustment Factors for Non-State Agency Projects are adjusted to compensate the Contractor for the ezIQC® License Fee and the State Administrative Fee.
- BB. **“Normal Working Hours”** will be established during the Joint Scope Meeting on Monday through Friday, except for Owner holidays.
- CC. **“Operating Manual”** means this Operating Manual (Job Order Contracting) (including, without limitation, the appendices), as modified from time to time by Amendments.
- DD. **“Option Period”** means an additional period of time beyond the Contract Term which extends the termination date of the Contract.
- EE. **“Other than Normal Working Hours”** will be established during the Joint Scope Meeting. Weekends and Holidays are included.
- FF. **“Prepriced Task”** means an item of Work included in the Construction Task Catalog® for which a unit price is given.
- GG. **“Price Proposal”** means a price proposal prepared by the Contractor that includes the Prepriced Tasks, Non Prepriced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work prepared in accordance with the Procedures to Develop all Job Orders.
- HH. **“Project”** means the collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
- II. **“Standard product warranties”** means preprinted written warranties published by individual manufacturers for particular products and are specifically endorsed by the manufacturer to the Owner.

- JJ. **"Special warranties"** means written warranties required by or incorporated in the Contract Documents or the Job Order, either to extend time limits provided by the standard warranties or to provide greater rights for the Owner's Representative.
- KK. **"Statement of Qualifications"** means all information and documents submitted by Contractor relating to Request for Qualifications including, without limitation, Contractor's formal sealed qualifications package and all other qualifications documents, that is, all documents and materials delivered by Owner to Contractor or by Contractor to Owner in connection with Owner's RFQ selection process.
- LL. **"Supplemental Job Order"** means a secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time. Supplemental Job Order shall have the same meaning as Change Order as defined in Uniform Terms and Conditions, Section 1.15, and be executed per Section 5.4, "Change Orders" and any applicable Standard Work
- MM. **"Unit Price"** means the price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Prepriced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price consists of labor, equipment, and material costs to accomplish that specific Prepriced Task.
- NN. **"Work"** means generally the construction, alteration, rehabilitation, remodeling, renewal, renovation, repair, maintenance and demolition and all labor, materials, supplies, tools, equipment, transportation, site cleanup, storage and disposal of construction or demolition debris, supervision, management, all other activities and items required to perform the Job Orders and the requirements of the Contract Documents This definition also includes "Work" as defined in the Uniform Terms and Conditions, Section 1.90.

SECTION 2 JOC Program Overview

- 2.1 The Contract Documents establish a Job Order Contracting program including regional Job Order Contracts.
- 2.2 This Contract is an indefinite quantity contract pursuant to which the Contractor may perform an ongoing series of individual projects at different locations throughout the State as identified by seven (7) separate regions. See Request for Qualifications, EXHIBIT 1, "Region Map." The Contract documents include a Construction Task Catalog® (CTC) containing construction tasks with preset unit prices. All unit prices are based on local labor, material and equipment costs and are for the direct cost of construction only. The Contract Documents also include the Technical Specifications.
- 2.3 Prior to contract award, the State and the highest-ranking Contractors on the short list will negotiate Adjustment Factors to be applied to the unit prices in any resultant contract. When preparing a Job Order Price Proposal, the Contractor shall select the appropriate Adjustment Factor for each task. Those Adjustment Factors are as follows:
 - A. Adjustment Factor for performing Work during Normal Working Hours for Owner funded projects;
 - B. Adjustment Factor for performing Work during Other Than Normal Working Hours or All Working Hours at Secure Locations for Owner funded projects;
 - C. Adjustment Factor for performing Work during Normal Working Hours for Federally funded projects;
 - D. Adjustment Factor for performing work during Other Than Normal Working Hours or All Working Hours at Secure Locations for Federally funded projects.
- 2.4 Secure Locations means those buildings and grounds (sites) that require specific security-related criteria where access to the work site or the site's daily operations negatively affects the Contractor's productivity on a daily basis. These include but are not limited to public access and operations security. These locations require the Contractor to follow stipulated requirements to perform work at the site, without exception. Examples of such sites include but are not limited to those for the State Facilities at Sky Harbor Airport (Department of Emergency and Military Affairs), Arizona Department of Corrections and Arizona Department of Juvenile Corrections. At the Joint Scope Meeting, any areas of work that are considered secure locations will be identified.
- 2.5 As projects are identified, the Contractor will attend a Joint Scope Meeting with the Owner, Design Professional, and others. The Owner will prepare a Detailed Scope of Work and issue a Job Order Proposal Request to the Contractor. The Contractor will then prepare a Job Order Proposal for the project including a Price Proposal, proposed Construction Schedule, Sketches and/or Drawings, a list of Subcontractors, and other requested documentation. If the Proposal is found to be acceptable, a Job Order may be issued.
- 2.6 A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price is determined by multiplying the preset unit prices by the appropriate quantities and by the appropriate Adjustment Factor as set forth in more detail in Section 7, Procedures to Develop all Job Orders. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. Changes, deletions and additions to the Detailed Scope of Work will be contained in Supplemental Job Orders.
- 2.7 The Work to be performed under this Contract will be building, alteration, system replacement, remodeling, renovation, maintenance and repair of real property in the State of Arizona, in accordance with "Scope of Work, Request for Qualifications Document".
- 2.8 The Work to be performed under this Contract will include tasks in a combination of trades, for example, carpentry, excavation, electrical, sheet metal, painting, demolition, concrete, masonry and welding.

- 2.9 It is anticipated that the Contractor will perform multiple Job Orders.
- 2.10 Owner will have the right to elect to perform work of the types included in the Contract Documents itself or to have other contractors perform such work. Such action by Owner will not be a breach of, or otherwise violate, the Contract Documents.
- 2.11 For each Job Order issued between \$1.00 to \$1000.00 the Contract may charge a one-time trip charge of not to exceed \$100.00.

SECTION 3 COMMON GOAL, TEAM CONCEPT

- 3.1 The common goal for the JOC Program is the completion of quality construction projects meeting Owner's needs, budget, and time schedule, at a reasonable and appropriate cost to Owner, and with a reasonable and appropriate fee for the Contractor, Subcontractors and any Design Professionals.
- 3.2 Owner, Contractor, Subcontractors and any Design Professionals commit, at all times, to cooperate, coordinate, collaborate and communicate fully with each other and with others involved in each Job Order and in the Job Order Contracting Program.
- 3.3 Owner, Contractor, Subcontractors and any Design Professionals will try to anticipate potential problems before they arise. They will communicate promptly with each other, and they will act quickly and cooperatively and in coordination to find ways to avoid potential problems. For problems that actually arise, they will attempt to solve actual problems early by identifying them as early as possible and acting on them quickly. Regardless of its nature, each potential or actual problem is a "team" or "project" problem that Owner, Contractor, Subcontractors and any Design Professionals will try to solve together cooperatively and collaboratively.
- 3.4 The JOC Program is not to be used concurrently with other procurement methods for the same project

SECTION 4 ADMINISTRATION OF JOC PROGRAM

4.1 Planning, Progress and Scheduling; Communications; Meetings; and Reports

- A. Planning, scheduling and progress monitoring are essential functions of Contractor.
- B. Contractor shall employ and supply a sufficient force of workers, material and equipment, and shall complete each Detailed Scope of Work with such diligence as to maintain a steady rate of progress, to prevent Work stoppage and to ensure completion of each Job Order within the Job Order Completion Time.
- C. All project notices, requests, instructions, modifications, approvals, and claims must be in writing, unless expressly specified otherwise in the Contract Documents.
- D. Copies of all communications from Contractor to Design Professional, or Owner Representative shall be delivered to Owner.

4.2 JOC Preconstruction Phase Meetings

- A. There will be regular oversight meetings attended by the Site Manager and the Owner Representative concerning the Job Order, each meeting will be held at a time and day designated by Owner Representative.
- B. There will be separate ad hoc meetings attended by the Site Manager when requested by the Owner Representative or the Site Manager.

4.3 Individual Project Meetings

- A. If Owner determines that a meeting on a particular Job Order is necessary and appropriate, then at a time designated by Owner, a progress meeting will be held at the Site. Contractor, together with representatives of its major Subcontractors, shall attend, as will the Owner and its representatives. Contractor shall be responsible for notifying Subcontractors of their required attendance. The purpose of this meeting will be to discuss the progress of the Detailed Scope of Work and to resolve any problems that may have developed or that are anticipated. Unless followed up in writing, verbal authorizations or acknowledgments by anyone present shall not be binding.

4.4 Meeting Minutes

- A. Owner Representative, or Contractor if designated by Owner Representative, will take and issue minutes for all meetings.

4.5 Hazardous Materials or Substances.

- A. Compliance with Environmental Law and OSHA. Contractor shall, and shall cause each Subcontractor, to comply with all Environmental Law and provisions of OSHA applicable to: (1) Contractor; (2) Subcontractors; (3) the Detailed Scope of Work under each Job Order and; (4) all of their activities in respect to any Work.
- B. General Provisions on Contractor Hazardous Waste.
 - 1. Contractor is liable for the cleanup of, and any injury resulting from, Hazardous Waste generated by Contractor.
 - 2. Contractor is liable for the cleanup of, and any injury resulting from, any unreasonable acts by Contractor or Subcontractor involving Hazardous Waste.

3. Owner is not liable for any injury to Contractor or Subcontractors caused by hazardous waste existing on Owner's property at the commencement of the Detailed Scope of Work if Owner has provided notice to Contractor of pre-existing hazardous waste.

C. General Provisions on Hazardous Substances.

1. Hazardous Substances, excluding Hazardous Waste, may be transported to and from, and stored, and used on Owner's property in such quantities as are generally recognized to be usual and customary for performance of the Detailed Scope of Work.
2. Hazardous Waste may be generated on Owner's property of such kinds and in such quantities as are generally recognized to be usual and customary in connection with performance of the Detailed Scope of Work. Hazardous Waste so generated may not be stored on Owner's property without prior approval of Owner.
3. Prior to final completion of the Detailed Scope of Work, Contractor shall remove from Owner's property, and dispose of in accordance with Environmental Law and OSHA, any Hazardous Substances brought onto Owner's property during the Detailed Scope of Work or used in connection with the Detailed Scope of Work.
4. Other than as provided in the three preceding paragraphs immediately above, Contractor shall not, and Contractor shall cause all Subcontractors to not, dispose of, generate, manufacture, process, produce, Release, treat or otherwise store, use or have in or on, or transport to or from Owner's property any Hazardous Substance, regardless of whether the Hazardous Substance is preexisting on Owner's property of otherwise.

D. Releases of Hazardous Substances

1. Upon any Release of any Hazardous Substance in connection with the Detailed Scope of Work, whether relating to a pre-existing condition on Owner's property (for example, arising from any demolition of, removal of, modification of, or addition to any structure, facility or equipment) or relating to acts or omissions of Contractor or a Subcontractor, Contractor shall take any immediate action reasonably necessary to contain the Release.
2. If the Release is not a Contractor Release, Owner will pay Contractor the reasonable costs incurred by Contractor in taking such reasonably necessary immediate action necessary to contain the Release.
3. Owner may elect to have Contractor control and carry out any containment, clean-up, removal and remediation activity as to a Release. If the Release is not a Contractor Release, Owner will pay Contractor reasonable costs and expenses of performing such activity. If the Release is a Contractor Release, Contractor shall pay all such costs and expenses. Contractor will not be obligated to begin performing the activities, and shall not begin the activities, until Contractor and Owner have agreed in writing on the tasks to be performed by Contractor and the amount to be paid to Contractor, if any, for performing the activities.
4. Alternatively, Owner shall have the right to elect to control and carry out any containment, clean-up, removal and remediation activities.
5. Regardless of who carries out the activities in the preceding two paragraphs, Contractor shall absorb, without reimbursement from Owner, all costs and expenses incurred by Contractor in connection with any Contractor Release. In addition, Contractor shall pay or reimburse Owner for all costs and expenses incurred by Owner relating to any Contractor Release, including without limitation,

costs and expenses of third parties engaged by Owner. If the amount is not paid promptly, Owner may offset the amount against any amount payable by Owner to Contractor under the Job Order or otherwise.

6. Remediation, removal, and other cleanup actions arising from any Release shall be in full compliance with Environmental Law and OSHA and shall be subject to approval by Owner. In addition, Owner may require remedial, removal or other cleanup action in excess of applicable minimum requirements of Environmental Law and OSHA (A) as reasonably necessary or appropriate in the judgment of Owner to permit human use and habitation of Owner's property and to permit use of Owner's property for its intended use, and (B) as reasonably consistent in the judgment of Owner with such habitation and uses.

E. Hazardous Waste

1. Owner will arrange for handling, storage and disposal of any Owner Hazardous Waste.
2. Contractor shall assure proper handling (including, without limitation, segregation from waste that is not Hazardous Waste) and storage of Contractor and Project Hazardous Waste in full compliance with Environmental Law and OSHA.
3. If Owner discovers that Contractor has not properly handled Contractor and Project Hazardous Waste, Owner may make arrangements for proper disposal of said Contractor or Project Hazardous Waste. Contractor shall pay all of Owner's expenses of storing, handling and disposing of Project and Contractor Hazardous Waste. Owner will deliver a statement to Contractor showing Owner's expenses, and Contractor will promptly pay such amount to Owner. If the amount is not paid promptly, Owner may offset the amount against any amount payable by Owner to Contractor under the Job Order or otherwise.

F. Environmental Notifications to Owner

1. Contractor shall notify Owner immediately upon occurrence of any of the following:
 - a. any discovery by Contractor or a Subcontractor of any Hazardous Substance in any existing structure, facility or equipment on Owner's property.
 - b. any Release of any Hazardous Substance on Owner's property in connection with the Detailed Scope of Work;
 - c. the creation or generation of any Hazardous Waste resulting from the Detailed Scope of Work (including, without limitation, Hazardous Waste arising from the removal of, demolition of, modification of, or addition to any existing structure, facility or equipment);
 - d. the need for any remediation or removal of any Hazardous Substance relating to the Detailed Scope of Work whether relating to a pre-existing condition on Owner's property or to acts or omissions of Contractor or a Subcontractor; or
 - e. any claim, demand, inquiry, investigation, litigation or other action or proceeding by any governmental authority or other person relating to any Hazardous Substance, Hazardous Waste, Environmental Law or OSHA relating to Work.
2. Except for immediate action to contain any Release of any Hazardous Substance and except for interim handling and storage of Project Hazardous Waste, Contractor shall not take any action on any of the above matters without the prior written approval of Owner, and Owner shall have the right to elect to control and

carry out any such action or matter.

4.6 Safety Data Sheet (SDS) Submittals.

- A. Contractor shall include a copy of the SDSs with the packing list or other suitable shipping document that accompanies each shipment to the job site.
- B. Prior to shipping hazardous materials (solids, liquids, cryogenic liquids, gasses) hereunder, Contractor shall provide the Owner with two (2) copies of the Safety Data Sheet (SDS) [U.S. Department of Labor "OSHA Voluntary form (Non-Mandatory Form)" or equivalent thereof] for each material, inclusive of all required information.
- C. The Contractor shall notify the Owner's Representative of any hazardous or toxic materials or any combination thereof that may produce a hazardous environment or any potentially dangerous process intended for use at the project site. The submittal will include the safety or control measures the Contractor proposes to implement. The Contractor shall not deliver any such material to the project site until so authorized by the Owner's Representative. This clause will be included in any subcontract issued for Work on this contract.
- D. Where two (2) or more hazardous materials are supplied separately or in kit form for the purpose of combining such materials to form an end compound that is the result, in whole or in part, of a chemical reaction, Contractor will provide an SDS for the end compound as well as for each component part.
- E. The Contractor shall provide an SDS for any propellant or explosive. In the case of explosive devices, the SDS may be specific for the explosive device or may be the SDS for the explosive material contained in the device.
- F. Contractor shall send one (1) copy of the SDS to the Owner's Representative prior to shipment and include one copy with the shipment.
- G. Proprietary or trade secret information about products containing a hazardous material, as defined above, will be disclosed as required by applicable statutes and government rules, regulations, and orders.
- H. Mandatory resubmission of an SDS is required with each change in formulation of the material that affects its hazardous characteristics, with each change in information regarding the material's hazardous characteristics, and with each change in information regarding handling procedures for the material.
- I. The Contractor shall include, or cause to be included, the following additional information in an attachment to the SDS:
 - 1. NFPA (National Fire Protection Association) hazard identification signal numbers and symbols;
 - 2. Proper DOT shipping name, UN number, hazard-class number, packing group number, labeling requirements, and any specialized container requirements; and
 - 3. DOT Exemptions and Department of Defense Certificate of Equivalency (COE) - Any solid or liquid chemical material, gasses, and all cryogenic liquids that require specification containers or cylinders must be so supplied, unless Seller obtains and submits applicable DOT Exemptions or Department of Defense COEs to Buyer as provided above.
- J. All primary containers of hazardous materials shall bear labels that comply with all aspects of the labeling requirements in all applicable statutes and government rules, regulations, and orders.

- K. All inside and outside shipping containers shall comply in all respects with all applicable statutes and government rules, regulations, and orders, utilizing specification containers when required.
- L. The SDS shall be furnished at the time of delivery of the material. Failure to provide the SDS with the material at time of delivery will result in rejection of the material pursuant to the provisions of this contract addressing acceptance, rejection, and/or inspection of goods.
- M. The Contractor shall submit one (1) copy of the SDS, unless a previous copy of the SDS has been submitted and is still valid. The SDS shall be sent to the following appropriate address depending on where the Job Order originated:

**Owner Representative as shown in Section IV of the Job
Order**

4.7 Indoor Air Quality Control Requirements

- A. General. The Contractor shall follow design approaches of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guidelines for Occupied Buildings under Construction, 2nd Edition, ANSI / SMACNA 008, and ASHRAE std 62.1.

The Contractor shall follow project specific strategies and requirements to ensure the best possible building environment is maintained during the construction project. The existence of construction dirt, dust, toxins and objectionable odors in the occupant's workspace is unacceptable. To avoid occupant exposure to diminished air quality during construction or renovation projects, Contractors and Subcontractors shall follow the following guidelines:

- 1. Indoor Air Quality (IAQ) Management Plan. The Contractor shall implement an indoor air quality management plan to be approved by the Owner's Representative. The purpose of the plan is to prevent residual problems with indoor air quality in the completed building and to protect workers on the site and building occupants from undue health risks during construction. The plan shall identify specific measures to address:
 - a. Control of problem substances, including: construction dust, chemical fumes, off-gassing materials, and moisture. The plan will ensure that these substances are not introduced into the building environment during, or upon completion of construction.
 - b. Pre-project planning, including:
 - 1) Hazardous product identification and substitution,
 - 2) Materials storage,
 - 3) Safe installation,
 - 4) Project sequencing,
 - 5) Monitoring, and
 - 6) Cleanup.
- 2. Scheduling. Whenever possible, the Contractor shall schedule all activities that can be reasonably anticipated to compromise indoor air quality for times in which the building is not occupied. Scheduling of activities such as the installation of sealants, caulks, paints, etc. will be sequenced such that proper venting of

objectionable odors can be accomplished to keep odor emissions as low as reasonably achievable.

3. HVAC Protection – During Construction. Contractor shall protect and enclose ductwork on site to keep all supply, return and exhaust ductwork free of dust, dirt, mold and air-borne contaminants. All open ends of installed supply, return, exhaust ductwork or return air shaft openings are to be sealed by the Contractor with plastic materials to prevent contamination, until startup or testing/operation of system. When the air distribution systems are operating during construction, Contractor shall include temporary filtration media on all return air openings and check/replace during construction as necessary to ensure that building air quality and system operation are not impacted. The central filtration system shall be monitored and clean filters will be installed by the Contractor during heavy construction.

- a. Return Air Systems. Contractor shall shut down all return air systems and openings during the heaviest periods of construction to prevent dust and odors from entering the system and settling in the ductwork, or being released throughout the building.
- b. Supply. Contractor shall keep the supply side of the HVAC system clean. When the HVAC system is off, Contractor shall cover all ducts and diffusers, and inspect and clean them as necessary. During start up, it will be common for some dirt to be discharged, however if it is a considerable amount of debris Contractor shall change the filters until the proper indoor air quality is restored.
- c. Filtration. Contractor shall replace installed filtration media with new materials at the end of construction, prior to occupancy. MERV ratings of filters used during construction will meet LEED IAQ Credit requirements.

Daily monitoring of temporary filters during heavy construction activity shall be performed by Contractor.

If any HVAC equipment will be operated during construction, Contractor shall use temporary air filters with a minimum MERV-8 rating on all return air openings and within the air handling equipment and 100% outdoor makeup air will be utilized in lieu of return air from construction spaces.

- d. Duct Work. Contractor shall comply with the following:
 - 1) All ductwork sections, fan terminal unit (FTUs) and variable air volume (VAV) boxes and equipment in storage or staged on site, shall be physically protected by wrapping in plastic and covering completely, and stored in a clear area, free from construction activities on wood blocking supports with a minimum of four (4) inches off the floor surface until installed. Absorptive insulating materials shall be weather protected from moisture damage.
 - 2) All openings to include piping, ductwork, and conduit system openings shall be closed at the end of each work day for systems under construction, or when HVAC equipment is shut off at the end of day for operational systems. Ductwork and/or insulation, which contain moisture or is wet, shall not be installed. Installed ductwork and/or insulation, which is wet, shall be removed and replaced with new. All newly installed fresh air intake louvers, openings, ductwork, etc. for indoor air handling units, perimeter louvers, exhaust openings, etc. shall be covered with plywood and plastic until ready to be operational. Ductwork, after installation, shall be kept clean.

- 3) All open ends of installed supply, return, exhaust ductwork or return air shaft openings shall be sealed by the Contractor with plastic materials to prevent contamination, until startup or testing/operation of system.
- 4) All condensate drain flows from mechanical equipment shall be constantly monitored for leaks, proper flow and blockage prevention.
- 5) For projects with special minimum or maximum indoor humidity levels as required for proper preparation or installation environment for millwork, casework, wood finishes and furnishings, etc. Contractor's project construction team shall collectively plan means and methods to achieve minimum or maximum humidity levels, and provide these plans to the Owner's Representative.
- 6) Central filtration media in equipment shall be changed on a regular basis by the Contractor in conformance with Sheet Metal & Air Conditioning Contractors' National Association (SMACNA Standards and to meet LEED Requirements.
- 7) At completion of construction and prior to occupancy, temporary filtration media in all equipment shall be removed and replaced with permanent filters with a minimum MERV-13 rating unless specified permanent filtration media is as good or a better rating, in accordance with LEED Requirements.
- 8) Specific IAQ requirements and procedures regarding prevention of airborne infection isolation, air pressure and exchange ranges, filtration and control requirements for specific healthcare and laboratory spaces shall be handled on a job-specific basis and issued by addendum to the project requirements.

4. Source Control – During Construction

- a. A concurrent approach for maintaining construction indoor air quality is source/pollution control. Whenever possible, electric powered equipment shall be utilized in lieu of fuel powered equipment to limit combustion discharge into the project site. Fuel powered equipment should not be used indoors except for in spaces designed for such use (i.e., in a warehouse where forklifts are used)
- b. The Contractor shall implement measures for exhausting all contaminants out of the building and away from air intakes. Construction processes which may create a hazardous environment, or create objectionable odors such as installation of epoxy flooring, etc. shall be properly identified during construction and signage will be posted to advise workers of potential hazards or personal protective equipment requirements. Whenever practicable, the Contractor shall utilize methods such as local recirculation of air by filtering out all odors and dust; all filters shall be properly selected for the materials they will be controlling. Determination of odor control and ventilation means shall be made by and at the expense of the installing Subcontractor.
- c. Construction areas that create a large amount of contaminants as defined by the (SMACNA) IAQ Guideline for Occupied Buildings under Construction and OSHA Guidelines, whether air borne dust, or drywall

dust shall be properly ventilated away from other construction activities to reduce the transfer of the contaminants from one work area to another work area.

- d. Temporary exhaust fans directed to the building exterior shall be provided at the expense of the installing Subcontractor.
 - e. All finish materials (i.e. carpet, ceramic tile, paints, stains, etc.) shall be covered or contained prior to installation and after installation as much as possible, along with all waste material by the installing Subcontractor.
 - f. Construction activities shall be inspected for visible moisture when installing drywall by the installing Subcontractor. Upon identification of moisture in drywall by the installing Subcontractor and with the assistance of the Owner's Representative, the source of the moisture is to be verified and eliminated and specific measures to remediate will be followed.
 - g. No materials shall be covered up which are wet or can absorb moisture. Wall vapor barriers shall be checked constantly by the installing Subcontractor for proper installation.
5. Reduce Construction Dust. Construction generated dust shall be contained to the greatest possible extent through the use of vacuum assisted drywall sanding equipment, and use of vacuums or other such equipment to clean construction dust from floors.
6. Ventilation. The Contractor shall use volatile organic compound (VOC) free or low VOC products whenever possible. All products that cannot be used as above due to architect requirements must have the product reviewed and approved by the Owner's Representative. In addition, activities that release VOCs into a facility may require, at the discretion of the Owner's Representative, temporary ventilation systems until the building returns to its pre-construction condition. These include but are not limited to: painting (even with no- or low-VOC paints), spreading of floor adhesives, and use of large amounts of caulk, sealants, and cleaning agents. Additionally, the installation of large amounts of building materials, such as carpet or vinyl-based flooring products and composite wood cabinets and shelves, may require extra ventilation.
7. VOC-Emitting Products (Carpet, Paints, Furnishings) – Supplemental Ventilation. Contractor to provide a plan to Owner. Ventilation shall continue for a minimum of 24 hours after completion, or until there are no longer any noticeable odors.
8. Wet Sanding Methods for Gypsum Board Assemblies. Exception: Dry sanding is acceptable if the following measures are taken:
- a. Full isolation of space under finishing.
 - b. Plastic protection sheeting is installed to provide air sealing during the sanding.
 - c. Closure of all air system devices and ductwork.
 - d. Sequencing of construction precludes the possibility of contamination of other spaces with gypsum dust.
 - e. Worker protection is provided. Use safety meetings, signage, and Subcontractor agreements to communicate the goals of the construction indoor air quality plan.

9. Clean Spills Immediately. If solvents, cleaners, gasoline, or other odorous or potentially toxic liquids are spilled onto the floor, Contractor shall clean up immediately. If a spill occurs on an easily replaced building material, Contractor shall replace with new material.
10. Pathway Interruption – During Construction. All project equipment and material staging areas shall be located away from critical air flow pathways. Mechanical rooms and air handling equipment areas shall not be used as storage space for construction materials and waste.
11. Housekeeping – During Construction. Contractor shall clean up construction waste, debris and rubbish during all phases of construction. All lunch papers, cups and other litter shall be placed into trash receptacles. Food and drinks, other than drinking water, shall not be allowed in the building interior. Cigarette and/or e-cigarette smoking, cigar smoking or chewing tobacco shall not be allowed in the building interior.

Before sealing up a vertical shaft or chase, the bottom area and all surfaces shall be cleaned of trash, dust, dirt and debris by shaft construction and installation Subcontractor. Loose insulation media material installation shall be controlled and monitored by the installing Subcontractor and shall prevent fiber discharge or particle release. Contractor shall provide pedi-mats or clean grave to limit foot traffic dirt from migrating into the building for each construction entry location.
12. Use of Combustion Equipment Indoors Prohibited. Engines and heaters that run on gasoline, diesel, kerosene, or other fossil fuels shall not be operated indoors unless in an approved area designed for this type of activity, approved by Owner's Representative, and only when large quantities of exhaust ventilation are provided to remove combustion pollutants such as carbon monoxide and moisture.
13. Liquid Storage Outdoors. To reduce the possibility of spills during storage, transfer, or mixing, all odorous or toxic liquids are to be stored in a previously approved location outside the building and protected against heat or freezing.
14. Indoor Air Quality – Post Construction, Prior to Occupancy.
 - a. Upon completion of the project and prior to occupancy, the Owner may contract with an independent agency to perform a complete hygienic test of indoor air quality by an industrial hygienist certified in comprehensive practice by the American Board of Industrial Hygiene.
 - b. The Action Plan for corrective measures when any unfavorable readings are encountered in any testing zone for any level above the predetermined thresholds, shall be to verify the source of the unfavorable readings with the industrial hygienist; remediate or eliminate the source; perform ventilation flush-out; perform additional testing at the expense of the contractor responsible for the installation or introduction of the source of the unfavorable readings.

4.8 Contractor's Management of the Detailed Scope of Work

- A. Contractor shall competently and thoroughly direct and superintend the Detailed Scope of Work and shall be solely responsible for all construction safety, means, methods, techniques, sequences and procedures.
- B. Contractor shall coordinate and schedule the Detailed Scope of Work, the performance of all its employees, agents, independent contractors, Subcontractors and Suppliers, and the timely procurement of all necessary labor, materials, equipment, supplies, and all else needed to complete the Detailed Scope of Work.

- C. Contractor shall at all times enforce strict discipline and good order among the workers on each Job Order and shall not employ or continue to employ on any Job Order any unfit person or any person not skilled in the Work assigned to him. Contractor shall be responsible to Owner for all acts and omissions of its employees, agents, independent contractors, Subcontractors, Suppliers, anyone whom Contractor may allow to perform, inspect or supervise any Work, and their employees, agents and independent contractors together with anyone whom Contractor may allow to come on the Site. In addition, if Contractor receives written notice from Owner to dismiss any unskilled or unfit Subcontractors, Suppliers, employees, agents or independent contractors or one who is a hindrance to proper or timely execution of the Work, Contractor shall dismiss the same and agrees to replace those dismissed without delay to the Work and at no additional cost to Owner.

4.9 Owner Representative and Design Professional

- A. Owner Representative will be as stated on the Job Order. In addition to the normal responsibilities of a project manager, the Owner Representative will have the administrative responsibilities of the outside design professional in a normal design-bid-build or construction-manager-at-risk project, even when Owner engages a Design Professional for Design Services for a Job Order. The role of the Design Professional will be as set forth in the Contract Documents.
- B. Owner Representative will oversee the Detailed Scope of Work on behalf of Owner. Owner Representative may be an employee of Owner or an independent person engaged by Owner.
- C. If the nature of the Detailed Scope of Work requires sealed construction drawings, the drawings will be sealed by the Design Professional. Installation drawings by the Contractor are the responsibility of the Contractor.
- D. If Owner provides a Design Professional for a Job Order, Design Professional shall have the right, responsibility and authority to carry out the specific obligations and activities of Design Professional in the Contract Documents and in the contract between the Design Professional and the Owner, which incorporates this Operating Manual, including any amendments thereto (collectively known as "Design Professional Contract Documents"). A copy of the Design Professional Contract Documents and any amendments will be furnished to Contractor, upon request of Contractor.
- E. Any Design Professional shall have such access to the Site as Design Professional determines to be appropriate in order to perform the Design Services and the other services of Design Professional. Owner Representative shall have access to the Site as the Owner Representative determines to be appropriate in order to perform oversight services for Owner. Owner Representative will visit the Site as determined by Owner Representative or Owner to be appropriate in order to advise Owner as to the quality and progress of construction. Contractor, Subcontractors and Owner shall cooperate with Design Professional and Owner Representative in all respects with regard to performing their functions.
- F. Owner Representative will be the initial interpreter of the requirements of the Contract Documents as they relate to a Job Order, provided that when the interpretation involves documents prepared by a Design Professional, Owner Representative will consult with Design Professional and obtain Design Professional's view before rendering the interpretation and may elect to have Design Professional render or join in the interpretation. Design Professional shall consult with the Owner Representative whenever requested by Owner Representative.
- G. Design Professional and Owner Representative shall render written interpretations of the documents prepared by Design Professional with reasonable promptness following a

written request from Owner or Contractor. These interpretations shall be consistent with the intent of the Contract Documents. Before issuing the interpretation, Owner Representative and Design Professional must discuss the matter with Site Manager.

- H. Following consultation as necessary with Owner, Owner Representative will take appropriate action on Supplemental Job Orders and may authorize Minor Changes in the Detailed Scope of Work, provided that when the Supplemental Job Order or Minor Change involves documents prepared by a Design Professional, Owner Representative shall consult with Design Professional and obtain Design Professional's view before taking action on the Supplemental Job Order or Minor Change. Design Professional shall consult with the Owner Representative. Supplemental Development will follow the same process outlined in Section 7.

- I. Owner Representative and Owner, acting jointly or independently, will have authority to reject all or any portion of the Detailed Scope of Work that does not conform to the Contract Documents and Job Order and to require special inspection or testing, but Owner Representative will take such action only after consultation with Site Manager, Owner and, if determined by Owner Representative to be appropriate, Design Professional.

If Owner observes or otherwise becomes aware of any fault or defect in the Detailed Scope of Work or non-conformity with the Contract Documents or Job Order, Owner will give prompt written notice thereof to Contractor. Failure of Owner or Owner Representative to notify Contractor shall not reduce, change, lessen or alleviate in any way, Contractor's duties and obligations under the Contract Documents or Job Order.

- J. Owner shall, throughout the performance of Detailed Scope of Work, cooperate with Contractor and perform Owner's responsibilities, obligations and services in a timely manner so as not to delay or interfere with Contractor's performance of the Detailed Scope of Work and Contractor's other obligations under the Contract Documents and Job Order.
- K. Owner Representative shall be responsible for processing Owner-supplied information and approvals or rejections in a timely manner to permit Contractor to fulfill its obligations under the Contract Documents and Job Order.
- L. Owner and Owner Representative shall review documents submitted by Contractor and shall render decisions pertaining thereto without unreasonable delay.
- M. Owner will direct other parties engaged by Owner to perform work at any Site to cooperate and coordinate their activities with Contractor so as not to interfere unreasonably with Contractor's ability to complete the Detailed Scope of Work in a timely manner and consistent with the Contract Documents.
- N. Final interpretations involving the Contract Statement of Work and terms and conditions shall be made by the Contract Procurement Officer of Record, whose interpretations shall be final.

4.10 Other Contractors and Cooperation

- A. Owner reserves the right to award other contracts related to any project, or to perform certain work itself. Owner also reserves the right to award other contracts unrelated to a Job Order but involving work in the vicinity of a Job Order Project or to perform unrelated work itself. Such other work may or may not be known to the Owner or disclosed to the Contractor prior to issuance of the Job Order.
- B. Contractor shall afford Owner and other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work and shall properly coordinate its Detailed Scope of Work with theirs in such manner as the Owner Representative may direct. Contractor shall also assure at its own cost reasonable access of other contractors to the site and their Work.

- C. Upon request of Contractor, Owner will provide Contractor with a copy of all plans, specifications, schedules and other data relating to other contracts or Work. Contractor shall thoroughly examine these documents and shall within three (3) days of date on the Job Order Proposal Request Document complete such examination and notify the Owner Representative in writing of any conflicts with the Detailed Scope of Work to be performed by Contractor. In no event shall such notice be given so late as to interfere with or delay the Detailed Scope of Work to be performed by Contractor. Failure of Contractor to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims Contractor may have as a result of the necessity to coordinate Contractor's Detailed Scope of Work with other activities.
 - D. Should Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim or cause of action against Owner for such damage and hereby waive any such claim. Contractor does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor or subcontractor. The phrase "acts or omissions" as used in this section shall include, but not be limited to, any reasonable delay by any such other contractors, whether due to negligence, gross negligence, inadvertence or any other cause.
 - E. Should Contractor cause damage to the Work or property of any other contractor or of Owner, Contractor shall upon receiving due notice promptly attempt to settle with such other contractor or Owner by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against Owner on account of any damage alleged to have been caused by Contractor, Owner shall notify Contractor who, at Owner's option, shall defend such proceedings or pay the costs of Owner defending such proceedings, and if any judgment or award against Owner arises therefrom Contractor shall pay or satisfy it or reimburse Owner for any amount paid by Owner and shall reimburse Owner for all attorney's fees and court or other costs which Owner has incurred.
- 4.11 In the event that Local Government policy requires a building permit for each Job Order Development Services and Job Order issuance process, Owner Representative shall indicate the anticipated required permits on the Job Order and the Contractor shall prepare a building permit in the Local Government prescribed form in effect from time to time and submit to Local Government for approval. This must be done prior to the Job Order being issued and prior to commencing the Detailed Scope of Work.

SECTION 5 JOB ORDER DEVELOPMENT SERVICES AND ISSUANCE OF JOB ORDERS

- 5.1 Contractor shall provide Job Order Development Services whenever requested by Owner during all hours of the day seven (7) days a week.
- 5.2 Contractor shall perform Job Order Development Services in connection with each Job Order at its own cost and expense. The Owner will not be obligated to pay Contractor for Job Order Development Services.
 - A. Owner will arrange for any Design Services required to prepare a final Detailed Scope of Work. If there are no Design Services, Owner will develop the Detailed Scope of Work and any line drawings required. Once finalized, the Owner shall issue a Job Order Proposal Request and the Detailed Scope of Work to the Contractor.
 - B. By submitting the Job Order Proposal, the Contractor agrees to perform the Detailed Scope of Work for the fixed Job Order set forth in the Price Proposal according to the proposed Construction Schedule that is within the Job Order Completion Time.
 - C. The Owner will review the Contractor's Job Order Proposal.

Contractor and Owner will work together to develop the final Job Order in accordance with the Procedures to Develop all Job Orders, with Owner having the right to make a final determination on any matters as to which Contractor and Owner do not agree.

All terms and provisions of the Contract Documents shall apply to, and are incorporated into, each Job Order issued, whether or not referenced therein.

- 5.3 Owner may issue Job Orders at any time during any term of this Contract. Except for Supplemental Job Orders required to complete a Project, no Job Orders shall be issued after the Contract has expired.
- 5.4 A Job Order is considered "issued" when:
 - A. the Job Order and corresponding Purchase Order are sent through the State's Procurement system, APP (<https://appstate.az.gov>);
 - B. the Job Order and corresponding Purchase Order are emailed to Contractor's email address listed in Contractor's APP profile and Owner does not receive a non- receipt message;
 - C. Notice to Proceed followed by a Purchase Order;
- 5.5 Contractor's approval of or consent to the Job Order is not required. If the Contractor desires to decline performance of a Job Order on the basis that Contractor believes that the Job Order is not in compliance with the Contract Documents, Contractor must deliver a written notice to Owner Representative within seven (7) days after issuance of the Job Order stating the reasons for Contractor's belief. If Contractor does not file such a written request with Owner Representative within that time frame, Contractor will be deemed to have waived any and all rights to not perform the Job Order.

SECTION 6 JOB ORDER PRICE

- 6.1 The Job Order Price shall be calculated in accordance with Section 7 Procedures to Develop all Job Orders. The Job Order Price shall be a fixed price for which the Contractor shall complete the Detailed Scope of Work within the Job Order Completion Time.
- 6.2 The Job Order Price may only be modified by a Supplemental Job Order. All Supplemental Job Orders shall be developed in accordance with the Procedures to Develop all Job Orders.

SECTION 7 PROCEDURES TO DEVELOP ALL JOB ORDERS

7.1 Job Order Contract Overview

- A. The Owner or Design Professional will provide construction administration and inspection for the Job Order projects.
- B. Final commissioning of systems will be performed by the Owner Representative and the local authority having jurisdiction.

7.2 Ordering Process

- A. As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- B. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
 - 1. the general scope of the Work;
 - 2. alternatives for performing the Work and value engineering; access to the site and protocol for admission;
 - 3. hours of operation; staging area;
 - 4. requirements for catalog cuts, technical data, samples and shop drawings; requirements for professional services, sketches, drawings, and specifications; construction duration;
 - 5. the presence of hazardous materials;
 - 6. whether or not any of the areas of work are considered to be secure locations;
 - 7. date on which Job Order Proposal is due.;
- C. Upon completion of the joint scoping process, the Owner will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the Work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Job Order Proposal Request that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Proposal and the Owner and/or Owner's Representative will evaluate the same. The Contractor does not have the right to refuse to perform any task or any Work in connection with a particular Project. In other words, if the Contractor refuses a required task, the Contractor refuses the entire Job Order.
- D. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.
- E. The Owner may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the Owner cannot agree on the quantities required, or for any other reason as determined by the Owner. In all such cases, the Owner shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

7.3 Multiple Contractor Proposal Requests (Requires prior ADOA Review)

- A. Owner may ask for proposals from multiple Contractors at Owners discretion.
 - 1. Contractors will be notified in advance and have the option to decline participation without reprisal.

2. Only to be used by agencies that are approved to opt out of Gordian Review services; agency is solely responsible for the review process of the proposals.
 3. Projects must have clear scope of work that is developed by the Agency procuring the project, enabling contractors to view and bid an identical Scope of Work.
- B. Each Contractor shall follow the same process used for requesting a proposal from one Contractor.
- C. The Contractor with the proposal providing the best value to the Owner will be selected.

7.4 **Preparation of the Price Proposal.**

- A. The Contractor will prepare Price Proposals in accordance with the following:
- B. Prepriced Tasks:
1. A Prepriced Task is a task described in, and for which a Unit Price is set forth in the Construction Task Catalog®. The Contractor will select the appropriate Prepriced Tasks, and enter the accurate quantity, and the appropriate Adjustment Factor.
 2. Contractor shall be entitled to apply the appropriate Adjustment Factor for the current contract term; however, if the Contractor's Adjustment Factors in previous contract terms were lower, Contractor may choose to apply those Adjustment Factors at the Contractor's sole discretion.
- C. Non Prepriced Tasks:
1. A Non Prepriced Task is a task that is not set forth in the Construction Task Catalog®. Non Prepriced tasks shall be separately identified and submitted in the Price Proposal. Information submitted in support of Non Prepriced Tasks shall include, but not be limited to, the following:
 2. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
 3. If the Contractor performs the Work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Prepriced Tasks for labor and equipment from the Construction Task Catalog®.
 4. If the Work is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. The Contractor shall not submit a quote or bid from any Supplier or Subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the Suppliers or Subcontractors are not acceptable or if the prices are not reasonable. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the Owner's approval. If approved, less than three quotes or bids will be allowed.
 5. The final price submitted for Non Prepriced Tasks shall be according to the following formulas using the appropriate Non Prepriced Adjustment Factor depending on for whom the work is being performed.

For Non Prepriced Tasks Performed with Contractor's Own Forces:

A = The burdened hourly rate including fringes for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

D = Overhead and Profit = (A+B+C) x Not To Exceed 10% (Markup on NPP Tasks is negotiable, however shall not exceed 10% markup)

Total for a Non Prepriced Tasks performed with Contractor's Own

Forces = (A+B+C+D) x the Appropriate Non Prepriced Adjustment Factor

For Non Prepriced Tasks Performed by Subcontractors:

If the Non Prepriced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

E = Lowest of three Subcontractor Quotes

F = Overhead and Profit = E x Not To Exceed 10% (negotiable)

Total Cost for Non Prepriced Tasks performed by Subcontractors = (E + F) x the Appropriate Non Prepriced Adjustment Factor

6. For Non Prepriced Tasks, the Contractor shall use the appropriate Non Prepriced Adjustment Factor depending on the Owner. The Non Prepriced Adjustment Factors are listed on the pricing document completed by the Contractor prior to Contract award.
 7. After a Non Pre-priced Task has been approved by the State of Arizona, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
 8. After a Non Pre-priced Task has been approved by the Owner, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
 9. The Owner's determination as to whether an item is a Prepriced Task or a Non Prepriced Task shall be final, binding and conclusive as to the Contractor.
- D. In the circumstance that three Subcontractor quotes are not possible, the Owner may accept fewer than three Subcontractor quotes with a letter of Justification.
- E. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefore. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task. For Reimbursable Tasks, the Contractor shall use a different Reimbursable Adjustment Factor depending on whether the Project is for a State agency, or a non-State agency. The Reimbursable Adjustment Factors are listed on the pricing document completed by the Contractor prior to Contract award.
- F. The Contractor shall provide engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
- G. The Contractor's Job Order Proposal shall include, at a minimum:
1. Price Proposal;
 2. Required drawings or sketches;
 3. Catalog cuts, technical data or samples;
 4. List of anticipated Subcontractors and Suppliers and anticipated price;
 5. Construction Schedule;
 6. Sample warranties or guarantees for materials, equipment or systems proposed;
 7. Other requested documentation.
- H. The Job Order Price shall be the value of the approved Price Proposal.

- I. The value of the Price Proposal shall be calculated by summing the total of the calculations for each Prepriced Tasks (Unit Price x quantity x Adjustment Factor) to be listed in the notes section plus the value of all Non Prepriced Tasks.
- 7.5 The Contractor's Proposal shall be submitted within ten (10) days of the Joint Scope Meeting. All incomplete Job Order Proposals shall be rejected. On complex Job Orders, such as Job Orders requiring engineering/architectural drawings and approvals and permits, allowance will be made with prior approval from the Owner to provide adequate time for preparation and submittal of the necessary documents.
- 7.6 In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Job Order Proposal Request or, as described below, the Contractor may be directed to begin Work immediately with the Job Order Proposal to follow. In these cases, the Job Order Proposal will be required within three (3) business days after completion of the emergency situations.
- 7.7 **Review of the Proposal and Issuance of Job Order.**
 - A. The Owner will evaluate the entire Proposal. The Owner will compare the Price Proposal with the Owner's cost estimate of the Detailed Scope of Work and determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
 - B. The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:
 - 1. Will constitute or create a hazard to the work, or to persons or property;
 - 2. Will not produce finished Work in accordance with the terms of the Contract; or
 - 3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
 - C. Owner's representatives or Gordian reserve the right to request documentation supporting the means and methods that are being selected for a task. Based on the supporting documentation, Owner's representative Gordain may approve or reject means and methods submitted by the contractor. This documentation will be in addition to the detailed scope of work and will be added to the project file/package for any future reference.
 - D. After initial Price Proposal review, if a revision is required, the contractor shall resubmit a revised Price Proposal within two (2) business days.
 - E. The Owner reserves the right to reject a Proposal or cancel a project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to Job Order Development Services.
 - F. By submitting a Job Order Proposal to the Owner, the Contractor offers to accomplish the Detailed Scope of Work in accordance with the Job Order Proposal Request within the proposed Construction Schedule for the lump sum Job Order Price. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal prior to delivering it to the Owner.
 - G. The Job Order shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All provisions of the Contract Documents shall be applicable to each Job Order. The Job Order, issued by the Owner constitutes the Owner's acceptance of the Contractor's Proposal. A signed copy of the Job Order will be provided to the Contractor.

- H. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin Work as directed notwithstanding the absence of a fully developed Job Order Proposal Request, Detailed Scope of Work, or Job Order. The Contractor shall be compensated in accordance with Section 7, Procedures to Develop all Job Orders as if the Work had been ordered under the standard procedures.

7.8 BidSafe®

- A. When the estimated Job Order Price is over \$500,000.00, the Owner may issue a Job Order Proposal Request to two or more Contractors for a Job Order. Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures.
- B. The Owner reserves the right to utilize BidSafe® on a Job Order by Job Order basis.
- C. The Owner will consider several factors when determining the applicability of BidSafe® to a Job Order including, but not limited to, the following:
1. Estimated Job Order Price;
 2. Scope Documentation, including but not limited to A/E design;
 3. Nature and complexity of the Work;
 4. Contractors' proven capabilities on similar Work;
 5. Schedule; and
 6. Other appropriate criteria as deemed in the best interest of the Owner.
- D. The Detailed Scope of Work will be developed by Owner personnel and included with the Job Order Proposal Request.
- E. The Owner may conduct one or more site visits with all contractors designated to receive the Job Order Proposal Request.
- F. All contractors that receive the Job Order Proposal Request will have the opportunity to submit requests for information. Should the Owner choose to respond to any or all of the requests for information, the responses, and any changes to the Job Order Proposal Request, will be provided in an addendum to all contractors designated to receive the Job Order Proposal Request.
- G. The Contractor will utilize the Bid Safe application in the eGordian® software to provide an Not-to-Exceed (NTE) Offer, along with any additional requested documentation, in response to the Job Order Proposal Request.
- H. The Owner will issue an Intent to Award to the Contractor submitting the NTE Offer that provides the best value to the Owner based on, but not limited to, price and any technical factors considered.
- I. The NTE Offer is valid for 90 Days from the date of opening unless stated otherwise in the Job Order.
- J. The Contractor that receives an Intent to Award will submit a Job Order Price Proposal to the Owner. Provided that any necessary Job Order Price Proposal modifications are completed in a timely and thorough manner, the Job Order may be issued to the Contractor.
- K. The Job Order Price shall be equal to the lessor of the NTE Offer and the Job Order Price Proposal amount.
- L. Where the NTE Offer is less than the Job Order Price Proposal, the difference between the NTE Offer and Job Order Price Proposal shall be deemed a discount offered by the Contractor. The discount amount shall be a percent-based discount that will be calculated by the following equation:
- M.
$$\text{Percent Discount} = (\text{Job Order Price Proposal Amount} - \text{NTE Offer}) \div \text{Job Order Price Proposal Amount}$$

- N. The discount shall be applied to subsequent Job Orders (additions or deletions) required to complete the Work, provided the Job Order contains materials, equipment and tasks that are similar in nature to the original Detailed Scope of Work.
- O. If the Owner exercises its right to award a Job Order utilizing BidSafe®, collaboration between Contractors is specifically prohibited. Contractor collaboration undermines competition, and evidence of such will be considered a material breach of this Contract and grounds for termination for cause.

7.9 General

- A. Before any Work is initiated, Contractor shall confer with Owner and agree on a sequence of procedure; means of access to premises and buildings; approaches; use of corridors, stairways elevators, and similar means of movement; and the location of partitions, eating spaces, and restrooms for Contractor's employees and the like.
- B. Contractor shall commence the Work on the Construction Start Date. Final Completion shall be achieved not later than the Final Completion Date set forth in the Job Order.
- C. Contractor shall be prepared to perform Work during all hours of the day seven (7) days a week. Contractor shall perform Work during such hours and days as are necessary to complete the Detailed Scope of Work within the Job Order Completion Time.

7.10 Existing Furniture and Portable Office Equipment

- A. Furniture and portable office equipment in the immediate area of the Work shall be moved by Contractor, unless other arrangements have been made, and replaced to their original position upon completion of the Detailed Scope of Work. If the location or nature of the Work will not allow furniture and portable office equipment to be replaced to its original position, new locations will be designated by Owner for placement by Contractor.

7.11 Materials, Equipment and Personnel

- A. Refer to Uniform Terms and Conditions

7.12 Method of Performing Work, Non-Interference with Owner Activities, Traffic Control and Job Site Management

- A. Refer to Uniform Terms and Conditions

7.13 Utility and Other Services

- A. Refer to Uniform Terms and Conditions

7.14 Site Neatness and Cleanup

- A. Refer to Uniform Terms and Conditions

7.15 Matters Relating to Subcontractors

- A. Refer to Uniform Terms and Conditions

7.16 Miscellaneous

- A. Contractor, Subcontractors and Suppliers shall be responsible for taking all appropriate field measurements prior to fabrication and installation of any item. Such measurements shall be taken sufficiently in advance so as to avoid any delay or potential delay. Failure to adhere to

this provision shall render such delays the responsibility of Contractor.

7.17 Drawings and Specifications

A. Refer to Uniform Terms and Conditions

7.18 Submittals and Shop Drawings

A. Refer to Uniform Terms and Conditions

7.19 Product Data and Product Samples

A. Refer to Uniform Terms and Conditions

7.20 Tests, Inspections, Observations and Approvals Do Not Relieve Contractor of Responsibility

A. Refer to Uniform Terms and Conditions

7.21 Contractor Provides Manufacturer's Warranties and Manuals

A. Refer to Uniform Terms and Conditions

SECTION 8 SUBCONTRACTORS AND SUPPLIERS

8.1 Subcontractor Generally

- A. In addition to this Section 9 “Subcontractors and Suppliers”, there are many provisions relating to Subcontractors throughout the Contract Documents. The Owner has the right to reject any Subcontractor.

8.2 Contractor Self-Performance of Work

- A. Contractor may self-perform Work.

8.3 Contractor Subcontractor Selection Plan

- A. Contractor shall select Subcontractors for each Job Order on a qualifications only basis or on a qualifications and price basis. Subcontractors shall not be selected on a price only basis. The Contractor shall select Subcontractors in accordance with the subcontractor selection plan proposed by the Contractor in submitting its qualifications with those modifications as the Owner and the Contractor agreed to in writing.
- B. For NPP items, Contractor shall use the Subcontractor submitted as back-up. Replacing the selected Subcontractor must be approved by Owner.
- C. Although there is no contractual commitment, Owner encourages Contractor to have Work performed by small businesses.

8.4 Contractor Responsibilities Relating to Subcontractors

- A. Contractor agrees to pay each Subcontractor and Supplier the full amount due to the Subcontractor or Supplier within seven (7) business days after Contractor receives payment from Owner.
- B. Contractor is fully responsible for its Subcontractors' Work and acts and omissions in connection with the performance of its Subcontractors' Work.
- C. Contractor is responsible for coordinating and properly supervising the activities of all Subcontractors.

8.5 Subcontractor Relationship with Owner; Assignment of Subcontracts

- A. Nothing in the Contract Documents is intended or shall be construed or deemed to create any legal or contractual relationship between Owner and a Subcontractor. In addition, nothing in the Contract Documents is intended or shall be construed or deemed to create any third-party beneficiary rights.

SECTION 9 INSPECTIONS

9.1 General

- A. Design Professional and Owner shall at all times have access to the Detailed Scope of Work, including, without limitation, materials being fabricated or stored off site. Contractor shall furnish at Contractor's cost any facilities necessary for sufficient and safe access to the Site.
- B. All Work and all materials are subject to inspection by Owner and Owner Representative to determine if they conform to the Contract Documents and Job Order.
- C. Contractor shall notify Owner and Design Professional by email at least seventy-two (72) hours prior to the time at which Owner, Design Professional, or Owner Representative must be present to perform an inspection. Failure to provide such notice will place Contractor at risk for all consequences of non-inspection and having to uncover Work.
- D. Nonconforming Work or materials may be rejected and Contractor shall correct such rejected Work without additional compensation, even if the Work or materials have been previously inspected or accepted by Owner and Owner Representative or even if Owner or Owner Representative failed to observe the unsuitable Work or materials.
- E. Regardless of any notification by Contractor to Owner and Owner Representative that Work is ready for inspection, any Work which is covered prior to inspection by Owner Representative and Owner without prior consent of Owner Representative or Owner must be uncovered and recovered by Contractor, if requested by Owner Representative or Owner, at Contractor's sole cost and expense and at no cost to Owner.
- F. If any portion of the Detailed Scope of Work has been covered after inspection by Owner Representative and Owner or with the consent of Owner Representative and Owner without inspection, Owner may request that it be uncovered for observation. If such portion is found to be in accordance with the requirements of the Contract Documents and the Job Order, the cost of uncovering and recovering it shall be charged to Owner. If such portion is found not to be in accordance with the requirements of the Contract Documents and the Job Order, Contractor shall pay such costs as well as the costs of correcting the non-conforming Work.
- G. Inspections, tests, measurements, or other acts of Owner, Design Professional, and/or Owner Representative are for the sole purpose of assisting Owner, Design Professional, and Owner Representative in determining that the Work, materials, rate of progress, and quantities comply with the Contract Documents, Job Order and/or Contractor's requests for payment. These acts or functions and issuance of the Final Inspection Certificate as provided below shall not relieve Contractor from performing the Work in full compliance with the requirements of the Contract Documents nor relieve Contractor from any of the quality, compliance and responsibility for the Work assigned to it by the Contract Documents. No inspection or issuance of a Final Inspection Certificate or other action by Owner, Design Professional, or Owner Representative shall constitute or imply acceptance or waiver of rights.

9.2 Design Professional Role in Inspections

- A. Design Professional, may inspect any Work on behalf of Owner and have the right to reject any Work on behalf of the Owner. Contractor shall rely on any inspection by Design Professional. Owner Representative may request Design Professional, engaged by Owner, to assist Owner Representative in inspection of Work.

9.3 Final Inspection

- A. The Punch List will be developed if it is determined at the inspection for Final Completion that there are deficiencies, corrections or incomplete items.
- B. When Contractor submits in writing to Owner a request for a final inspection of the Detailed Scope of Work, Owner Representative, State Inspector, and Owner shall determine the validity of the request. Owner Representative and Owner may request Design Professional to participate in the determination.
- C. Following the final inspection,
 - 1. If the Detailed Scope of Work is complete in accordance with the requirements of the Contract Documents and the Job Order, Owner Representative will issue a Final Inspection Certificate stating that to the best of the Owner Representative's knowledge, information and belief, and on the basis of the Owner Representative's observations and inspections, the Detailed Scope of Work(including, without limitation, all deficiency, incomplete and correction items (Punch List)) has been completed in accordance with the terms and conditions of the Contract Documents and the Job Order.
 - 2. If as a result of the inspection it is determined by Owner or Owner Representative that there are any deficiencies, corrections or incomplete items, Owner Representative will not issue the Final Inspection Certificate but instead will give Contractor a Punch List of such items.
 - 3. Contractor shall correct each of the items on the Punch List. Punch List items will be completed within two (2) weeks of issuance of the Punch List. Contractor may then request another final inspection.
 - 4. A Final Inspection Certificate will not be issued and final payment will not be made until all items on the Punch List and the Detailed Scope of Work are complete in accordance with the Contract Documents.
- D. In the event Contractor does not complete the Detailed Scope of Work (including, without limitation, all Punch List items) within the Job Order Completion Time, Owner shall have the right to have these items corrected or completed by Owner or others, in which event Contractor shall pay or reimburse Owner for all costs and expenses incurred by Owner, including, without limitation, all architectural, engineering and inspection costs and expenses incurred by Design Professional, Owner Representative and Owner. Alternatively, Owner may deduct the amount owed by Contractor from any amount due Contractor under the Job Order or otherwise.

SECTION 10 ADJUSTMENT OF THE ADJUSTMENT FACTORS

- A. The State may consider a request for increase in the Adjustment Factors on each anniversary of the award date to account for changes in construction costs, provided, the Contractor requests in writing, no less than thirty days prior to the anniversary of the award date, that the Adjustment Factors be updated. Such requests shall be delivered to the State and to Gordian. In the event the Contractor fails to deliver the request timely, then the State shall determine the date on which the Adjustment Factors will be updated, if approved, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the State.
- B. Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
- C. The Contractor cannot delay submission of the Job Order Proposal past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- D. The Adjustment Factors for Reimbursable Tasks will remain constant for the duration of the Contract and a not to exceed amount for Non Prepriced Tasks.

SECTION 11 TIME PERIOD TO ISSUE JOB ORDERS

All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

SECTION 12 ADMINISTRATIVE AND COOPERATIVE FEES

Other state agencies and purchasing cooperative members within the State of Arizona may purchase construction services from the Contractor utilizing this Contract through a cooperative purchasing arrangement as provided in Special Terms and Conditions, Paragraph 2.2, Eligible Agencies. The Contractor acknowledges that The Gordian Group, Inc. will administer this Contract for other state agencies and cooperative program members through its ezIQC® system and its subsidiary EZIQC, LLC and that the State of Arizona has no obligation to administer Work performed for other entities.

The Contractor shall inform the Gordian Group, Inc. of requests for Work by other state agencies and cooperative program members by entering new project information in the ezIQC® website at <http://www.eziqc.com>. The Contractor shall not collect information from other entities on forms or web sites other than at <http://www.eziqc.com>. The Contractor may input new project information on the ezIQC® website on behalf of an Owner.

Other state agencies or members of cooperative purchasing entities ("Entities") may purchase construction services from the Contractor utilizing this Contract. If the Contract is utilized by Entities, the Contractor agrees to pay Gordian a 5.00% license fee (ezIQC® License Fee) due and payable within five (5) days from the date the Contractor receives payment from an Entity. License Fees not paid by the specified deadline shall bear an interest rate of 1½% per month until paid. The Adjustment Factors for Other State Agency Projects and Non-State Agency Projects, as calculated on the pricing document prior to Contract award, include the ezIQC® License Fee. The application of the Other State Agency Adjustment Factors or the Non-State Agency Adjustment Factors is the Contractor's sole compensation for the ezIQC® License Fee.

If the Contract is accessed and utilized by other cooperative program members, **the Contractor agrees to promptly pay the 1% State of Arizona Department of Administration Administrative Fee (Administrative Fee) consistent with the Special Terms and Conditions, Paragraph 3.1, Administrative Fee.** The Gordian Group, Inc. will collect the Administrative Fee through its subsidiary EZIQC, LLC, and will remit it to the State of Arizona on behalf of the contractor. The application of the Adjustment Factors for Non-State Agency Projects is the Contractor's sole compensation for the Administrative Fee..

Should Gordian, or any applicable tax authority, conclude that any sales and/or use tax shall be imposed on any part of the of the transactions contemplated herein, said tax shall be collected from the Job Order Contractor, in addition to the fees set forth herein, and remitted by Gordian.

The Fee shall be due and payable within fifteen (15) Days from the date that the Contractor receives payment from a state agency or cooperative program member ordering Work by accessing the Contract. The Contractor shall have no claim or right to any portion of the Fees. Failure to pay Fees in a timely manner shall be considered a material breach of this Contract and, at the State of Arizona's sole discretion, may be deemed grounds for termination of this Contract.

The Contractor acknowledges that The Gordian Group, Inc. will administer cooperative purchases through this Contract and that the Owner has no obligation to administer purchases by Entities.

Gordian authorizes the Contractor the use of Gordian's names, logos, trademarks, and Gordian provided materials solely for the presentation and promotion of the availability and use of this Contract by Entities and potential Entities. The Contractor authorizes the Owner and Gordian the use of the Contractor's name, logos, trademarks, and Contractor provided materials in the presentation and promotion of the availability and use of this Contract by Entities and potential Entities.

The Owner and Gordian shall not be liable or responsible for any obligation, including, but not limited to, payments due under a Job Order, Purchase Order or similar purchasing document issued to the Contractor by the Entity ("Purchase Order").

The Contractor shall remit License Fees as follows:

Payments Via ACH/Wire

Financial Institution: Bank of America

Account Name:	The Gordian Group, Inc
ABA: ACH/EFT:	071923284
Account Number:	8765331742
Swift Code:	BOFAUS3N

Payments Via Check

The Gordian Group, Inc.
PO Box 74008498
Chicago, IL 60674-8498

The Contractor shall, within two (2) business days of receipt of a Purchase Order from an Entity, provide notification to the Owner and Gordian of each Purchase Order by forwarding a copy of the Purchase order via email to the Gordian Account Manager for the project.

The Contractor shall, within two (2) business days of receipt of sending a final invoice to an Entity, provide notification to the Owner and Gordian of the Construction Complete date via email to the Gordian Account Manager for the project.

The State of Arizona and The Gordian Group, Inc. may request records from the Contractor for all purchasing conducted with Owners through use of this Contract and payment of all Fees. If discrepancies exist between Owner activity and Fees paid, the State of Arizona or The Gordian Group, Inc. will provide written notification to the Contractor of discrepancies and allow the Contractor thirty (30) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of the State of Arizona and The Gordian Group, Inc., notwithstanding any other remedies available to the State of Arizona by law or contract, the State of Arizona and The Gordian Group, Inc. reserve the right to engage a third party to conduct an independent audit of the Contractor's records, and Contractor shall reimburse the appropriate party for the cost and expense related to such audits.

SECTION 13 MARKETING THE CONTRACT

The Contractor authorizes the State of Arizona and The Gordian Group, Inc. the use of the Contractor's name, trademarks, and Contractor provided materials in the presentation and promotion of the availability and use of the Contract by other entities.

Prior to the use, advertisement or promotion of information for commercial benefit concerning this Contract or anything having to do with this Contract, Contractor shall comply with Uniform Terms and Conditions, Paragraph 3.6. Additionally, the Contractor must adhere to the following when preparing marketing materials, and in the use of proprietary materials, such as trademarks, service marks, etc.:

1. All uses of the trademarks and service marks belonging to The Gordian Group, Inc. and EZIQC, LLC shall include the registered trademark symbol (®) at all times.
2. Under no circumstances may copy or branding images of the State of Arizona, The Gordian Group, Inc. or EZIQC, LLC be altered in any way without the express written approval of the State of Arizona or The Gordian Group, Inc. as applicable.
3. The state may request the Contractor attend in-state trade shows or speaking engagements in conjunction with the State of Arizona Procurement Officer administering the contract to provide information for the State Job Order Contracting Program. Contractor shall be responsible for payment of all necessary Contractor expenses for any event attendance.

SECTION 14 SOFTWARE LICENSING

The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software Applications, construction cost data, and Construction Task Catalog®, which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by the Owner. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee (License Fee) on all Job Orders issued to obtain access to the Gordian JOC Solution™. The License Fee is to be included in the Contractor's Adjustment Factors



Request for Qualifications

Solicitation No.

BPM004397

Description:

General Contractor Job Order Contracting Statewide

Arizona Department of Administration

General Services Division

1400 W. Washington St., Ste. B200

Phoenix, AZ 85007

NOTICE OF REQUEST FOR QUALIFICATIONS

Pursuant to A.R.S. § 41-2501, the Arizona Department of Administration, State Procurement Office (the State) is seeking to establish multiple contracts per region for **Statewide General Contractor Job Order Contracting** to provide job-order-contracting construction services to satisfy the needs of all State Agencies, Boards, and Commissions, as well as participating purchasing Cooperative Members (collectively the Eligible Agencies).

A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor may perform on-going services on individual projects at different locations throughout the State of Arizona. The State is divided into seven (7) geographical regions and contracts shall be awarded by region. The Contract Documents include, but are not limited to, the Solicitation, Job Order Operating Manual, Construction Task Catalog® which contains construction tasks with preset unit prices, and Technical Specifications. The Construction Task Catalog® and Technical Specifications are provided by The Gordian Group in accordance with the firm's state-contract to provide a unit price book and other services related to Job Order Contracting.

The purpose of this solicitation is to conduct a competitive process to create contracts from which the State and Eligible Agencies may acquire these services. To participate in this contract, a Cooperative Member shall have entered into a Cooperative Purchasing Agreement with the Arizona Department of Administration, State Procurement Office as required by A.R.S. § 41-2632. Membership in the State Purchasing Cooperative is available to all Arizona political subdivisions including cities, counties, school districts, and special districts. Membership is also available to all non-profit organizations, as well as State governments, the United States Federal Government, and Tribal Nations. Non-profit organizations are defined in A.R.S. § 41-2621(4) as any non-profit corporation as designated by the Internal Revenue Service under section 501C(3) through 501C(6).

DUE DATE AND TIME: Offers will be received until 3:00 p.m., Arizona time, April 29, 2022

PRE-SUBMITTAL MEETING: April 12, 2022, 9:30 a.m. Please sign in at the following link and a calendar invite will be sent to the corresponding email address.

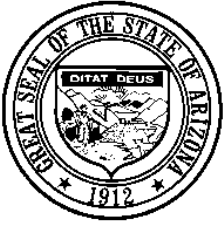
https://docs.google.com/document/d/1pl1y7wdFwmTWMEMtg3hEPVuQ9PFalt_E2XCuS99AP18/edit?usp=sharing

Anticipated Award Date: June 24, 2022

The State makes no guarantee as to actual spend under any resultant contract.

In accordance with A.R.S. § 41-2579, Statements of Qualifications for the General Contractor Job Order Contracting services specified, will be received **online** through the State's e-Procurement system, APP (www.appstate.az.gov) at the date and time posted in APP. Qualifications received by the correct time and

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date will be opened and the name of each Offeror will be publicly available. **Qualifications must be in the actual possession of the State on or prior to the time and date indicated in the Notice.**

LATE QUALIFICATIONS WILL NOT BE CONSIDERED

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Procurement Agency. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement as identified above.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

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SCOPE OF WORK

- 1.0 A Job Order Contract is an indefinite quantity contract pursuant to which the Contractor may perform on-going services on individual projects at different locations throughout the State of Arizona.
 - 1.1 The State is divided into seven (7) different regions and contracts are awarded by region.
 - 1.2 Throughout the regions, the State of Arizona is very diverse in its maintenance and construction needed, including but not limited to work in and about wells, prison facilities, hospital and lab settings, courts, office buildings and residential and commercial buildings.
 - 1.3 Facilities range from small to large and are located in and around a wide range of weather and transportation conditions all over the State.
 - 1.4 Additionally, Cooperative Program members include schools, cities and counties with their diverse range of needs will have ability to utilize these contracts.
- 2.0 The Construction Task Catalog® and Technical Specifications are provided by The Gordian Group, in accordance with the firm's contract to provide a unit price book and Job Order Contracting related services. The Gordian Group Technical Specifications are a minimum standard in the event the Owner does not provide technical specifications for the work.
 - 2.1 The unit prices in the Construction Task Catalog® are based on local labor, material, and equipment costs and include the direct cost of construction only.
- 3.0 The scope of job order services may include individual job orders for building, altering, repairing, improving or demolishing any public structure or building.
- 4.0 The highest-ranking Contractor's on the final list will provide Adjustment Factors for each separate region based on Normal and Other than Normal Working Hours, for Owner and Federally funded projects, and Secure Locations. The Adjustment Factor will be used to calculate the Job Order Price in accordance with the Operating Manual for Vertical Job Order Contracting.
- 5.0 During the course of the Contract, as projects are identified, the Contractor will attend a Joint Scope Meeting with those involved with the project including the Owner and Design Professionals. The Owner will prepare a Detailed Scope of Work and issue a Job Order Proposal Request to the Contractor. The Contractor will then prepare a Job Order Proposal for the project to include but not be limited to a price proposal, schedule, sketches or drawings, list of proposed subcontractors, and other requested documentation. If the Job Order Proposal is found to be acceptable, a Job Order may be issued.
- 6.0 A Job Order will include the Detailed Scope of Work, Job Order Price, and the Job Order Completion Time. The Job Order Price is determined by multiplying the preset Unit Prices in the Construction Task Catalog® by the appropriate quantities and by the appropriate Adjustment Factor(s). The Job Order Price will be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job

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Order will be issued for each project. Changes, deletions, or additions to the Detailed Scope of Work will be contained in Supplemental Job Orders.

- 7.0 If projects require plans and specifications, all design work shall be performed under the direction of a Design Professional appropriately licensed in the State of Arizona. All State projects requiring a Design Professional, either hired by the Owner or as requested to be provided by the Contractor is subject to Statutory Review.
- 8.0 Contractors may also be called upon to complete emergency work. In these circumstances, the work will be completed to address the emergency and the Job Order Proposal will be due within three (3) days of emergency work completion.
- 9.0 Maintenance agreements are excluded from this contract.
- 10.0 This contract is for services and shall not be used for equipment-only purchases.
- 11.0 Contractors are required to work in all areas of the Region for which the Contractor is awarded. In submitting an Adjustment Factor for a specific region, Contractor recognizes that a region may have extreme remote locations.
- 12.0 In addition to State funding and associated rules, funding for these projects may be solely or in part by Federal funds. This requires compliance with Federal rules and regulations including but not limited to wages and record keeping.
- 13.0 Firm must have an active Arizona State Contractors License sufficient in nature to undertake the size, scope and complexity of the proposed project at the time of submittal of the SOQ. If bidder is a joint venture, a joint venture agreement must have been executed at time of bid submission, and each party to the joint venture is required to have a valid Arizona State Contractors License.

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INSTRUCTIONS TO OFFERORS

1.0 ESTIMATED PROCUREMENT SCHEDULE

Issue Solicitation	April 4, 2022
Pre-Submittal Conference	April 12, 2022
Statements of Qualifications Due	April 29, 2022
Short List Interviews	May 16 - May 27, 2022
Negotiations	May 31 - June 10, 2022
Award	June 24, 2022

2.0 DEFINITION OF TERMS:

As used in these Instructions, the terms listed below are defined as follows:

1.1 Attachment

"Attachment" means any item the Solicitation requires an Offeror to submit as part of the Offer.

1.2 Best and Final Offer

"Best and Final Offer" means a revision to an Offer submitted after negotiations are completed that contains the Offeror's most favorable terms for price, service, and products to be delivered.

1.3 E-Procurement

"eProcurement (Electronic Procurement)" means conducting all or some of the procurement function over the Internet. Point, click, buy, and ship Internet technology is replacing paper-based procurement and supply management business processes. Elements of eProcurement also include Request for Qualifications, Request for Proposals, and Request for Quotations.

1.4 Offer

"Offer" means a response to a Solicitation.

1.5 Offeror

"Offeror" means a person who responds to a Solicitation.

1.6 Solicitation

"Solicitation" means a Request for Proposals ("IFB"), a Request for Technical Offers, a Request for Proposals ("RFP"), a Request for Quotations ("RFQ"), or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.

1.7 Solicitation Amendment

"Solicitation Amendment" means a change to the Solicitation issued by the Procurement Officer.

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2.0 INQUIRIES

2.1 Duty to Examine

It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its Offer for accuracy before submitting an Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time.

2.2 Solicitation Contact Person

Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Procurement Officer.

2.3 Submission of Inquiries

All inquiries related to the Solicitation are required to be submitted in the State's eProcurement system via the Discussion Forum. All responses to inquiries will be answered in the State's eProcurement system. Any inquiry related to the Solicitation should reference the appropriate solicitation page and paragraph number. Offerors are prohibited from contacting any state employee other than the Procurement Officer concerning the procurement while the solicitation and evaluation are in process.

Technical inquiries about submitting your offer in PAPP should be submitted to the APP Help Desk by phone at (602) 542-7600, option 1, or by email at app@azdoa.gov.

2.4 Timeliness

Any inquiry or exception to the Solicitation shall be submitted as soon as possible for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.

2.5 No Right to Rely on Verbal or Electronic Mail Responses

An Offeror shall not rely on verbal or electronic mail responses to inquiries. A verbal or electronic mail reply to an inquiry does not constitute a modification of the solicitation.

2.6 Solicitation Amendments

The Solicitation shall only be modified by a Solicitation Amendment.

2.7 Pre-Submittal Conference*

A non-mandatory pre-submittal conference has been scheduled under this Solicitation as described in the Notice of Request for Qualifications above. Offerors should raise any questions about the Solicitation at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a Solicitation Amendment.

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***To attend the pre-submittal conference please RSVP to dustin.deason@azdoa.gov before Monday April 11, 2022**

2.8 Persons with Disabilities

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Procurement Officer. Requests shall be made as early as possible to allow time to arrange the accommodation.

3.0 OFFER PREPARATION

3.1 Electronic Documents

The Solicitation is provided in an electronic format. Offerors are responsible for clearly identifying any and all changes or modifications to any Solicitation documents upon submission to the State's eProcurement system. Any unidentified alteration or modification to any Solicitation, attachments, exhibits, forms, charts, or illustrations contained herein shall be null and void. Offeror's electronic files shall be submitted in a format acceptable to the State. Acceptable formats include .doc and .docx (Microsoft Word), .xls and .xlsx (Microsoft Excel), .ppt and .pptx (Microsoft PowerPoint) and .pdf (Adobe Acrobat). Offerors wishing to submit files in any other format shall submit an inquiry to the Procurement Officer.

3.2 Evidence of Intent to be bound

The Offer and Acceptance form within the Solicitation shall be submitted with the Offer in the State's eProcurement system and shall include a signature by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate, and complete. Failure to submit verifiable evidence of intent to be bound, such as a signature, shall result in rejection of the Offer.

3.3 Exceptions to RFQu Documents

3.3-A Exceptions to the Terms and Conditions.

All exceptions included with the Offer shall be submitted in writing where the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.

3.3-B Exceptions Affect Evaluation

All exceptions that are contained in the Offer may negatively impact an Offeror's susceptibility for award. An Offer that takes exception to any material requirement of the solicitation may be rejected.

3.4 Cost of Offer Preparation

The State will not reimburse any Offeror the cost of responding to a Solicitation.

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3.5 Federal Excise Tax

The State is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.

3.6 Provision of Tax Identification Numbers

Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance form.

3.7 Employee Identification

Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this Contract. If the federal identifier of the Offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

3.8 Identification of Taxes in Offer

The State is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the Solicitation. When applicable, the tax rate and amount shall be identified on the price sheet.

3.9 Disclosure

If the person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall set forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

3.10 Delivery

Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

3.11 Federal Immigration and Nationality Act

By signing of the Offer, the Offeror warrants that both it and all proposed subcontractors are in compliance with federal immigration laws and regulations (FINA) relating to the immigration status of their employees. The State may, at its sole discretion require evidence of compliance during the evaluation process. Should the State request evidence of compliance, the Offeror shall have five days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the Offer not being considered for contract award.

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4.0 SUBMISSION OF OFFER

4.1 APP

Offers in response to this solicitation shall be submitted within the State's eProcurement system, APP (<https://appstate.az.gov>). Please be advised that utilizing APP requires a certain level of technical competency that should be considered when selecting staff to work in the system. The successful submission of your offer in APP is critical in order for the State to receive and evaluate your offer. Therefore, particular focus should be placed on the selection of staff given the responsibility for submitting your offer in APP. Offers shall be received before the date/time listed in the solicitation's 'Bid Opening Date' field. Offers submitted outside APP, or those that are received after the date/time stated in the 'Bid Opening Date' field, shall be rejected.

While price shall not be considered, to satisfy APP functionality, Submitters shall include a price of \$1.00 in Line Item 1.

4.2 Offer Submission, Due Date and Time

Offerors responding to a Solicitation must submit the Offer electronically through the State's eProcurement system. Offers shall be received before the due date and time stated in the solicitation. Offers submitted outside of the State's eProcurement system or those that are received after the due date and time shall be rejected.

4.3 Offer and Acceptance

Offers shall include a signed Offer and Acceptance form. The Offer and Acceptance form shall be signed with a signature by the person authorized to sign the Offer, and shall be submitted in the State's eProcurement system with the Offer no later than the Solicitation due date and time. Failure to return an Offer and Acceptance form may result in rejection of the Offer.

4.4 Solicitation Amendments

A Solicitation Amendment shall be acknowledged in the State's eProcurement system no later than the Offer due date and time. Failure to acknowledge a Solicitation Amendment may result in rejection of the Offer.

4.5 Offer Amendment or Withdrawal

An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.

4.6 Confidential Information

If an Offeror believes that any portion of an Offer, protest, or correspondence contains a trade secret or other proprietary information, the Offeror shall clearly designate the trade secret and other proprietary information, using the term "confidential." An Offeror shall provide a statement detailing the reasons why the information should not be disclosed including the specific harm or prejudice that may arise upon disclosure. The Procurement Officer shall review all requests

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for confidentiality and provide a written determination. Until a written determination is made, a Procurement Officer shall not disclose information designated as confidential except to those individuals deemed to have a legitimate State interest. In the event the Procurement Officer denies the request for confidentiality, the Offeror may appeal the determination to the State Procurement Administrator within the time specified in the written determination. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information.

4.7 Public Record

All Offers submitted and opened are public records and must be retained by the State for six years. Offers shall be open and available to public inspection through the State's eProcurement system after Contract award, except for such Offers deemed to be confidential by the State.

4.8 Non-collusion, Employment, and Services

By signing the Offer and Acceptance form or other official contract form, the Offeror certifies that:

- (1) The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and
- (1) The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with an applicable federal, state, and local laws and executive orders regarding employment.

4.9 Content of Statement of Qualifications

4.9-A Required Documents

The submitted statement of qualifications shall include the following documents. Failure to submit all documents below according to instructions may have a negative impact on the evaluated score or result in the offer being determined non-responsive and therefore not susceptible for award.

ATTACHMENT 1 – OFFER AND ACCEPTANCE FORM

ATTACHMENT 2 - BOYCOTT OF ISRAEL DISCLOSURE

ATTACHMENT A:

SECTION A & B – BONDING/ORG CHART

SECTION C – RESUMES

SECTION D – SAMPLE PROJECTS

SECTION E – KEY PERSONNEL

SECTION F – MANAGEMENT PLANS

SECTION G – SUBCONTRACTOR SELECTION

SECTION H – REGION SELECTION

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4.9-B *Pre-Printed Documents*

Any pre-printed documents required by this solicitation are located within this document and shall be completed in the format provided and according to any instructions contained within the document or elsewhere in these instructions. Offerors shall download all pre-printed documents, save the completed document to their computer, and upload completed documents as part of their submitted offer in APP. Excessive marketing attachments that are not requested in the documents listed below are discouraged.

4.9-C *Submission of Pricing*

Offeror shall not submit fees or hourly rate schedules with their statement of qualifications.

5.0 EVALUATION

5.1 Opening

Supplemental to Uniform Instructions to Offerors paragraph 4.7, offers received by the due date and time will be opened online and the name of each Offeror will be publicly available. Offers will not be subject to public inspection until after contract award.

5.2 Evaluation

5.2-A **Selection Criteria and Content for Statements of Qualifications.** The Selection Committee will evaluate the SOQs submitted in response to this RFQu. Submitters' competence and qualifications will be evaluated as demonstrated in accordance with the selection criteria as listed below. In selecting material for inclusion in the Submitter's Statement of Qualifications, Submitters should be mindful of the following:

5.2-A-(01) The Proposal should display clearly and accurately the capacity, knowledge, experience and ability of the Submitter to meet the requirements of this RFQu.

5.2-A-(02) Each Submitter shall submit only one (1) SOQ in response to this solicitation. Material submitted should not exceed thirty (30) pages in length, instruction pages not included.

5.2-A-(03) In accordance with the Arizona Procurement code A.R.S. § 41-2534, awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below.

5.2-A-(04) In addition to the evaluation criteria, exceptions to the terms and conditions, as stated in the Instructions to Offerors 3.3,

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may impact an Offeror's susceptibility for award.

5.2-A-(05) The selection criteria are listed below in their relative order of importance.

(05) (a) **Experience and Qualifications.** Attachment A-Sections C-E (Max 400 points)

(05) (b) **Method of Approach.** Attachment A-Sections F-G (Max 350 points)

(05) (c) **Capacity and Capability.** Attachment A-Sections A-B (Max 250 points)

5.2-B Interviews

5.2-B-(01) The selection committee may hold interviews. Before the interviews are held, the state shall distribute to the persons or firms on the short list the interview evaluation criteria and weighting (if different from the criteria listed in the solicitation) used to determine the persons or firms on the final list and their order of preference.

5.2-B-(02) **If conducted, Interviews will be held from May 16 – May 27, 2022, at the GSD Offices located at 1400 W. Washington Street, Phoenix, AZ 85007.**

5.3 Selection Process

5.3-A Selection Committee

A Selection Committee will evaluate and score each Statement of Qualifications (SOQ).

5.3-A-(01) The JOC Selection Committee will be composed of no more than seven (7) members and contain a representation of staff, administrators, and others, as well as a Licensed Architect/Engineer and a senior manager of a licensed Contractor.

5.3-A-(02) The Selection Committee will create one (1) List, containing not more than ten (10) Submitters. The List will show those Submitters in order of preference based on the combined results of the evaluation of SOQ's (maximum 1000 points) prior to any recommendation to award is made, only the names of the firms on the List will be available to the public – rankings will not be available at that time.

5.3-A-(03) The Procurement Officer will issue a formal (Invitation to Negotiate) to the highest ranked Submitters on the Final List. Upon successful

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negotiation of a contract, agreeable to the State and the Submitter, a contract may be executed.

5.4 Cost is Not a Consideration

Fees, price, man-hours or any other cost information shall not be requested or considered at any point in the qualifications selection process, the selection of persons or firms to be on the final list, in determining the order of preference of persons or firms on the final list.

5.5 Clarifications

The State may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of providing a greater understanding of the offer. Clarifications shall not otherwise afford the Offerors the opportunity to alter or make a material change in its offer.

5.6 Negotiations

5.6-A The Procurement Officer may proceed to negotiate an agreement for services, commemorated with an official (Invitation to Negotiate) sent to the highest ranked Submitter on the Final List. If the Procurement Officer is unable to negotiate a satisfactory agreement with a Submitter, for compensation and on other terms the Procurement Officer determines to be fair and reasonable, negotiations with that Submitter will be formally terminated. The Procurement Officer may then undertake negotiations with the next most qualified Submitter on the Final List, in sequence, until an agreement is reached or a determination is made to reject all SOQ's. Once negotiations have been terminated with a Submitter, they may not be re-opened with that Submitter for this procurement.

5.6-B Adjustment Factors

5.6-B-(01) The Construction Task Catalog® and Technical Specifications will be made available to those Offerors selected for negotiations. Invitations (date, time and place) will be distributed to the highest ranked Offerors on the final list per region for a mandatory negotiations kick-off meeting after which Offerors will be given

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deadlines for submissions of their Adjustment Factors in APP for each Region for which the Offeror may be awarded.

5.6-B-(02) Adjustment Factors shall include four (4) categories for which an Offeror may be awarded:

(02) (a) One Adjustment Factor for performing Work during Normal Working Hours for Owner funded projects;

(02) (b) One Adjustment Factor for performing Work during Other Than Normal Working Hours or All Working Hours at Secure Locations for Owner funded projects;

(02) (c) One Adjustment Factor for performing Work during Normal Working Hours for Federally funded projects;

(02) (d) One Adjustment Factor for performing work during Other Than Normal Working Hours or All Working Hours at Secure Locations for Federally funded projects.

5.6-B-(03) All Unit Prices listing in the Construction Task Catalog® are priced at the net value of 1.0000. The Adjustment Factors shall be an increase or decrease to all the Unit Prices listed in the Construction Task Catalog®. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices.

5.6-B-(04) Within each category, the Other than Normal Working Hours Adjustment Factor must be equal to or greater than the Normal Working Hours Adjustment Factor.

5.6-B-(05) Secure Locations are defined as buildings and grounds (sites) that require specific security-related criteria where access to the work site or the site's daily operations negatively affects the Contractor's productivity on a daily basis. These include but are not limited to public access and operations security. These locations require the Contractor to follow stipulated requirements to perform work at the site, without exception. Examples of such sites include but are not limited to those for the Arizona Department of Corrections and Arizona Department of Juvenile Corrections. At the Joint Scope Meeting, any areas of work that are considered Secure Locations will be identified.

5.6-C If the state is unable to negotiate a satisfactory contract with the highest qualified person or firm on the final list, the negotiations will be terminated. Negotiations may be undertaken with the next most qualified person or firm on the final list in

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sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list.

5.7 Responsibility, Responsiveness, and Susceptibility

The State shall consider, at a minimum, the following criteria when determining Offeror's responsibility, as well, as the statement of qualification's responsiveness and susceptibility for contract award.

- (1) Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
- (2) Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;
- (3) Whether the Offeror is legally qualified to contract with the State and the Offeror's financial, business, personnel, or other resources, including subcontractors; This includes if the vendor or key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- (4) Whether the Offeror promptly supplied all requested information concerning its responsibility;
- (5) Whether the Offer was sufficient to permit evaluation by the State, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Scope of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- (6) Whether the Offer was in conformance with the requirements contained in the Scope of Work, Terms and Conditions, and Instructions for the Solicitation including its Amendments and all documents incorporated by reference;
- (7) Whether the Offer limits the rights of the State;
- (8) Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the State necessary for successful Contract performance. The State shall be the sole determiner as to the reasonableness of a condition;
- (9) Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Scope of Work, Terms and Conditions, or Instructions; and,

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(10) Whether the Offeror provides misleading or inaccurate information.

5.8 Financial Stability

The Offeror must be financially stable and able to substantiate the financial stability of its company.

The State reserves the right to request additional documentation from the Offeror and to request reports on financial stability from independent financial rating services. If requested, current financial statements or other financial information deemed appropriate, must be provided within five (5) business days of request. The State reserves the right to reject any offer which does not demonstrate financial stability sufficient for the scope of this contract award.

5.9 Late Offers

An Offer submitted after the exact Offer due date and time shall be rejected.

5.10 Disqualifications

An Offeror (including each of its principals) who is currently debarred, suspended, or otherwise lawfully prohibited from any public procurement activity shall have its Offer rejected.

6.0

AWARD

6.1 Best Advantage to State

The state intends to enter into negotiations with the highest qualified person or firm on the final list.

6.2 Contract Document Consolidation

At its sole option, following any contract award(s) the State may consolidate the resulting contract documents. Examples of such consolidation would include (i) reorganizing solicitation documents and those components of the Contractor's Offer not pertaining to the Contract's operation; or (ii) excluding any components of the Contractor's Offer that were not awarded. Contract document consolidation shall not materially change the Contract.

6.3 Notice to Proceed

Contractors shall commence with the performance of the Contract upon receipt of a notice to proceed issued by the Procurement Officer or other authorized representatives as set forth in the Contract. Prior to receiving this notice, Contractors shall not commence any billable activities in the performance of the Contract.

6.4 Evidence of Insurance Coverage

Prior to commencing services under any awarded Contract, successful Contractor(s) shall provide and maintain during the entire term of an awarded Contract, a certificate of insurance indicating the coverage stated in the Special Terms and Conditions of this solicitation.

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6.5 Contract Inception

An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.

6.6 Effective Date

The effective date of the Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

7.0 PROTESTS

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and rules adopted thereunder. Protests shall be in writing and be filed with both the Chief Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of the Solicitation shall be received by the agency Chief Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the Procurement Officer makes the procurement file available for public inspection. A protest shall include:

- (1) The name, address, email address and telephone number of the interested party;
- (2) The signature of the interested party or its representative;
- (3) Identification of the purchasing agency and the Solicitation or Contract number;
- (4) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- (5) The form of relief requested.

End of Instructions to Offerors

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SPECIAL TERMS AND CONDITIONS

The Special Terms and Conditions modify the Uniform Terms and Conditions and its Appendices. It can modify them by replacing, deleting, appending to, or revising the text of an existing provision or by inserting a new paragraph into an existing article. No other document modifies or adds to the Uniform Terms and Conditions, except as may subsequently be otherwise and expressly agreed and incorporated by Contract Amendment.

1.0 Definition of Terms

As used in the Contract, the terms listed below are defined as follows:

1.1 Co-Op Buyer

“Co-Op Buyer” means a member of the State Purchasing Cooperative that has entered into a “Cooperative Purchasing Agreement” with the Arizona Department of Administration State Procurement Office under A.R.S. § 41-2632. Unless there is an applicable Cooperative Purchasing Agreement in effect at the time, a State Purchasing Cooperative member cannot be a Co-Op Buyer. For reference, “Co-Op Buyer” is to be construed as encompassing “eligible procurement unit” under A.A.C. R2-7-101(23).

NOTE: Membership in the State Purchasing Cooperative is open to all Arizona political subdivisions, including cities, counties, school districts, and special districts. Membership is also available to non-profit organizations, other state governments, the federal government and tribal nations. For reference, “non-profit organizations” are defined in A.R.S. § 41-2631(4) as any nonprofit corporation as designated by the IRS under section 501(c)(3) through 501(c)(6) of the tax code.

1.2 Eligible Agency

The Contract is a “statewide” contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate.

2.0 Contract Interpretation

2.2 Contract Order of Precedence

CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, Contractor shall i) provide the better quality or greater quantity of Work or ii) comply with the more stringent requirements. If the foregoing requirements do not resolve the issue of inconsistency, conflict, or ambiguity, then the following contract documents and their provisions are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions within the same sub-section below, the document or provision with the latest date prevails; information being identified in one document but not in another is not to be considered a conflict or inconsistency:

- Special Terms and Conditions and any accompanying Exhibits;
- Federal Terms and Conditions (If Applicable);
- Uniform Terms and Conditions;
- Change Orders, Amendments, and any other change to Contract;
- Design Requirements;

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- i) Specifications
- ii) Drawings
- f) Any Contract, Proposal, Job Order, Task Order and accompanying Attachments, Exhibits and Schedules;
- g) Accepted Offer;
- h) Solicitation Documents in this order:
 - i) Scope of Work
 - ii) Exhibits to the Scope of Work
 - iii) ADOA JOC Manual; and
 - iv) Any other Contract Documents not referenced by name

3.0 Contract Administration and Operation

3.1 Statewide Cooperative

The Contract is a “statewide” contract for multiple purchases, projects, or assignments, and can be purchased against by some or all Eligible Agencies and any Co-Op Buyers that elect to participate. Even if only one Eligible Agency needs or elects to purchase against the Contract, it is to be construed as being a “statewide” contract hereunder.

The Contract is an indefinite delivery, indefinite quantity (ID/IQ) type of contract; it is to be construed as a “delivery order” sub-type of ID/IQ contract to the extent the Work is Materials, and a “task order” sub-type to the extent the Work is Services.

- 3.1.1. Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

<https://spo.az.gov/programs/cooperative>

- 3.1.2. Contractor shall sell to Co-Op Buyers at the same price and on the same lead times and other terms and conditions under which it sells to Eligible Agencies, with the sole exception of any legitimately additional costs for extraordinary shipping or delivery requirements if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

- 3.1.3. Contractor shall pay State an administrative fee against all Contract sales to Co-Op Buyers, as provided for under A.R.S.

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§ 41-2633. The fee rate is one (1%) percent. Failure to remit the administrative fees is a material breach of contract, and will entitle the State to its remedies under Article 8 and its right to terminate for default under Article 9. Method of calculation, payment procedures, and other details are provided on the State Procurement Office website:

<https://spo.az.gov/suppliers/usage-reporting>

- 3.1.4. Contractor shall submit to State a quarterly usage report documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle the State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

<https://spo.az.gov/suppliers/usage-reporting>

- 3.1.5. Contractor shall acknowledge each Order from Eligible Agencies within 1 (one) business day after receipt by either: (a) "approving" the Order electronically in The State's e-Procurement System, which will indicate Contractor's unqualified acceptance of the Order as-issued; or (b) "rejecting" the Order electronically in The State's e-Procurement System, with a concurrent explanation by email to relevant originator as to the reason for rejecting it. Unless and until Contractor has approved the Order in The State's e-Procurement System, it will have no effect under the Contract and will not oblige either State or Contractor. If the relevant Eligible Agency explicitly instructs at the time that a verbal acceptance is sufficient because of urgency or other unusual circumstances and Contractor duly gives its verbal acceptance, then Contractor will be deemed to have accepted the Order immediately upon commencing performance, provided that, Contractor must follow-up its

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verbal acceptance by accepting the Purchase Order electronically in The State's e-Procurement System within 3 (three) business days. Contractor shall thereafter be barred from subsequently rejecting the Order in The State's e-Procurement System and if it does so the rejection will be void.

- 3.1.6. Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

4.0 Costs and Payments

4.1 Liquidated Damages

Failure of Contractor to complete the Work within the time specified in the Contract, including any and all properly authorized extensions of time, will result in damages to the Agency with regard to occupancy, operations, and the specific benefits of public services, that are hereby communicated to the Contractor and contemplated by the Contractor as nullifying the inherent benefit of Agency's contractual bargain. Accordingly, as such damage is difficult to specify and formulate, Agency and Contractor agree that Contractor shall pay to Agency per day as liquidated damages for each calendar day the Work remains incomplete beyond the date fixed for Substantial Completion.

Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Contractor's performance under the Contract for matters other than delays in Completion.

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Original Contract Amount		Calendar Day or Fixed Date:
From More Than:	To and Including:	
\$ 0	\$ 100,000	\$ 350
100,000	500,000	490
500,000	1,000,000	840
1,000,000	2,000,000	910
2,000,000	5,000,000	1,190
5,000,000	10,000,000	1,540
10,000,000	-----	2,380

5.0 Contract Changes

No modifications to uniform terms and conditions section

6.0 Risk and Liability

6.1. Indemnification:

No modifications to uniform terms and conditions section

6.2. Insurance Requirements

Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

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Phoenix, AZ 85007

Policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability and XCU (explosion/collapse/underground) coverage.

General Aggregate \$2,000,000

Products – Completed Operations Aggregate \$2,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Damage to Rented Premises \$50,000

a. The policy shall be endorsed (Blanket Endorsements are not acceptable) to include the following additional insured language: "The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor." Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

b. Policy shall contain a waiver of subrogation endorsement (Blanket Endorsements are not acceptable) in favor of the "State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed (Blanket Endorsements are not acceptable) to include the following additional insured language: "The State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor." Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

b. Policy shall contain a waiver of subrogation endorsement (Blanket Endorsements are not acceptable) in favor of the "State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Contractor.

c. Policy shall contain a severability of interest provision.

3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

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Employers' Liability

Each Accident \$1,000,000

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000

a. Policy shall contain a waiver of subrogation endorsement (Blanket Endorsements are not acceptable) in favor of the "State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees" for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. Builders Risk

Builders Risk shall be purchased in an amount equal to the initial Contract Amount plus additional coverage equal to contract amount for all subsequent change orders.

a. The State of Arizona, the Department subcontractor and any others with an insurable interest in the work shall be endorsed (Blanket Endorsements are not acceptable) in favor of "State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees" as Additional Insureds on the policy.

b. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for flood and earth movement as well as coverage for losses that may occur during equipment testing.

c. Policy shall be maintained until whichever of the following shall first occur: (1) final payment has been made; or, (2) until no person or entity, other than the State of Arizona, has an insurable interest in the property required to be covered.

d. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the State of Arizona.

e. The Builders Risk must provide coverage from the time the equipment/material becomes the responsibility of the Contractor and shall continue without interruption during the installation, including any time during which the equipment/material is being transported to the installation site, or awaiting installation, whether on or off site.

f. Policy shall contain a waiver of subrogation endorsement (Blanket Endorsements are not acceptable) in favor of the "State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees" for losses arising from work performed by the Contractor for the State of Arizona.

g. Contractor is responsible for the payment of all deductibles under the Installation Floater or Builders Risk policy.

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h. The Department shall be named as loss payee as our interest may appear.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed (Blanket Endorsements are not acceptable) to include, the following provisions:

1. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
2. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the State of Arizona. Such notice shall be sent directly to the Department and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS: Contractors insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements (Blanket Endorsements are not acceptable) are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

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F. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by the contracting agency in consultation with the Department of Administration, Risk Management Division. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

7.0 Warranties

No modifications to uniform terms and conditions section.

8.0 State's Contractual Remedies

No modifications to uniform terms and conditions section

9.0 Contract Termination

No modifications to uniform terms and conditions section

10.0 Contract Claims

No modifications to uniform terms and conditions section.

11.0 Contractor Responsibilities

No modifications to uniforms terms and conditions section.

12.0 Agency Responsibilities

No modifications to uniform terms and conditions section.

13.0 Data and Information Handling

No modifications to uniform terms and conditions section.

14.0 Information Technology Work

14.1 Systems and Controls

In consideration for State having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Contractor agrees to establish and keep in place systems and

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controls appropriate to ensure that State funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights.

14.2 Section 508 Compliance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 18-131 and § 18-132 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

14.3 Cloud Applications

The following are required for the awarded Contractor of any "cloud" solution that hosts State data outside of the State's network, or transmits and/or receives State data.

1. Submit a completed Arizona Baseline Infrastructure Security Controls assessment spreadsheet as found at: <https://aset.az.gov/resources/policies-standards-and-procedures>, and mitigate or install compensating controls for any issues of concern identified by State. Contractor is required to provide any requested documentation supporting the review of the assessment. The assessment shall be re-validated on a minimum annual basis.

State reserves the right to conduct Penetration tests or hire a third party to conduct penetration tests of the Contractor's application. Contractor will be alerted in advance and arrangements made for an agreeable time. Contractor shall respond to all serious flaws discovered by providing an acceptable timeframe to resolve the issue and/or implement a compensating control.

Contractor must submit copy of system logs from cloud system to State of AZ security team on a regular basis to be added to the State SIEM (Security Information Event Monitor) or IDS (Intrusion Detection System).

Contractor must employ a government-rated cloud compartment to better protect sensitive or regulated State data.

End of Special Terms and Conditions

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UNIFORM TERMS AND CONDITIONS

Add

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Uniform Terms and General Conditions

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Uniform Terms and General Conditions

1) DEFINITION OF TERMS

As used in the Contract, the terms listed below are defined as follows:

1.1. Acceptance	"Acceptance" means the document headed "Offer and Acceptance Form" bearing the State Contract number, once Procurement Officer has signed it to signify (a) the Agency's formal acceptance of the Accepted Offer and (b) the formation of the Contract.
1.2. Additional Work	"Additional Work" means the addition of any Work, not described as Basic Work, to be provided to the Agency by the Construction Contractor that is contemplated by, but not specifically described in, an Exhibit to this Contract. Compensation for Additional Work must be approved through a Change Order or Contract Amendment.
1.3. Agency	"Agency" is used with the same meaning as "State" in the definition below.
1.4. Agency Designated Representative	"Agency Designated Representative" means the assigned representative of the Agency to monitor the progress and Schedule of the Work for the Project.
1.5. Allowance	"Allowance" means construction funds established by the Agency to compensate for a portion of the Work which cannot sufficiently be specified or determined before such Costs are incurred. The Construction Contractor shall place any and all Allowances within separate line items in the Construction Contractor's Contract Cost at time of offer submission.
1.6. Application for Progress Payment	"Application for Progress Payment" means Contractor's monthly invoice request for payment that includes any and all portions of the Work in a Contract that have been completed and accepted by the Agency for which an invoice has not been previously submitted in accordance with the requirements of the Contract Documents. Progress Payments for Contractor Work approved and certified by the Contractor and Agency signature, shall be paid less deductions to pay the expenses the Agency reasonably expects to incur in correcting a deficiency set for in an Agency written finding in accordance with A.R.S. §41-2577, and retained percentage in accordance with A.R.S. §41-2576.
1.7. Application for Final Payment	"Application for Final Payment" means Construction Contractor's final invoice for payment. The Application for Final Payment shall meet all the requirements of Applications for Payment, but shall also include any and all remaining open invoices under the Contract. After a Construction Contractor's Application for Final Payment is approved by the Agency, the Agency shall not release any additional payments to that Construction Contractor under the Contract.
1.8. Arizona Procurement Code; A.R.S., A.A.C.	"Arizona Procurement Code" means, collectively, Arizona Revised Statutes ("A.R.S.") Title 41 Chapter 23, Section 2501, <i>et seq.</i> , and the rules promulgated thereunder, Arizona Administrative Code ("A.A.C.") R2-7-101, <i>et seq.</i> NOTE: There are frequent references to the Arizona Procurement Code throughout the Solicitation, therefore, you will need to be familiar with its provisions to be able to understand the Solicitation fully. Links for obtaining copies are given below. The Arizona Department of Administration State Procurement Office provides a reference compilation of the Arizona Procurement Code on its website: https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations The Arizona State Legislature provides the official A.R.S. online at: http://www.azleg.gov/arstitle/ The Office of the Arizona Secretary of State provides the official A.A.C. online at: http://www.azsos.gov/rules/arizona-administrative-code
1.9. Arizona TPT	"Arizona TPT" means Arizona Transaction Privilege Tax. For information, refer to the Arizona Department of Revenue (DOR) website at: https://www.azdor.gov/business/transactionprivilegetax.aspx .
1.10. As-builts	"As-builts" shall mean the marked-up version of the Drawings and Specifications Contract Documents prepared by the Construction Contractor to record As-built conditions, current changes, and selections made during construction.
1.11. Attachment	"Attachment" means any item that the Offeror is required to submit as part of the provision of services required to design or engineer or construct the Project, as detailed in Exhibit A, "Construction Contractor Agreement".
1.12. Basic Work	"Basic Work" means the services to be provided to the Agency by the Construction Contractor described in an Exhibit.



1.13. Bidding Documents	"Bidding Documents" means those documents prepared and furnished by the Design Professional for the purpose of obtaining bids from Construction Contractors to construct the Work.
1.14. Building Work	"Building Work" means everything covered by the definitions in A.R.S. § 41-2503 [Definitions] of the terms "Construction" (4), "Maintenance Services" (26), and "Operations Services" (28).
1.15. Change Order	"Change Order" means the instrument by which the Agency authorizes Construction Contractor to perform some or all of the Work, including but not limited, Construction Change Orders, Design Change Notices, and Field Order Directives. Consistent with A.R.S. § 41-2503(3), only the Procurement Officer responsible for this Contract has the authority to modify or amend this Contract through a signed Change Order or Contract Amendment. The Agency will only compensate Construction Contractor for Work that has been approved by the Agency through a fully authorized Change Order or Contract Amendment.
1.16. Change Order Request	"Change Order Request" means a document that informs Agency of a proposed change in the Work and appropriately describes or otherwise documents such change including Construction Contractor(s)'s response of pricing for the requested change.
1.17. Close Out Documents	"Close Out Documents" means those items required by Exhibit M-Contractor Project Closeout, and as may be further defined, identified, and required by the Contract Documents.
1.18. Conditional Waiver of Lien	<p>"Conditional Waiver of Lien" has the meaning defined in A.R.S §33-1008 which, for convenience of reference only, is a:</p> <p>Conditional Waiver and release on Progress Payment "where the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a progress payment and the claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release"; and</p> <p>Conditional Waiver and release on Final Payment "where the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a final payment and the claimant is not paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release".</p>
1.19. Construction	"Construction" as defined in A.R.S. § 41-2503(4) means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real property in which the public has an interest.
1.20. Construction Contract	"Construction Contract" means any contract between the State and a Person that has or will engage in Construction Services for the benefit of the State.
1.21. Construction Contractor	"Construction Contractor" is a Person that has or had a contract with the State to engage in Construction Services for the benefit of the State.
1.22. Construction Documents	"Construction Documents" means any and all documents created by the Design Professionals that describe the Work in detail, including but not limited to, plans, specifications, revisions, addenda, and Change Orders, issued to build the project. Construction Documents created after the Contract is signed may be integrated into the Contract if, and only if, there is a properly executed Contract Amendment or Change Order to verify that integration.
1.23. Contingency	"Contingency" means an amount associated with Costs that were unforeseen by the Construction Contractor when it submitted its offer which may be authorized by the Agency through a Change Order. Construction Contractor may not proceed with Work on Contingencies without prior authorization from the Agency through a Field Order Directive or Change Order. The Agency will not compensate Construction Contractor for unauthorized Contingency Work.
1.24. Contract	<p>"Contract" means, collectively, the entire agreement between Agency and Construction Contractor, including all of the Contract Documents, the Acceptance, the Solicitation Documents, the Construction Contractor Agreement, any and all authorized Change Orders, and any Contract Amendments.</p> <p>The Contract is identified as a "Purchase Order" in ProcureAZ, since that is the terminology used in the software; use of that term in ProcureAZ is not, in any way, an attempt by the Agency to change the contractual term "Order" as defined in (paragraph 44). The terms of</p>



	this Contract are defined in this document alone. The use of different terminology, or the same terminology with a different meaning, in any State eProcurement system (including, but not limited to, ProcureAZ) does not override any term in this Contract. The Construction Contractor should contact the relevant Procurement Officer if it has any questions regarding the meaning of terms in the State's eProcurement System.
1.25. Contract Amendment	"Contract Amendment" means a document signed by Procurement Officer that has been issued for the purpose of making changes to the Contract after execution without changing the general scope. Only the Procurement Officer responsible for this Contract has the authority to modify or amend this Contract. The term "Change Order" in ProcureAZ is synonymous with "Contract Amendment."
1.26. Contract Cost	"Contract Cost" means the amount for which a Construction Contractor agrees to perform the Work as set forth in its Contract with the Agency.
1.27. Contract Terms and Conditions	"Contract Terms and Conditions" means the <u>Special Terms and Conditions</u> and these Uniform Terms and Conditions taken collectively.
1.28. Contractor	For the purpose of this Contract, "Contractor" refers to any Person who has entered into a Contract with the Agency, including, but not limited to, a Design Professional or Construction Contractor.
1.29. Contractor Indemnitor	"Contractor Indemnitor" means Construction Contractor and/or any of its owners, officers, directors, agents, employees, or Subcontractors and, if applicable, their respective spouses.
1.30. Cost	<ol style="list-style-type: none"> 1) "Cost" as defined by A.R.S. § 41-2571(2), means the aggregate Cost of all Materials and services, including labor performed by force account. The Agency shall only pay for expenses explicitly authorized as part of the Work under the Contract. 2) For any changes, subject to Markup, in the Work or additional charges sought by Construction Contractor under the contract, "Cost" shall only mean actual direct labor, material, and service Costs incurred by Construction Contractor at the construction site and which are necessary to complete the Work. Such Costs shall include those from subcontractors, vendors, and material suppliers. 3) Costs, for the purpose of this section, shall exclude Markup for, including but not limited to, Costs incurred for <u>general conditions, bonds, insurance, contingency, overhead or profit.</u>
1.31. Day	"Day" means a calendar day unless otherwise specified in a particular context.
1.32. Design Change Notice	"Design Change Notice" refers to an agreement that records a change to the time for Work completion, price, and/or change in design after the initial completion of the design was reviewed and approved by the Statutory Review. The purpose of the Design Change Notice is to ensure: the changes are re-reviewed and approved by Statutory Review and the Procurement Officer; and the Contract Documents are revised in a manner that is consistent with the Design Requirements under the Contract.
1.33. Design Professional	"Design Professional" means the individual or firm with which the Agency has entered into a written Design Professional Services Contract.
1.34. Design Professional Services	"Design Professional Services" as defined in A.R.S. § 41-2571(4), means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a Design Professional or employees or Subconsultants of the Design Professional.
1.35. Design Requirements	<p>"Design Requirements" means, at a minimum, the purchasing Agency's written description of the Work by the Design Professional including: the required features, functions, characteristics, qualities and properties; the anticipated Schedules, including start, duration and completion; and estimated budgets applicable to the specific procurement for design and Construction and, if applicable, for operation and maintenance, and plans and specifications for the project.</p> <p>"Design requirements" may also include the following, at the purchasing Agency's discretion: Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to A.R.S. § 32-121; and/or additional design information or documents.</p>
1.36. Drawings	"Drawing" means the Work product of the Design Professional which graphically depicts the Work.
1.37. Estimated Project Construction Cost	"Estimated Project Construction Cost" shall mean Design Professional's written estimate in the form specified by the Agency of the total Construction Cost of the Project at the various stages of the design process.
1.38. Excusable Delay	"Excusable Delay" means a delay to the Schedule approved through a Change Order that entitles the Construction Contractor to an adjustment of the Contract time for Substantial Completion, but not an adjustment of the Contract Cost.



1.39. Exhibit	“Exhibit” means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Contract Documents.
1.40. Field Order Directive	“Field Order Directive” refers to written directives used in advance of a Construction Change Order, as more specifically prescribed in these Uniform Terms and General Conditions.
1.41. Final Completion	“Final Completion” means the date upon which the Work is complete in accordance with the terms and conditions of the Contract, including punch list items. The date of Final Completion shall be set by the Agency as a certain number of days after Substantial Completion. Any additional or supplemental Work after this date due to Construction Contractor error or omission shall be completed by the Construction Contractor without additional compensation.
1.42. Final Completion Certificate	The “Final Completion Certificate-Exhibit L” is the certificate issued by the Design Professional and/or the Agency Designated Representative that documents, to the best of the Design Professional’s and/or the Agency Designated Representative’s knowledge and understanding, that Construction Contractor has completed all Work required by the Contract Documents, including, but not limited to: all of the Punch List items and pre-final Punch List items for which it is responsible; final cleanup; and Construction Contractor’s provision of Record Documents, operations manuals, maintenance manuals, and any and all other Close Out Documents required by the Contract Documents and list on Exhibit M-Contractor Project Closeout.
1.43. General Conditions of Contractor	“General Conditions of Contractor” means the Construction Contractor’s resources, equipment, and items used by the Construction Contractor in the Work of the Project that is used to complete the Project. The General Conditions Fee will be based on actual itemized, documented Cost.
1.44. Gratuity	“Gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
1.45. Hazardous Waste Release	“Release” means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, releasing, spilling, or similar action or event. “Construction Contractor Hazardous Waste Release” means any Release of a Hazardous Substance on Agency’s property or adjoining property during the Work arising, in whole or in part, from acts or omissions of Construction Contractor or any Subcontractor.
1.46. Hazardous Substance	“Hazardous Substance” means a substance, material or hazardous waste which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating or otherwise harmful, is likely to cause death or injury.
1.47. Hazardous Waste	“Hazardous Waste” means “hazardous waste”, as defined in the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, <i>et seq.</i>) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time (including, without limitation, any such waste resulting from removal of, demolition or modifications of or additions to part or all of any existing structure, facility or equipment). “Contractor Hazardous Waste” means any Hazardous Waste arising during or from Work that is generated, in whole or in part, by the acts or omissions of Construction Contractor or a Subcontractor.
1.48. Indemnified Basic Claims	“Indemnified Basic Claims” means any and all claims, actions, liabilities, damages, losses, or expenses, including court costs, expert fees, attorneys’ fees, and costs of claim processing, investigation and litigation, for any and all damage or equitable claims made against the Agency, including, but not limited to, personal injuries, death, property damages (real, personal, tangible or intangible), and injunctive relief.
1.49. Instructions to Offerors	“Instructions to Offerors” are those instructions in the Solicitation Documents.
1.50. Materials	“Materials” means, as defined in A.R.S. § 41-2503(7) “all property, including equipment, supplies, printing, insurance, and leases of property [but] does not include land, a permanent interest in land or real property or leasing space.” Materials includes software, unless the software is sold or provided as a service under the Contract. Software sold or provided as a service under the Contract is both a Material (to the extent it consists of encoded information or computer instructions) and a service, as described in “Services”



1.51. Negotiation	"Negotiation" means, as defined in A.A.C. R2-7-101(32), an exchange or series of exchanges between the Agency and an offeror or Construction Contractor that allows the Agency or the offeror or Construction Contractor to revise an offer or Contract, unless revision is specifically prohibited by the Arizona Procurement Code.
1.52. Notice to Cure	"Notice to Cure" means a written letter from a Procurement Officer to cure an event of default and/or an anticipatory breach of Contract setting forth a time limit in which the cure is to be completed or commenced and diligently prosecuted.
1.53. Notice to Proceed	"Notice to Proceed" means the written document from the Project Manager, by letter or email, informing Design Professional and/or Construction Contractor of the date designated as the date of commencement of construction and the date of Substantial Completion.
1.54. Offer; Best and Final Offer (BAFO)	"Offer," and "Best and Final Offer" ("BAFO") are each defined in the <u>Instructions to Offerors</u> .
1.55. Payment Bond	"Payment Bond" means a bond issued by a surety authorized to transact business in this State, issued in the amount for the Contract Cost and is payable to Agency, solely for the protection and use of payment bond beneficiaries pursuant to A.R.S. § 41-2574.
1.56. Performance Bond	"Performance Bond" means a bond issued by a surety authorized to transact business in this State, issued in the amount for the Contract Cost and is payable to State, to guarantee the faithful performance of the Work by the Construction Contractor in accordance with the Contract Documents pursuant to A.R.S. § 41-2574.
1.57. Person	"Person" means any corporation, business, individual, firm, partnership, association, union, committee, club, or other organization or group of individuals.
1.58. Preconstruction Services	"Preconstruction Services" means services and other activities during the Design Phase.
1.59. Procurement Officer	"Procurement Officer" means the person, or his or her designee, who has been duly authorized by Agency to enter into and administer the Contract and to make written determinations with respect to the Contract. Procurement Officer is as identified on the Acceptance unless subsequently changed by Contract Amendment.
1.60. eProcurement System (APP)	"eProcurement System" means State's official electronic procurement system, established pursuant to A.A.C. R2-7-201, as set forth in the Arizona Department of Administration State Procurement Office policy document Technical Bulletin No. 020, APP – The Official State eProcurement System. NOTE (1): Technical Bulletin No. 020 is available online at: https://spo.az.gov/administration-policy/state-procurement-resource/procurement-regulations NOTE (2): The URL for APP itself is: https://appstate.az.gov/
1.61. Product Data	"Product Data" means illustrations, Schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Contractor to illustrate Materials or equipment for some portion of the Work.
1.62. Project	"Project" means any and all activities necessary for realization of the Work. This includes but is not limited to design, Contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
1.63. Punch List	"Punch List" means a list of items of Work to be completed or corrected by Construction Contractor after Substantial Completion. Punch Lists indicate items to be finished, remaining Work to be performed, or minor Work that does not meet quality or quantity requirements as required in the Contract Documents.
1.64. Record Documents	The term "Record Documents" shall mean those documents including, but not limited to, the updated version of the Construction Documents prepared by the Construction Contractor incorporating any Attachments, Exhibits, Change Orders, and information from the As-Built and other data furnished by Construction Contractors to the Agency.
1.65. Request for Information	"Request for Information" (RFI) means a written request by Construction Contractor directed to the Agency or Agency Designated Representative for a clarification of the information provided in the Contract Documents or direction concerning information necessary to perform the Work that may be omitted or unclear from the Contract Documents.
1.66. Reimbursable Expenses	"Reimbursable Expenses" means a limited range of Costs approved by the Agency for which the Construction Contractor can receive compensation under the Contract for amounts expended in the interest of the Project. Unless otherwise detailed in the Scope of Work or limited by other Agency policies, and subject to review and approval by the Agency,



	<p>the following, and only the following, are the categories of Costs which may be Reimbursable Expenses:</p> <p>Subject to the cost limitation of the State of Arizona Travel Policy, transportation costs accrued in furtherance of Work and under the Contract and Agency authorized out-of-town travel and subsistence;</p> <p>Fees paid to governmental entities that ensure Agency compliance with any applicable laws or codes;</p> <p>Costs paid toward reproduction, plots, standard form documents, postal charges;</p> <p>If requested and approved by the Agency, costs paid for surveys, requests and special requests.</p> <p>Construction Contractor shall not exceed the approved Reimbursable Expense amount stated in the Contract without prior written approval of the Agency through a Contract Amendment.</p>
1.67. Samples	<p>"Samples" mean representative physical examples of Materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.</p>
1.68. Schedule	<p>"Schedule" means the timetable which sets forth pertinent milestones, reviews, critical path of activities and other deadlines for timely completion of the Work for the Project prepared by Construction Contractor and accepted by Agency. The Schedule shall not exceed the time limit current under the Contract Documents unless approved by Agency through a Contract Amendment.</p>
1.69. Schedule of Values	<p>"Schedule of Values" means the detailed breakdown of the original Contract Cost for the Materials, labor, and equipment necessary to accomplish the Design and/or Construction Work.</p>
1.70. Scope of Work	<p>"Scope of Work" means the Requirements Document of the Solicitation Documents. Scope of Work is inclusive of the Project program for design Work and the Construction Documents for performance of the construction Work.</p>
1.71. Secure Locations	<p>"Secure Locations" means those buildings and grounds (Sites) that require specific security-related criteria where access to the Work Site or the Site's daily operations negatively affects the Construction Contractor's productivity on a daily basis.</p>
1.72. Services	<p>"Services" as defined in A.R.S. § 41-2503(35), means "the furnishing of labor, time, or effort by [the] [C]ontractor or [S]ubcontractor which does not involve the delivery of a specific end product other than required reports and performance [but] does not include employment agreements or collective bargaining agreements." Services includes Building Work and the service aspects of software described in Materials.</p>
1.73. Shop Drawings	<p>"Shop Drawings" mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Construction Contractor or its Subcontractors which detail a portion of the Work.</p>
1.74. Site	<p>"Site" means the geographical location of the Work for the Project.</p>
1.75. Solicitation; Solicitation Documents	<p>"Solicitation" and "Solicitation Documents" are defined in the <u>Uniform Instructions to Offerors</u>.</p>
1.76. Special Terms and Conditions	<p>"Special Terms and Conditions" are contained in the Special Terms and Conditions section of the Solicitation Documents.</p>
1.77. Specification	<p>"Specification" has the meaning given in A.R.S. § 41-2561, which, for convenience of reference only, is "... any description of the physical or functional characteristics, or of the nature of a Material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a Material, service or construction item for delivery." Specifications (if any are included in the Contract), are indexed in the <u>Scope of Work</u> and could be bound separately from the other documents forming the Contract.</p>
1.78. State	<p>With respect to the Contract generally, "State" means the State of Arizona and its department, agency, university, commission, or board that has executed the Contract. With respect to administration or rights, remedies, obligations and duties under the Contract for a given Order, "State" means each eligible Agency who has issued the Order.</p>
1.79. State Indemnitees	<p>"State Indemnitees" means, collectively, the State of Arizona, its departments, agencies, universities, commissions, and boards and, and their respective officers, agents, and employees.</p>
1.80. State Fiscal Year	<p>"State Fiscal Year" means the period beginning each July 1 and ending each June 30.</p>



1.81. Stipulated Sum (Fixed Price/Lump Sum)	"Stipulated Sum (Fixed Price/Lump Sum)" means the complete and total amount the Construction Contractor is obligated to complete the Work barring unforeseen conditions, Agency change to the Scope of Work, or other circumstances set forth in the Contract.
1.82. Subconsultant	"Subconsultant" as defined in A.R.S. § 41-2571, means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct Contract with Construction Contractor or another subconsultant to perform a portion of the Work.
1.83. Subcontract	"Subcontract" means any Contract, express or implied, between Construction Contractor and another party or between a Subcontractor and/or Subconsultant and another party delegating, in whole or in part, the making or furnishing of any Materials, the performing of any Services, or the carrying out of any other aspect of the Work.
1.84. Subcontractor	"Subcontractor" as defined in A.R.S. § 41-2503(38), is "... a person who contracts to perform Work or render service to ... [C]ontractor or to another [S]ubcontractor as a part of a Contract with a state governmental unit . . ." The Contract is to be construed as "a Contract with a state governmental unit" for purposes of the definition. Any Person carrying out an element of the Work who is neither a Construction Contractor nor a representative of the State is a Subcontractor from the moment that Person first carries out that element of the Work, regardless of whether a Contract exists between that Person and the Construction Contractor, then or subsequently.
1.85. Submittal Register	"Submittal Register" means a list provided by Construction Contractor of all items to be furnished for review and approval by Construction Contractor and/or Agency and as identified in the Contract Documents including submittal dates.
1.86. Substantial Completion	Substantial Completion" means the date determined and certified by the Design Professional's and/or Agency Designated Representative's signature, when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational, fit for the use intended, and so the Agency may occupy the Work.
1.87. Unconditional Waiver of Lien	"Unconditional Waiver of Lien" has the meaning defined in A.R.S. §33-1008. An Unconditional Waiver of Lien on Progress Payment is "where the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a Progress Payment and the claimant asserts in the waiver that it has been paid the Progress Payment". Unconditional Waiver of Lien on Final Payment is "where the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a Final Payment and the claimant asserts in the waiver that it has been paid the Final Payment".
1.88. Uniform Terms and Conditions	The "Uniform Terms and Conditions" are made up of this document and whichever of the <u>Appendices</u> are indicated in the <u>Special Terms and Conditions</u> as being applicable.
1.89. Unit Price Work	"Unit Price Work" means the Work, or a portion of the Work, paid for based on incremental units of measurement.
1.90. Work	"Work" means the totality of the Materials and the Services and all the acts of administration, creation, production, and performance necessary to fulfill and incidental to fulfilling all of Construction Contractor(s)'s obligations and duties under the Contract in conformance with the Contract and applicable laws. "Work" shall refer to any and all authorized Basic and/or Additional Work.
1.91. Work Progress Schedule	"Work Progress Schedule" means the continually updated time Schedule prepared and monitored by Construction Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Schedule.
2.0 Contract Interpretation	
2.1 Arizona Law	The Contract is governed by, and is to be interpreted in accordance with, the laws of the State of Arizona, including, but not limited to the Arizona Procurement Code, without consideration of conflict of laws principles
2.2 Contract Order of Precedence	<ol style="list-style-type: none"> 1) COMPLEMENTARY DOCUMENTS. All of the documents forming the Contract are complementary and all provisions are to be interpreted as a single, united contract. If certain Work, requirements, obligations, or duties are set out only in one but not in another, Construction Contractor shall carry out the Work as though the relevant Work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results. 2) CONFLICTS. In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, Contractor shall i) provide the better quality or greater quantity of Work or ii) comply with the more stringent requirements. If the foregoing requirements do not resolve the issue of inconsistency, conflict, or ambiguity,



	<p>then the following contract documents and their provisions are to prevail in the following order, descending from most dominate to most subordinate, provided that, among categories of documents or provisions within the same sub-section below, the document or provision with the latest date prevails; information being identified in one document but not in another is not to be considered a conflict or inconsistency:</p> <ul style="list-style-type: none">a) Special Terms and Conditions and any accompanying Exhibits;b) Federal Terms and Conditions (If Applicable);c) Uniform Terms and Conditions;d) Change Orders, Amendments, and any other change to Contract;e) Any Contract, Proposal, Job, Order, Task Order and accompanying Attachments, Exhibits and Schedules;f) Design Requirements:<ul style="list-style-type: none">i) Specificationsii) Drawings;g) Accepted Offer;h) Solicitation Documents in this order:<ul style="list-style-type: none">i) Scope of Workii) Exhibits to the Scope of Workiii) Any other Contract Documents not referenced by name
2.3 Implied Terms	Each provision of law and any terms required by law to be in the Contract are a part of the Contract as if fully stated in it.
2.4 References to Statute	The above Definitions of Terms includes statutory language for convenience. If any definition in the Contract references a statute without modification, the current statutory language, not the stated definition in the Contract, will take priority in any interpretation of the Contract.
2.5 Usage	<ul style="list-style-type: none">1) Where the Contract:<ul style="list-style-type: none">a) Assigns obligations to the Construction Contractor, any reference to "Construction Contractor" is to be construed to be a reference to "Construction Contractor" and all Subconsultants and/or Subcontractors whether or not they are first-tier, suppliers, sub-suppliers, consultants, or sub-consultants, as well as all of Construction Contractor's and the Subconsultants and/or Subcontractors respective agents, representatives, and employees" in every instance unless the context plainly requires that it is a reference only to Construction Contractor as apart from Subconsultants and/or Subcontractors;b) Uses the permissive "may" with respect to a party's actions, determinations, etc., the term is to be interpreted as in A.A.C. R2-7-101(31) [Definitions]. For clarity of intent, any right given to Agency using "State may" or a like construction, denotes discretion and freedom to act so far as any regulatory or operative constraints permit in the relevant circumstances, provided that the Agency's discretion extends to whatever is in the best interest of the Agency;c) Uses the imperative "shall" with respect to a party's actions, duties, etc., the term is to be interpreted as in A.A.C. R2-7-101(43) [Definitions]. Conversely, the phrase "shall not" is to be interpreted as an imperative prohibition;d) Uses the term "must" with respect to a requirement, criterion, etc., the term is to be interpreted as conveying compulsion or strict necessity, and is to be read as though written "must, if [the subject] is to be entitled to have [the object] considered or credited as being compliant with, conforming to, or satisfying [the requirement, criterion, constraint, etc.], otherwise, [the object] will be considered or debited as being non-compliant, non-conforming, or unsatisfactory for its Contract-related purposes" in every instance;



	<ul style="list-style-type: none">e) Uses the term “might” with respect to an event, outcome, action, etc., the term is to be interpreted as conveying contingency or non-discretionary conditionality; andf) Uses the term “will” or the phrases “is to be” or “are to be” with respect to an event, outcome, action, etc., the term or phrase is to be interpreted as conveying such certainty or imperativeness that “shall” is either unnecessary or irrelevant in that instance.
2.6 Independent Contractor	Construction Contractor is an Independent Contractor and shall act in an independent capacity in performance under the Contract. Neither party is, or is to be construed to be, the employee or agent of the other party, and no action, inaction, event, or circumstance will be grounds for deeming it to be so.
2.7 Severability	The provisions of this Contract are severable to the extent allowed under Arizona contract law. Any term or condition deemed or adjudged illegal or invalid is thereby stricken from the Contract and will not affect any other term or condition of the Contract.
2.8 Complete Integration	The Contract, including any documents incorporated into the Contract by reference and any authorized Contract Amendments and Change Orders, is intended by the parties to be a final and complete expression of their agreement. There are no prior, contemporaneous, or additional agreements, either oral or in writing, pertaining to the Contract. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing can independently bind the Agency to changes to the Contract. The Agency may avoid any unauthorized modifications to the Contract.
2.9 No Waiver of Rights	Either party's failure to insist on strict performance of any term or condition of the Contract is not, and is not to be construed as being, nor will it be deemed, a waiver of that term or condition or a bar to, or diminishment of the right of, subsequent enforcement of any term or condition.
3.0 Contract Administration and Operation	
3.1. Term of Contract	The term of the Contract will commence on the date indicated on the Acceptance and continue for the period specified in the <u>Special Terms and General Conditions</u> unless canceled, terminated, or permissibly extended. If the <u>Special Terms and General Conditions</u> do not specify a period, then the Contract will remain in force for that period required for Final Completion of the Work for the Project, including required extensions thereto, unless discontinued by any of the several provisions contained elsewhere in the Contract, but no longer than 5 years total. Agency has no obligation to extend or renew the Contract past the initial term.
3.2. Contract Extensions	Agency may at its discretion extend the initial Contract term in increments of one or more months and do so one or more times, provided that, the maximum aggregate term of the Contract including extensions cannot exceed the period specified in the <u>Special Terms and Conditions</u> . If the <u>Special Terms and Conditions</u> do not specify a period, then a reasonable period of time, but no more than an aggregate of 5 (five) years. Nothing herein shall negate Construction Contractor's obligation to continuously perform the Work with adequate manpower and due diligence.
3.3. Notices and Correspondence	<ul style="list-style-type: none">1) TO CONSTRUCTION CONTRACTOR. Unless stated otherwise in the <u>Special Terms and General Conditions</u>, Agency shall:<ul style="list-style-type: none">a) Address all Contract correspondence other than formal notices to the email address indicated as “Default for Type” for “General Mailing Address” in Contractor's corresponding APP Vendor Profile; andb) Address any required notices to Contractor to the “Contact Name and Title” at the “Mailing Address” indicated in the Construction Documents.2) TO AGENCY. Unless stated otherwise in the Special Terms and General Conditions, Contractor shall:<ul style="list-style-type: none">a) Address all Contract correspondence and formal notices to the Agency Procurement Officer indicated in Exhibit A “Agreement.”b) CHANGES. Agency may change the designated Procurement Officer, update contact information, or change the applicable mailing address.3) Notice is deemed served when emailed or mailed.



3.4. Contractor Performance Evaluation	The Agency may evaluate the Construction Contractor's performance during the progress of the Work, at completion of a phase of Work for the Project, completion of the Work, or any of the foregoing. The Agency shall retain the evaluation(s) in the procurement file. The Agency will use the evaluation(s) in determining the responsibility of the Construction Contractor for any award of a future contract for the next five (5) years. If the Construction Contractor or any of the Construction Contractor's Subconsultants and/or Subcontractors commit a breach of the contract for the project, the Agency will use the responsibility analysis for future projects for five (5) years after the date of breach of the Construction Contractor's Subconsultants and/or Subcontractors (where applicable) for future contract awards with the Agency or Subcontracts on Agency Projects. Construction Contractor may comment or take exception to any rating in accordance with the State's protest policies.
3.5. Signing of Contract Amendments	<ol style="list-style-type: none">1) Construction Contractor's counter-signature – or "approval" in APP, in the case of a Change Order – is not required to give effect if the Contract Amendment only covers either:<ol style="list-style-type: none">a) Extension of the term of the Contract within the maximum aggregate term;b) Revision to Procurement Officer appointment or contact information; orc) Modifications of a clerical nature that have no effect on terms, conditions, price, scope, or other Material aspect of the Contract.2) In every case other than those listed in a), b), and c) above, the signatures of all required parties – or "approval" in APP, in the case of a Change Order – is necessary to give it effect.3) If the initial scope of the Project is changed materially by the Agency, the Construction Contractors compensation will be equitably adjusted through negotiation upon execution of a Contract Amendment.
3.6. Click-Through Terms and Conditions	Unless expressly stated otherwise in the <u>Special Terms and Conditions</u> , if either party uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the Contract (each an "Electronic Ordering System"), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Construction Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of Agency do not have any actual or apparent authority to create legally binding obligations that vary from the terms and conditions of the Contract. Accordingly, where an authorized Agency user is required to "click through" or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering Systems, any such terms and conditions are deemed void upon presentation. Additionally, where an authorized Agency user is required to accept or be made subject to any terms and conditions in accessing or employing any Materials or Services, those terms and conditions will also be void.
3.7. Books and Records	<ol style="list-style-type: none">1) RETAIN RECORDS. By A.R.S. § 41-2548(B), Construction Contractor shall retain and shall contractually require each Subconsultant and/or Subcontractor to retain books and records relating for any Cost and pricing data submitted in satisfaction of § 41-2543 for the period specified in the statute.2) RIGHT TO AUDIT. The retained books and records are subject to audit by Agency during that period. By A.R.S. § 35-214 and 41-2548(B), Construction Contractor shall retain and shall contractually require each Subconsultant and/or Subcontractor to retain books and records relating to performance under the Contract for the period specified in the statute and those retained books and records are subject to audit by Agency during that period.3) AUDITING. Construction Contractor or Subconsultant and/or Subcontractor shall either make all such books and records under subparagraphs 2) and 3) available to Agency at all reasonable times or produce the records at a designated Agency office on Agency's demand, the choice of which being at Agency's discretion. For the purpose of this paragraph, "reasonable times" are during normal business hours and in such a manner so as to not unreasonably interfere with normal business activities. Any Person who obstructs or impairs an audit being conducted or about to be conducted in relation to any contract or subcontract with the State may be found guilty of a class 5 felony under A.R.S. § 35-215.



3.8. Contractor Licenses and Registration	Construction Contractor shall maintain current all federal, state and local licenses, registrations and permits required for the operation of its business in general, for its operations under the Contract, and, unless expressly stated otherwise in the <u>Special Terms and Conditions</u> , for the Work itself.
3.9. Ownership of Intellectual Property	<ol style="list-style-type: none">1) PRE-EXISTING MATERIAL. All pre-existing software and other Materials developed or otherwise obtained by or for Construction Contractor or its affiliates independently of the Contract are not part of the Work instruments of service to which rights are granted state under subparagraph 3) below, and will remain the exclusive property of Construction Contractor, provided that:<ol style="list-style-type: none">a) any derivative Works of such pre-existing Material or elements thereof that are created pursuant to the Contract are part of the Work instruments set forth below;b) any elements of derivative Work of such pre-existing Material that was not created pursuant to the Contract are not part of that Work instrument; andc) except as expressly stated otherwise, nothing in the Contract is to be construed to interfere or diminish Construction Contractor's or its affiliates' ownership of such pre-existing Materials.2) JOINT DEVELOPMENTS. The parties may each use equally any ideas, concepts, know-how, or techniques developed jointly during the course of the Contract, and may do so at their respective discretion, without obligation of notice or accounting to the other party.3) DEVELOPMENTS OUTSIDE OF CONTRACT. Unless expressly stated otherwise in the <u>Special Terms and Conditions</u>, the Contract does not preclude Construction Contractor from developing competing Materials outside the Contract, irrespective of any similarity to Materials delivered or to be delivered to Agency hereunder.4) OWNERSHIP AND USE OF DOCUMENTS. The Construction Contractor agrees all Project information, including but not limited to, notes, plans, Drawings, Specifications photos, studies, computer programs, Schedules, technical reports, prototypes and AutoCAD design backgrounds, or other Work instruments produced by the Construction Contractor under this Contract necessary to complete the Work, are the property of the Agency. The Construction Contractor agrees to continue to supply the Project AutoCAD design backgrounds to the Agency for other projects outside the scope of this Contract, as requested by the Agency. The Construction Contractor shall also provide the Agency high quality copies on Agency-approved media of updated drawings and reproducible copies of specifications as specified. The cost of such copies will be reimbursed by the Agency to the Construction Contractor as a Reimbursable Expense. The Construction Contractor may not provide copies of or otherwise use the Work instruments in any5) The Construction Contractor agrees that items such as plans, Drawings, Specifications photos, studies, computer programs, Schedules, technical reports, or other Work products which is/are specified to be delivered under this Contract, and which is/are to be paid for by the Agency, is/are subject to the rights of the Agency in effect on the date of this Contract. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. The Construction Contractor shall not copyright or otherwise claim Ownership of the Work instruments of service for the Project. The Construction Contractor shall include in its Subconsultants and/or Subcontractors Contracts appropriate provisions to achieve the purpose of this section.6) Construction Contractor shall give Agency full ownership of, including any and all necessary permissions to use, every aspect of the Work, unless explicitly excluded by law or contract, including the ability to create new structures based on the design Specifications and Drawings.7) In the event of any dispute with the Construction Contractor regarding any breach or default of this Contract, the Agency shall have the right to possess and use any and all plans, Specifications, Drawings, documentation, reproducible, Design Requirements, and any other Materials necessary to complete the project.8) Notwithstanding anything to the contrary, Agency, at all times, shall have unlimited rights to copy and use in connection with the Project any and all Design Requirements and/or Materials prepared by Construction Contractor for the Project at no additional Cost to Agency, regardless of degree of completion. Construction Contractor also



	<p>grants to Agency a royalty free license to all such any and all Design Requirements and/or Materials to which Construction Contractor may assert any rights under patent or copyright laws.</p> <p>a) Construction Contractor hereby assigns outright and exclusively to Agency all copyrights to any and all Design Requirements and/or Materials created for, or used in, the Project.</p> <p>b) Construction Contractor, as part of its agreements with any Subcontractors and/or Subconsultants, will secure such license and use rights from each such entity to all copyrights to any and all Design Requirements and/or Materials created for, or used in, the Project, and shall defend, indemnify and hold Agency harmless from any claims by such entities for copyright or patent infringement.</p>
3.10. Inspection and Testing	<p>By A.R.S. § 41-2547, State may at reasonable times inspect the part of Construction Contractor's or Subcontractor's or Subconsultant's plant or places of business related to performance under the Contract. Accordingly, Construction Contractor agrees to permit (for itself) and ensure (for Subcontractors or Subconsultants) access for inspection at any reasonable time to its facilities, processes, and services. State may inspect or test, at its own cost, any finished goods, Work-in-progress, components, or unfinished Materials that are to be supplied under the Contract or that will be incorporated into something to be supplied under the Contract. If the inspection or testing shows non-conformance or defects, then Construction Contractor will owe State reimbursement or payment of all Costs it incurred in carrying out or contracting for the inspection and testing, as well as for any re-inspection or re-testing that might be necessary. Neither inspection of facilities nor testing of goods, Work, components, or unfinished Materials will of itself constitute acceptance by State of those things. State inspection of, or failure to detect an issue, error, or omission at, the place of business or plant of a Construction Contractor, Subcontractor, or Subconsultant does not, in any way, excuse that Construction Contractor, Subcontractor, or Subconsultant from any obligation under this Contract.</p>
3.11. Subcontracts and Subconsultants	<p>1) INITIAL LIST. Prior to Contract execution, Construction Contractor's candidate Subcontractors and/or Subconsultants were identified in their Offer if required.</p> <p>2) ADDITIONAL NAMES. Construction Contractor shall not enter into a Subcontract without first obtaining Procurement Officer's written consent with any prospective Subcontractor or Subconsultant that (a) was not listed at time of Contract execution or (b) is for any Materials or Services categories other than the ones for which they were previously consented. For either case (a) or (b), Construction Contractor shall submit a written request sufficiently in advance of the need date for those Materials or services so that performance under the Contract is not impaired. Procurement Officer may request any additional information he or she determines is necessary to assess the submittal, and may withhold consent pending it.</p> <p>3) FLOW-DOWN. Construction Contractor shall incorporate the provisions, terms, and conditions of the Contract into every Subcontractor and/or Subconsultant agreement by inclusion or by reference. Subconsultants and/or Subcontractors shall incorporate the provisions, terms, and conditions of the Contract into their Subcontracts. When making any post-execution consent requests, Construction Contractor shall include its warrant that it will do the same for the pending Subcontractor and/or Subconsultant covered by the request. Entering into Subcontract and/or Subconsultant agreement will not relieve Construction Contractor of any of its obligations or duties under the Contract, including, among other things, the duty to supervise and coordinate the Work of Subconsultants and/or Subcontractors. Nothing contained in any Subcontract and/or Subconsultant agreement will create or is to be construed as creating any contractual relationship between Agency and the Subconsultants and/or Subcontractors.</p>
3.12. Non-Discrimination	<p>Construction Contractor shall comply with [Arizona] State Executive Order No. 2009-09 and all other applicable federal and state laws, rules, and regulations regarding non-discrimination and equal opportunity, including the Americans with Disabilities Act.</p>
3.13. E-Verify Requirements	<p>As required by A.R.S. § 41-4401, Construction Contractor and each Subconsultants and/or Subcontractors warrants compliance with A.R.S. § 23-214(A) and all federal immigration laws and any regulations relating to the immigration status of their employees. Construction Contractor and each Subconsultants and/or Subcontractors acknowledge that under A.R.S. § 41-4401, Agency retains the legal right to inspect the papers of any Construction</p>



	Contractor or Subconsultants and/or Subcontractors employee who Works under the Contract to ensure that Construction Contractor or Subconsultants and/or Subcontractors employee is in compliance with the foregoing warranty and understands that a breach of the foregoing warranty under shall be deemed a Material breach of the Contract that is subject to penalties up to and including termination of the Contract.
3.14. Offshore Performance of Certain Work Prohibited	Construction Contractor shall only perform those portions of the Work that directly serve the Agency or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the <u>Specifications</u> or the <u>Scope of Work</u> , this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to Work performed by Subconsultants and/or Subcontractors at all tiers.
3.15. Other Contractors	<ol style="list-style-type: none">1) Agency may undertake with its own forces or award other contracts to the same or Other Contractors for additional or related Work.2) In such cases, Contractor shall cooperate fully with Agency's employees and such Other Contractors and carefully coordinate, fit, connect, accommodate, adjust, or sequence its Work to the related Work by others.3) Where the Contract requires handing-off Contractor's Work to others, Contractor shall cooperate as Agency instructs regarding the necessary transfer of its Work product, services, or records to Agency or the Other Contractors.4) Contractor shall not commit or permit any act that interferes with the Agency's or Other Contractor's performance of their Work, provided that, Agency shall enforce the foregoing section equitably among all its Contractors so as not impose an unreasonable burden on any one of them.5) Agency shall be reimbursed by Contractor for Costs incurred by Agency which are payable to an Agency separate Contractor because of delays, improperly timed activities, or defective design or construction by Contractor. Agency will equitably adjust the Contract by Change Order for Costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective design or construction by an Agency separate Contractor.6) Should the Work be interrupted or hindered by the Agency or Contractor, the Contractor shall be entitled to an extension of time pursuant to the paragraph "Change Orders" in an amount equal to such interruption or hindrance but such interruption or hindrance shall not constitute a claim for damages nor for loss of anticipated profits by the Contractor.
3.16. Work on State Premises	<ol style="list-style-type: none">1) COMPLIANCE WITH RULES. Construction Contractor is responsible for ensuring that its personnel comply with Agency's rules, regulations, policies, documented practices, and documented operating procedures while delivering or installing Materials or performing Services on State's grounds or in its facilities. Construction Contractor shall comply with State security requirements in order to deliver, install, or perform at that particular location without entitlement to any additional compensation or additional time for performance even if those particular requirements are not expressly stated in the Contract.2) PROTECTION OF GROUNDS AND FACILITIES. Construction Contractor shall deliver and perform the Services without damaging any State grounds or facilities. Construction Contractor shall promptly repair or replace any damage caused by Construction Contractor, or any of its Subcontractors or Subconsultants, at its own expense, subject to whatever instructions and restrictions Agency needs to make to prevent inconvenience or disruption of operations. If Construction Contractor fails to make the necessary repairs or replacements in a timely manner, Agency will be entitled to exercise its remedies available under the Contract.
3.17. Background Checks	<ol style="list-style-type: none">1) Each of Construction Contractor's personnel who is performing Work with information technology, correctional facilities, proprietary and sensitive data or confidential or access-restricted or in an Agency defined secured area, or as otherwise requested by Agency, must undergo the security clearance and background check procedure, which includes fingerprinting.2) Construction Contractor shall obtain and pay for the security clearance and background check and shall incorporate Cost in the Construction Contractor's offer submitted to perform the Work.



	Construction Contractor personnel who will have administrator privileges on a State network must additionally provide identity and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.
3.18. Advertising, Publishing and Promotion of Contract	Contractor shall not advertise, promote, or otherwise use information concerning the Contract for commercial benefit without the prior written approval of Procurement Officer. The Procurement Officer may withhold approval at his or her discretion.
4.0 Costs and Payments	
4.1. Additional Work	<ol style="list-style-type: none">1) Compensation for Additional Work will be in accordance with basis for compensation established in the Contract.2) Compensation for Additional Services will be determined either on a Standard Hourly Rate with a Not-to-Exceed-Maximum-Amount ("Standard Hourly Rate") fee basis in Contract or as a Stipulated Sum fee basis, as amended to the Contract, through Contract Amendment or Change Order, by the Procurement Officer.3) Before Additional Work may be performed or additional Costs incurred beyond the specified approved Contract for the Project, both the Agency and Construction Contractor must execute a written Contract Amendment or Change Order.4) The Agency is not responsible for actions of the Construction Contractor or its Subconsultants and/or Subcontractors for any Costs incurred by the Construction Contractor or its Subconsultants and/or Subcontractors relating to Additional Work prior to the execution of a Contract Amendment or Change Order.5) Any Additional Work must be performed within the time period established in the Contract Amendment or Change Order for the Project.6) The Agency shall only approve of requests for Additional Work due to:<ol style="list-style-type: none">a) need for additional design;b) acts or omissions of the Agency;c) significant changes to the Project; ord) need to provide services due to the default of another Contractor.
4.2. Applicable Taxes	<ol style="list-style-type: none">1) CONSTRUCTION CONTRACTOR TO PAY ALL TAXES. Agency is subject to Arizona Transaction Privilege Tax (TPT). Therefore, Arizona TPT applies to all sales under the Contract and Arizona TPT is Construction Contractors' responsibility (as seller) to remit. Construction Contractor's failure to collect Arizona TPT or any other applicable sales or use taxes from Agency will not relieve Construction Contractor of any obligation to remit sales or use taxes that are due under the Contract or laws. Unless stated otherwise in the <u>Commercial Document</u>, all prices therein include Arizona TPT as well as every other manner of transaction privilege or sales/use tax that is due to a municipality or another state or its political subdivisions. Construction Contractor shall pay all federal, state, and local taxes applicable to its operations and personnel.2) TAX INDEMNITY. Construction Contractor shall hold Agency harmless from any responsibility for taxes or contributions, including any applicable damages and interest, that are due to federal, state, and local authorities with respect to the Work and the Contract, as well as any related Costs; the foregoing expressly includes Arizona TPT, unemployment compensation insurance, social security, and workers' compensation insurance.
4.3. Application for Payment, Construction Contractor	<ol style="list-style-type: none">1) The Construction Contractor shall submit to the Agency an itemized Application for Payment completed and accepted in accordance with the Schedule of Values. Such application shall be supported by such data substantiating the Construction Contractor's right to payment as the Agency requires below, and reflecting retainage, if applicable.2) The Application for Payment (Exhibit H) shall:<ol style="list-style-type: none">a) be an accurate reflection of the progress of the Work;b) contain line items based on the Schedule of Values;c) bear the notarized signature of Construction Contractor;d) bear the signature of the Design Professional if contracted to perform Construction Phase Services;e) only be paid after approval by the Agency Designated Representative; and



	<ul style="list-style-type: none">f) not include Subcontracted items or any other items for which Construction Contractor does not intend to pay.3) Unless otherwise stated in the Special Terms and Conditions, the Construction Contractor is required to include the following, at a minimum:<ul style="list-style-type: none">a) Construction Contractor Name and Address;b) Subcontractor's Name, Remit to Address and Contact Information, andc) All backup documentation to Application for Payment, detailed prior to showing subtotals for each item for Construction Contractor and Subcontractor (e.g., labor detail, Materials, and tax listed in separate line items).4) Applications for Payment may include requests for payment on account of changes in the Work which have been properly authorized and executed by the Agency in Change Orders.5) Applications for Payment may not include requests for payment of amounts the Construction Contractor does not intend to pay to a Subcontractor or Material supplier because of a dispute or other reason.6) Applications for payment shall be made on account of Materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work.<ul style="list-style-type: none">a) If approved in advance by the Agency, payment may similarly be made for Materials and equipment suitably stored off the Site at a location agreed upon in writing in accordance with Arizona General Accounting Office policies.b) Payment for Materials and equipment stored on or off the Site shall be conditioned upon compliance by the Construction Contractor with procedures to establish the Agency's title to such Materials and equipment or otherwise protect the Agency's interest, and shall include applicable insurance, storage and transportation to the Site for such Materials and equipment stored off the Site.7) The Construction Contractor further warrants that upon submittal of any Progress Application for Payment all Work for which Applications for Payment have been previously issued and payments received from the Agency shall, to the best of the Construction Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Construction Contractor, Subcontractors, Material suppliers, or other persons or entities making a claim by reason of having provided labor, Materials, and equipment relating to the Work by also submitting a Conditional Waiver of Lien form with the Application for Payment.8) At the time of submittal for payment of retainage, if requested by the Construction Contractor prior to the Final Application for Payment, and at Final Application for Payment, Construction Contractor shall provide the Agency with all items contained in Contractor Project Closeout-Exhibit M.9) Agency shall not accept improper or incorrect Application for Payment until corrections have been made.10) A Progress Payment shall not be made to Construction Contractor until the Application for Payment has been certified.11) Final Payment shall not be made to Construction Contractor until a Final Completion Certificate has been issued.
4.4. Automated Clearing House	Agency may pay invoices through an Automated Clearing House (ACH). In order to receive payments in this manner, Construction Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at: https://gao.az.gov/afis/vendor-information
4.5. Availability of Funds	By A.R.S. § 35-154, every State payment obligation under the Contract is conditioned on the availability of funds appropriated for payment of that obligation. If funds are not appropriated and available for continuance of the Contract, State may terminate the Contract at the end of the period for which funds are available, or, at State's discretion, allow appropriate amendment to the Contract. No liability will accrue to State if it exercises the foregoing right or discretion, and State will have no obligation or liability for any future payments or for any damages as a result of having exercised it.
4.6. Contracted Labor Rate	<ul style="list-style-type: none">1) The contracted labor rates are the fully-burdened and marked-up billing rates for Construction Contractor's labor Exhibit C2) The rates are deemed to be inclusive of the actual gross wages plus all:<ul style="list-style-type: none">a) Applicable payroll taxes, non-payroll employer burden, workers' compensation contributions and health and welfare benefit contributions;



	<ul style="list-style-type: none">b) Retirement or other pension contributions, vacation, sick time or other paid leave allowances and the like;c) Required home office support, corporate or subordinate licenses or registrations, corporate insurance, professional association fees, advertising, time and travel by any of Construction Contractor personnel other than billable personnel and any bonuses or other incentives for all personnel (including billable Personnel);d) Insurance coverages to be provided by Construction Contractor under the Contract; ande) Profit. <p>3) The rates are not subject to overtime or other premium time unless expressly stated otherwise.</p> <p>4) Prior to Construction Contractor finalization of Subconsultants and/or Subcontractors contracts, the Agency shall review and approve Subconsultants and/or Subcontractors hourly rates.</p>
4.7. Contract Payment Retention	<p>To the extent that Contracts for Construction do not include Design Services, preconstruction services, finance services, maintenance services, operations services or any other related Services, retention amounts in Progress Payments will be made or paid in accordance with A.R.S. § 41-2576.</p> <p>Construction Contractor may elect to substitute security in the same amount as the retainer in lieu of retention pursuant to A.A.C. R2-7-509 and R2-7-510. The Agency shall not accept any substitute security unless it is accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the Agency or the Construction Contractor in relationship to the security assigned pursuant to A.R.S. § 41-2576(D).</p> <p>The Agency will retain 10% of the amount of each estimated Progress Payment until final completion and acceptance unless, upon written request from the Construction Contractor, at the half-way point of the Project (as determined by the Work Progress Schedule) if the Agency has determined that the Work is satisfactory, then half of the retainer will be released to the Construction Contractor.</p> <p>If the Agency determines that this condition has been met, then the percentage of subsequent retainers will decrease from 10% to 5%.</p> <p>At any subsequent point in the Project, if the Agency finds that the Construction Contractor's Work is less than satisfactory, then the retainer will revert to 10%.</p> <p>Absent a specific written finding by the Agency with a reason to delay the release of the retained amount, the retainer described in this section will be released within sixty (60) days of the Agency's acceptance of the Work and approval of the Application for Final Payment.</p> <p>If the Agency determines that the Work is not acceptable for any reason, it must make a specific written finding of the reason why the Work is not acceptable; then may retain an amount of payments sufficient to pay or discharge the expenses the Agency reasonably expects to incur to correct the issue with the Work that was set forth in the written finding.</p>
4.8. Final Completion and Payment	<ul style="list-style-type: none">1) When Construction Contractor deems Work fully complete, Construction Contractor will notify Agency.2) A Certificate of Final Completion shall set forth the date of Final Completion and shall be executed by Agency and/or Design Professional.3) Neither Final Payment nor any final release of retention will be made until Construction Contractor submits the following documents to Agency:<ul style="list-style-type: none">a) Affidavit that payments, bills for equipment and Materials, and all indebtedness incurred for Construction have been paid or satisfied;b) Certificate evidencing that insurance required by Contract Documents remains in force pursuant to the terms of the Contract and will not expire until 30 days written evidence is given to Agency; andc) Any items required by Exhibit M-Contractor Project Closeout.



4.9. Delay	<ol style="list-style-type: none">1) Pursuant to A.R.S. § 41-2617, if the Construction Contractor incurs damages due to a delay for which the Agency and the Construction Contractor agree is (a) the fault of the Agency, (b) unreasonable under the circumstances, and (c) was not already contemplated by the terms of the agreement, then the Agency and the Construction Contractor may negotiate for the recovery of those damages. In this case, if the Construction Contractor sustains damages, which could not have been avoided by the judicious handling of forces, equipment and materials; or by reasonable revision in the Construction Contractor's schedule of operation, the compensation for such damages will be negotiated. The Construction Contractor shall notify the Agency of the condition in writing by the next work day. Failure to notify the Agency within this time may be just cause to reject any claims for such damages.2) DELAYS THAT RESULT IN A MATERIAL CHANGE TO THE DATE OF SUBSTANTIAL COMPLETION MAY RESULT IN LIQUIDATED DAMAGES. Agency may assess Liquidated Damages (as detailed in the Special Terms and General Conditions) for unexcused and/or unauthorized delays, caused by the Construction Contractor, or any of its Subconsultants or Subcontractors, that result in a material change to the date of Substantial Completion of the Work. Construction Contractor is responsible for any reasonably foreseeable causes of delay.3) TIME EXTENSION. Within one business day after the Construction Contractor should have reasonably known of the occurrence prompting the request for an extension of time, the Construction Contractor must deliver a preliminary written notice to the Agency describing the general nature of the request. Within a reasonable time after the preliminary notice, the Construction Contractor must provide the Agency written supporting documentation stating all known time extensions to which the Construction Contractor is entitled. Construction Contractor may submit written time extension requests to the Agency for approval if the Construction Contractor is delayed through no fault of its own.4) CONCURRENT DELAYS. To the extent the Construction Contractor is entitled to an extension of time due to an Excusable Delay but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Construction Contractor and/or any of its subcontractors/subconsultants, and suppliers, the Construction Contractor shall not be entitled to any additional Costs for the period of such concurrency.5) CHANGE ORDER. Any requests for time extensions must be approved by Agency and/or Design Professional through the use of a Change Order.
4.10. Equipment Rental	Construction Contractor rental of construction equipment to perform the Work shall be recorded and billed to the Agency to the nearest one-half hour and shall cease when equipment is no longer necessary for the Work. Billing shall include sales tax, the cost of transportation, loading, unloading, and dismantling and removal thereof in accordance with the rental agreement terms and Agency approved Construction Contractor markup for overhead and profit. Rates for Construction Contractor owned equipment shall be approved by Agency prior to equipment use. Construction Contractor shall not charge Agency for equipment that is inoperable due to breakdown or used for Work not related to the Project.
4.11. Interest	Payments to Construction Contractor are issued pursuant to A.R.S. § 35-342. If payments to Contractor are allowable and 30 days past due, interest shall accrue at the rate detailed in A.R.S. § 44-1201.
4.12. Payment and/or Application for Payment	<ol style="list-style-type: none">1) PAYMENT NOT ACCEPTANCE. Agency payment of any invoice or Application for Payment shall not be construed to be acceptance of the Work.2) PAYMENT DEADLINE. Agency shall make payments in compliance with Arizona Revised Statutes Titles 35 and 41. Unless and then only to the extent expressly stated otherwise in the Contract, Agency shall make payment in full for Materials that have been delivered and accepted and Work that has been performed and accepted within the time specified in A.R.S. § 35-342 after both of the following become true:<ol style="list-style-type: none">a) All of the Materials being invoiced have been delivered or installed (as applicable) and accepted and all of the Work being invoiced have been performed and accepted; andb) Contractor has provided a complete and accurate invoice and/or Application for Payment in the form and manner called for in the Contract and reasonably



	<p>required by Agency, provided that the Agency will not make or be liable for any payments to Contractor until Contractor has registered properly in ProcureAZ and provided a current IRS Form W-9 to Agency unless excused by law from providing one.</p> <p>3) PAYMENTS ONLY TO CONTRACTOR. Unless compelled otherwise by operation of law or order of a court of competent jurisdiction, Agency shall make payment to Contractor under the federal tax identifier provided.</p>
4.13. Project Suspension by Agency	If the Project is suspended or abandoned in whole or in part for more than six (6) months by the Agency, the Construction Contractor will be compensated for only the following: all Work performed prior to receipt of written notice from the Agency of such suspension or abandonment together with Reimbursable Expenses then due. The Agency will not be liable for any additional expenses or any damages, including but not limited to consequential damages. If the Project is resumed after having been suspended for more than six (6) months, the Construction Contractor's compensation may be equitably adjusted through negotiation. If the parties cannot agree on an adjustment, Agency may terminate the Agreement.
4.14. Recovery of Overpayment	If Agency determines that an over-payment has been made to Construction Contractor on any prior invoice, it shall inform Construction Contractor of the amount and date of the over-payment and may deduct the over-paid amount from amounts then or thereafter due to Construction Contractor.
4.15. Reimbursable Expenses	Reimbursable expenses may be billed in accordance with Uniform Terms and Conditions for amounts expended in the interest of the Project. Construction Contractor shall not exceed the approved reimbursement amount without prior written approval of the Agency through a Contract Amendment.
4.16. Scrap or Surplus Material	Pursuant to A.R.S. 41-2602, <i>et seq.</i> , The Construction Contractor may not sell any resulting from production under this Contract without requesting the Procurement Officer's approval, unless stated otherwise in the <u>Special Terms and Conditions</u> .
4.17. Standard Hourly Rate Basis for Work	For Projects compensated on a Standard Hourly Rate basis, the invoice statement for all Applications for Payment must show the name of all employees and Subconsultants and/or Subcontractors charging time to the Project, the amount of time billed, the fully burdened hourly rates, and the activities performed by each person listed. If requested by Agency, payroll time sheets and any other documents reasonably requested by Agency to verify amounts requested, shall be provided.
4.18. Stipulated Sum (Fixed Price/Lump Sum) Basis for Work	For Projects compensated on a Stipulated Sum basis, the invoice statement for Application for Payment must include a brief summary of the progress and completion of tasks in accordance with the Work to substantiate the percentage of completion of Work by phase during the time period covered by the Application for Payment. Any Costs in excess of approved maximum not to exceed Contract amount incurred prior to Agency's written consent will not be paid unless Costs were incurred at the Agency's direction.
4.19. Notification of Payments	Any Construction Contractor, Subconsultants and/or Subcontractors, or Subcontractor may notify the Agency in writing requesting that it be notified by the Agency in writing within five days from payment of each progress payment made to the Construction Contractor. If a request is made to the Agency as described in this paragraph, the request remains in effect for the duration of the requestor's Work related to this Contract pursuant to A.R.S. § 41-2577. Note that this paragraph in no way limits the Construction Contractor's and/or Construction Contractor's ability to withhold any application or certification due to issues related to the Work of a Construction Contractor, Subconsultants and/or Subcontractors, or Subcontractor as described in A.R.S. § 41-2577(D).

5.0 Contract Changes

5.1. Assignments and Delegation	1) NOTICE AND ASSIGNMENT OF TRANSFER OF OWNERSHIP. In additions to Sections 5.2 and 5.3 below, the Agency will require immediate notice and explicit assignment, pursuant to this Section, of any change to the underlying ownership of the Construction Contractor. For the purpose of this Section, a change in ownership is defined by the transfer of any ownership interest or
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	<p>control of fifty percent or more of the Construction Contractor, regardless of the form under which the Construction Contractor conducts its business.</p> <p>2) IN WHOLE. Construction Contractor shall not assign in whole or in part its rights or delegate in whole or in part its duties under the Contract without (a) notifying the Procurement Officer in advance and (b) obtaining the Procurement Officer's prior written consent, which the Procurement Officer may withhold at his or her discretion. If Construction Contractor's proposed assignment or delegation stems from a split, sale, acquisition, or any other change in control, then no such consent will be given in any event without the assignee or delegate giving the Agency satisfactory and equivalent evidence or assurance of its financial soundness, competency, capacity, and qualification to perform as that which Construction Contractor possessed when Agency first awarded it the Contract. Such determinations shall be made by the Procurement Officer in its sole discretion.</p>
5.2. Contract Amendments	<p>The Contract is issued for Agency under the authority of Procurement Officer. Only a Contract Amendment can modify the Contract, and then only if it does not change the Contract's general scope.</p>
5.3. Unauthorized Contract Amendments or Orders are Void	<p>Purported changes to the Contract by a person not expressly authorized by Procurement Officer or made unilaterally by Construction Contractor will be void and without effect; Construction Contractor will not be entitled to any claim made under the Contract based on any such purported changes. The Construction Contractor is on notice that any course of conduct dealings cannot bind the Agency to any changes to the Contract; the Agency may avoid any unauthorized modifications to the Contract, Contract Amendments, or Change Orders.</p>
5.4. Change Orders	<p>1) The Agency will only compensate for and the Construction Contractor shall only deliver or perform Additional Work that has been approved by the Agency through a fully authorized Change Order.</p> <p>2) CHANGE ORDER TERMS. All Change Orders are subject to the Contract Terms and Conditions except to the extent they are modified by Change Order.</p> <p>3) REASONABLE TIME FOR REVIEW. Both parties to the Contract agree to allow a reasonable period of time for the review and consideration of any requested Change Orders.</p> <p>4) FIELD ORDER DIRECTIVES (See Exhibit I). Field Order Directives should be followed by a Change Order within a reasonable time. The Not-to-Exceed Cost detailed in the Field Order Directive is enforceable against the Construction Contractor if the Agency and Construction Contractor are unable to agree to a price through a Construction Change Order.</p> <p>5) ITEMIZATION OF WORK. The Construction Contractor shall include the proposed Cost itemized breakout including Subcontractor or Subconsultant pricing by Work division labor and Materials, at a minimum to include: General Conditions, Overhead and Profit, Total- Labor Costs, Total Materials Cost, Equipment, Field Office and Job Site Supervision, Bonds, Insurance, and applicable tax. Failure of Construction Contractor to submit itemized Cost information with the Change Order Request will delay processing through no fault of the Agency.</p> <p>6) ADDITIONAL TIME FOR DELAY. Construction Contractor must submit any request for an Excusable Delay within one business day after the Construction Contractor should have reasonably known of the occurrence prompting the request for an extension of time.</p> <p>a) Any Construction Contractor request for an Excusable Delay must be made through Construction Contractor initiation of a Change Order Request and written notice to the Agency.</p> <p>b) Failing to timely and properly provide written notice of the Delay, which must include a request through a Change Order Request, will waive Construction Contractor's ability to negotiate increased time to complete the Work.</p> <p>c) The Construction Contractor's request shall include an estimate of Cost and of probable effect of delay on the Work Progress Schedule. Adverse weather conditions shall not be a basis for a claim for additional Costs.</p>



	<ol style="list-style-type: none">7) FUEL SURCHARGES. Under no circumstances will the Agency accept any fuel surcharges on any Change Order request or Construction Contractor Pay Applications8) CONSTRUCTION CONTRACTOR AND SUBCONTRACTOR MARKUP. The combination of overhead and profit shall not exceed the original percentage mutually agreed upon value of labor and Material for Work performed by any Construction Contractor or subcontractor for any Change Order or 5%, whichever is greater.9) CONSTRUCTION CONTRACTOR ADDITIONAL WORK. Any Additional Work caused by Construction Contractor error, inconsistency, ambiguity, or otherwise conduct of Construction Contractor shall not constitute a change, and such Work will be performed at no additional cost to Agency.10) AGREEMENT ON CHANGE ORDER. Agreement on any Change Order shall constitute a final settlement of any and all matters relating to the change in the Work which is the subject of the Change Order including, but not limited to, any and all direct and indirect costs associated with such change and any and all adjustments to the Contract sum and the Schedule.
5.5. Field Order Directive	<ol style="list-style-type: none">1) The Agency may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, the Contract Cost and time for Substantial Completion being adjusted accordingly.2) A Field Order Directive (Exhibit I) shall be used in the absence of total agreement on the terms of a Change Order.3) If the Agency and the Construction Contractor cannot agree as to what amount should be charged for the Field Order Directive, Construction Contractor shall only be entitled to be reimbursed for actual direct labor and material Costs incurred at the construction site attributable to the change plus 5% for overhead and profit. Construction Contractor shall keep detailed records of all such Costs and submit such records to the Agency on a weekly basis. Within ten (10) days of completion of the change and the submission of all Cost data to the Agency, the Agency shall determine the total allowable Costs for the purpose of pricing and paying for the additional work required by the Field Order Directive and advise the Construction Contractor of such determination in writing. This determination shall be final and binding unless Construction Contractor objects in writing within ten (10) days of this determination. The written objection shall contain a detailed statement of those elements and items of the determination with which the Construction Contractor disagrees with an adequate explanation forming the bases of the disagreement. The parties shall then make a good faith effort to resolve the disagreement within fifteen (15) days. If the parties still fail to agree, the dispute shall be submitted to the Procurement Officer. The Procurement Officer shall determine the Costs and notify the Construction Contractor in writing of his or her determination. If the Construction Contractor disagrees with the Procurement Officer's determination, the Construction Contractor shall immediately initiate the contract claims resolution process in the Arizona Procurement Code (A.A.C. R2-7-B901, <i>et seq.</i>)4) When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.5) The amount of credit to be allowed by the Construction Contractor to the Agency for a deletion or change which results in a net decrease in the Contract Cost shall be actual net Cost as determined by the Design Professional and/or Agency.6) Pending final determination of Cost to the Agency, amounts not in dispute may be included in applications for payment.7) For any disagreement between the Construction Contractor and Agency on the adjustment in Contract time or the method for determining it, the adjustment or the method shall be referred to the Agency for determination.8) When the Agency and Construction Contractor agree with the determination made by the Construction Contractor concerning the adjustments in the Contract Cost and Contract time, or otherwise reach agreement upon the



	adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
5.6. Minor Changes in the Work	The Design Professional, with the Agency's approval, has the authority to order minor changes in the Work not involving adjustment in the Contract Cost or extension of the Contract time and consistent with the intent of the Contract. Such changes shall be effected by written order and shall be binding on the Agency and Construction Contractor. The Construction Contractor shall carry out such written orders promptly.
5.7. Claims	If Construction Contractor is aware of any act, omission, or condition that would give rise to a breach of Contract or a Change Order and/or claim, Construction Contractor shall notify Agency in writing within 48 hours after becoming aware of such act, omission, or condition. This notice shall provide sufficient detail so that the claim may be properly evaluated by the Agency in a timely manner. Failure to give such notice shall be deemed a waiver of the right of the Construction Contractor to recover.
6.0 Risk and Liability	
6.1. Risk of Loss	If applicable, Construction Contractor shall bear all risk of loss and damages caused by Drawings, Specifications, Design Requirements or other documents prepared by Construction Contractor and used by Construction Contractor in bidding, designing and/or constructing the project to the extent that such documents are ambiguous, incomplete, contain errors or inconsistencies or fail to comply with any applicable codes, regulations and laws.
6.2. Basic Indemnification	<ol style="list-style-type: none"> 1) CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). If a Construction Contractor provides Work, services, studies, planning, surveys or other preparatory Work in connection with a public building or improvement, the Contractor, and any and all of its Subconsultants and/or Subcontractors under this Contract, shall indemnify and hold harmless the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees, from liabilities, damages, losses and Costs, including reasonable attorney fees and court costs (including, but not limited to, primary loss investigation, judgment costs, expert witness fees, and any and all fees and costs from appellate proceedings), for any and all acts arising from or connected to the performance of this Contract but only to the extent caused by the negligence, recklessness, or intentional wrongful conduct of such Contractor or other persons employed or used by such Contractor or Subconsultants and/or Subcontractors in the performance of the Contract or subcontract, as allowed under A.R.S. Section 41-2586 (C) and A.R.S. Section 34-226. The Construction Contractor additionally agrees to indemnify the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for any vicarious liability for the tortious conduct of the Construction Contractor's actions including the actions of any of the Construction Contractor's personnel or Subcontractors and/or Subconsultants. The amount and type of insurance coverage requirements set forth in the Contract shall not be construed as limiting the scope of the indemnity in this paragraph. 2) This indemnity shall not apply if the Contractor or Subconsultant(s) and/or Subcontractor(s) is/are an agency, board, commission or university of the State of Arizona.
6.3. Patent and Copyright Indemnification	<ol style="list-style-type: none"> 1) CONSTRUCTION CONTRACTOR/VENDOR (NOT PUBLIC AGENCY). With respect to Materials or Services provided or proposed by a Construction Contractor Indemnitor for performance under the Contract, Construction Contractor shall indemnify, defend and hold harmless the State of Arizona and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees against any third-party claims for liability, Costs, and expenses, including, but not limited to reasonable attorneys' fees, for infringement or violation of any patent, trademark, copyright, or trade secret by the Materials and the Services. With respect to the defense and payment of claims under this subparagraph:



	<ul style="list-style-type: none">a) Agency shall provide reasonable and timely notification to Construction Contractor of any claim for which Construction Contractor may be liable under this paragraph;b) Construction Contractor, with reasonable consultation from Agency, shall have control of the defense of any action on an indemnified claim including all negotiations for its settlement or compromise. Construction Contractor shall provide the Agency with notice of settlement negotiations and allow the Agency to participate in negotiations, if Agency so chooses;c) Agency may elect to participate in such action at its own expense; andd) Agency may approve or disapprove any settlement or compromise, provided that, Agency shall not unreasonably withhold or delay such approval or disapproval and Agency shall cooperate in the defense and in any related settlement negotiations. <p>2) If Construction Contractor is a public agency, this paragraph does not apply.</p>
6.4. Force Majeure	<ul style="list-style-type: none">1) DEFINITION. For this paragraph, "force majeure" means an occurrence that is<ul style="list-style-type: none">a) beyond the control of the affected party,b) occurred without the party's fault or negligence, andc) something the party was unable to prevent by exercising reasonable diligence.2) Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and subject to paragraph 6.5 "Performance in Public Health Emergency," declared public health emergencies.3) Force majeure expressly does not include late delivery caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure.4) RELIEF FROM PERFORMANCE. Except for payment of sums due at the time of Force Majeure, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall provide written notice to the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.5) DELAY CAUSED BY FORCE MAJEURE IS NOT DEFAULT. Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits or any other consequential damages if and to the extent that such failure was or is being caused by an occurrence of force majeure.6) DEFAULT DIMINISHES RELIEF. Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.
6.5. Performance in Public Health Emergency	<ul style="list-style-type: none">1) Construction Contractor warrants that it will:



	<p>a) Have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum:</p> <ul style="list-style-type: none"> i) identification of response personnel by name; ii) key succession and performance responses in the event of sudden and significant decrease in workforce; and iii) alternative avenues to keep the project consistent with its Schedule or sufficient product on hand or in the supply chain; and iv) Provide a copy of its current plan to Agency within three (3) business days after Agency's written request. If Construction Contractor claims relief under the paragraph "Force Majeure" for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Construction Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable. <p>2) For clarification of intent, being obliged to implement the plan is not of itself an occurrence of Force Majeure, and Construction Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a Material breach of contract.</p>
6.6. Safety Standards	<p>1) Construction Contractor shall provide Materials and Services under this Contract that comply with all current applicable safety standards and regulations, including but not limited to, the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards and any other standard references in the Contract.</p> <p>2) Construction Contractor shall provide necessary protection, take all precautions for and monitor the safety of Construction Contractor personnel, Subcontractors, and Subconsultants and/or Subcontractors during the performance of Work.</p> <p>3) Construction Contractor is obligated to act to prevent threatened damage, injury or loss of persons, the Work, or property at the Site or adjacent thereto in emergencies affecting the safety or protection thereof.</p>
6.7. Third Party Antitrust Violations	Construction Contractor assigns to Agency any claim for overcharges resulting from antitrust violations to the extent that those violations concern Materials or services supplied by third parties to Construction Contractor toward fulfillment of the Contract.
7.0 Warranties	
7.1 Liens	Construction Contractor warrants that the Materials and Services when accepted will be and will remain free of liens or other encumbrances.
7.2 Guarantees and Warranties	<p>1) Construction Contractor warrants that it has carefully conducted and performed internal checking of any and all Design Requirements to ensure proper layouts and dimension completeness and clarity, and through due diligence has no knowledge of any inconsistencies, ambiguities, errors, omissions, or conflicts with regard to such Design Requirements.</p> <p>2) Construction Contractor warrants that it has advised Agency in writing of the need for any tests, studies, analysis or subconsultant services for the development of design documents.</p> <p>3) Construction Contractor warrants that construction drawings and specifications submitted for bidding or negotiation with a Construction Contractor are complete, accurate, unambiguous and in compliance with all applicable codes, laws and ordinances.</p> <p>4) Construction Contractor warrants that it is financially solvent and possesses sufficient experience, licenses, personnel, and capital to complete the services for the Agency.</p> <p>5) Construction Contractor warrants that it has visited the Project Site, is thoroughly familiar with the conditions of the Site, and will correlate its observations with the construction drawings and specifications.</p>



- 6) Construction Contractor warrants that it shall be responsible for any and all defects in the construction drawings and specifications, and other design documents prepared by Construction Contractor and/or Subconsultants and/or Subcontractors, that are caused by the Construction Contractor, Subconsultants and/or Subcontractors, or any other person or firm hired by the Construction Contractor.
- 7) Construction Contractor warrants that the Design Requirements are sufficient for the intended purpose of any and all improvements under the Contract.
- 8) Construction Contractor warrants that the construction drawings and specifications may be built at the Site and that construction and completion of the project will not violate any zoning ordinance or use restrictions imposed by any governing authority.
- 9) Construction Contractor warrants that all personnel or Subconsultants and/or Subcontractors used for construction administration services shall have sufficient knowledge and experience to properly carry out the duties required for the Work.
- 10) Construction Contractor shall provide any written and signed standard warranty, and any written notarized and signed special warranty document(s) required for the Project after substantial completion but prior to final acceptance of the Work, stating warranty coverage for Materials and defects in accordance with the plans and specifications. Warranty requirements not listed in the plans and specifications shall be the greater duration of either the manufacturer standard warranty period or such duration allowed by law.
- 11) Construction Contractor warrants that Work performed under this contract shall conform to the contract requirements and be free of any defect in equipment, Material, or design furnished, or workmanship performed by the Construction Contractor or any subcontractor or supplier at any tier. This workmanship warranty shall continue for a period of at least two (2) years or such time as permitted by law, whichever is greater.
- 12) Construction Contractor warrants that it has reviewed the Site and found that it is suitable for the Project.
- 13) The Construction Contractor shall repair or replace such defective Materials, equipment or workmanship to the full satisfaction of the Agency within the stipulated guarantee period without Cost to the Agency. In addition, the Construction Contractor shall remedy at the Construction Contractor's expense any damage to Agency-owned or controlled real or personal property, when that damage is the result of:
 - a) The Construction Contractor's failure to conform to contract requirements;
 - b) Construction Contractor's Work; or
 - c) Any defect or failure of equipment, Material, workmanship, or design furnished by the Construction Contractor or Subcontractor or supplier at any tier.
- 14) This warranty shall not limit the Agency's rights under any other clause of this contract with respect to latent defects, gross mistakes, or fraud.
- 15) The Construction Contractor shall restore any Work damaged in fulfilling the terms and conditions of this clause. The Construction Contractor's warranty with respect to Work repaired or replaced will run for two (2) years from the date of repair or replacement or such greater period as allowed by law.
- 16) The Procurement Officer or the Agency's designated representative shall notify the Construction Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- 17) If the Construction Contractor fails to remedy any failure, defect, or damage with regard to any item or part of the Work caused by the Construction Contractor or its respective subcontractors or suppliers at any tier within a reasonable time after receipt of notice, the Agency shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Construction Contractor's expense.
- 18) **GUARANTEES ACCEPTANCE OF GOODS AND SERVICES.** Goods and services delivered will be subject to a complete inspection by the Agency. Acceptance criteria shall include, but is not limited to, conformity to the



	<p>specifications, workmanship, quality, and material requirements. The Construction Contractor shall be responsible for the transport of the Material to and from the delivery point of any items not in compliance with the requirements of the Contract. Product returned for corrective action may delay payment. Invoices/Applications for Payment will be processed for payment only after the product is accepted.</p> <p>19) LATENT DEFECTS. Materials and equipment incorporated into the Work may have, or as a result of the construction process, may develop hidden defects known as latent defects. Construction Contractor shall guarantee that such latent defects, when discovered, shall be remedied at no extra Cost to the Agency, regardless of whether the defective Materials have been paid for, inspected, or previously accepted by the Agency.</p> <p>20) SERVICES PERFORMANCE. In the event of the Construction Contractor's failure to perform required Services or meet agreed upon Service levels or other Construction Contractor service standards as required by this Contract, the Construction Contractor shall perform an analysis of the cause of the service level problem and implement remediation steps as appropriate. The Design Professional and the Agency shall have the right to review the analysis and approve the remediation steps prior to or subsequent to their implementation. If Construction Contractor fails to complete any deliverable, then Construction Contractor shall:</p> <ol style="list-style-type: none"> Promptly perform a root-cause analysis to identify the cause of such failure; Use commercially reasonable efforts to correct such failure and to begin meeting the requirements as promptly as practicable; Provide the Agency with a report detailing the cause of, and procedure for correcting, such failure; and If appropriate under the circumstances, take action to avoid such failure in the future.
7.3 Contractor Personnel	<ol style="list-style-type: none"> Construction Contractor warrants that its personnel will perform their duties under the Contract in a professional manner, applying the requisite skills and knowledge, consistent with industry standards, and in accordance with the requirements of the Contract. Construction Contractor further warrants that its key personnel will maintain any certifications relevant to their Work, and Construction Contractor shall provide individual evidence of certification to Agency's authorized representatives upon request. The Construction Contractor shall enforce strict discipline and good order among the Construction Contractor's employees and other persons carrying out the Contract Work. The Construction Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
7.4 Intellectual Property	<ol style="list-style-type: none"> Construction Contractor warrants that the Materials and Services do not and will not infringe or violate any patent, trademark, copyright, trade secret, or other intellectual property rights or laws, except only to the extent the Specifications do not permit use of any other product and Construction Contractor is not and cannot reasonably be expected to be aware of the infringement or violation. SYSTEMS AND CONTROLS. In consideration for Agency having agreed to permit Pass-Through Indemnities in lieu of direct indemnity, Construction Contractor agrees to establish and keep in place systems and controls appropriate to ensure that Agency funds under this Contract are not knowingly used for the acquisition, operation, or maintenance of Materials or Services in violation of intellectual property laws or a third party's intellectual property rights
7.5 Compliance with Laws	<ol style="list-style-type: none"> If applicable, Construction Contractor warrants that the Materials and Services, and any disposal thereof bearing on performance of the Work, do and will continue to comply with all applicable federal, state, and local laws. Some of the local codes with which the Work performed by the Construction Contractor must be in compliance include, but are not limited to, the Arizonans with Disabilities Act (A.A.C. R10-3-401 through 412) and American National Standards Institute's Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped; State of Arizona Fire Code; regulations related to solar energy and life cycle cost analysis (see A.R.S. § 34-452); and Water Conservation for State Facilities (see Executive Order 91-3).



7.6 100% Construction Documents	<ol style="list-style-type: none">1) Construction Documents shall be consistent with the Project program, construction budget, and Project Schedule.2) Prior to the first Construction Documents phase submittal, Construction Contractor and its Subconsultants and/or Subcontractors shall review Agency's Bidding Documents for Project requirements and recommend any changes needed to make them applicable to the Project.3) Construction Contractor shall update the documents and provide additional drawings, details and specifications in sufficient detail as to be deemed complete and buildable.4) Prior to submitting the 100% Construction Documents, Construction Contractor and its Subconsultants and/or Subcontractors shall have thoroughly checked, coordinated, and revised all documents to bring them to 100% completed level.5) The Construction Contractor shall provide or assist with the preparation of the following:<ol style="list-style-type: none">a) Certification Pageb) Project Descriptionc) Index to the Specificationsd) Specifications and List of Drawings
7.7 Contracted Work, Errors and Omissions	<ol style="list-style-type: none">1) Errors, inconsistencies, ambiguities or omissions discovered by the Construction Contractor shall be reported as a written Request for Information to the Agency immediately prior to the execution of Work.2) If the Construction Contractor performs any Work activity knowing or should have known it involves an error, inconsistency or omission in the Contract without such written notice to the Agency, the Construction Contractor shall assume full responsibility for such performance and shall bear the full Costs for correction.3) REMEDIATION OF ERRORS. Construction Contractor bears full responsibility for errors and omissions in its Work and any and all Work of the Construction Contractor's Subconsultant's and/or Subcontractor's Work. Construction Contractor shall include in its Work, without limit or additional Cost to the Agency, all Work necessitated, in whole or in part, by any and all errors and omissions of, or breach of, the Contract by, the Construction Contractor, its Subconsultants and/or Subcontractors, or any entity working under the Construction Contractor. At a minimum, the Construction Contractor shall, at no Cost to the Agency, promptly remediate any errors, omissions, deficiencies, or contradictions in its Work to the satisfaction of the Agency.4) ACCEPTANCE OR APPROVAL DOES NOT ALLEVIATE CONSTRUCTION CONTRACTOR'S RESPONSIBILITY FOR ERRORS. The approval, review, or acceptance of the Construction Contractor's Work by any Agency or other party does not, in any way, alleviate the Construction Contractor from its responsibility to fully remediate the Work from any errors discovered subsequently or necessary clarification of any ambiguities. The obligations of the Construction Contractor to correct defective or nonconforming Work shall not, in any way, limit the Construction Contractor's other obligations under the Contract.
7.8 Licenses and Permits	Construction Contractor warrants that it will maintain all licenses required under paragraph 3.8 [Contractor Licenses] and all required permits are valid and in force.



	<p>The Construction Contractor shall secure and pay for any building permit, Arizona Department of Environmental Quality emissions permit, and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids or proposals are received or negotiations concluded, unless otherwise stated in the Contract. Any required building or right of way permit applications shall be completed by Construction Contractor and filed with authorities having jurisdiction within five (5) days of the Notice to Proceed.</p>
7.9 Operational Continuity	<p>Construction Contractor warrants that it will perform without relief notwithstanding being sold or acquired; no such event will operate to mitigate or alter any of Construction Contractor's duties hereunder absent a consented delegation under paragraph 5.1 Assignments and Delegation that expressly recognizes the event.</p>
7.10 Pandemic Contractual Performance	<ol style="list-style-type: none"> 1) The Construction Contractor shall have a plan that illustrates how the Construction Contractor shall perform contractual requirements in the event of a pandemic. At a minimum, the plan shall include: <ol style="list-style-type: none"> a) Key succession and performance planning in the event of sudden significant decrease in Construction Contractor's workforce; b) Alternative methods to ensure there are products in the supply chain c) A current organizational chart and contact list. 2) In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this Contract impossible or impracticable, the following shall apply: <ol style="list-style-type: none"> a) The Agency may temporarily void the Contract(s) in whole or specific sections if the Construction Contractor cannot perform contractual requirements; d) The Agency shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the director as per § 41-2537 of the Arizona Procurement Code; and e) The Agency may, at its sole discretion, reinstate the voided contracts or sections of contracts when the pandemic is officially declared over and/or the Construction Contractor can demonstrate the ability to perform. 3) The Agency, at any time, may request to see a copy of the written plan from the Construction Contractor. The Construction Contractor shall produce the written plan within seventy-two (72) hours of the request.
7.11 Lobbying	<ol style="list-style-type: none"> 1) PROHIBITION. Construction Contractor warrants that: <ol style="list-style-type: none"> a) it will not engage in lobbying activities, as defined in 40 CFR part 34 and A.R.S. § 41-1231, et seq., using monies awarded under the Contract, provided that, the foregoing does not intend to constrain Construction Contractor's use of its own monies or property, including without limitation any net proceeds duly realized under the Contract or any value thereafter derived from those proceeds; and, upon award of the Contract, it will disclose all lobbying activities to Agency to the extent they are an actual or potential conflict of interest or where such activities could create an appearance of impropriety. f) Construction Contractor shall implement and maintain adequate controls to assure compliance with this paragraph. g) Construction Contractor shall obtain an equivalent warranty from all Subcontractors and shall include an equivalent no-lobbying provision in all Subcontracts. 2) EXCEPTION. This paragraph does not apply to the extent that the Services are defined in the Contract as being lobbying for Agency's benefit or on Agency's behalf.
7.12 Survival of Warranties	<p>All representations and warrants made by Construction Contractor under the Contract will survive the expiration or earlier termination of the Contract.</p>
7.13 Waiver of the Statute of Repose	<p>To the fullest extent permitted by law, Construction Contractor waives Arizona's statute of repose as defined in A.R.S. § 12-552 (the "Statute of Repose"). The</p>



	Construction Contractor's express written warranties stated elsewhere in the Contract, and any and all claims, actions, liabilities, damages, losses, or expenses including attorney fees and court costs, for bodily injury or personal injury (including death), will not be time-barred by the Statute of Repose. Court costs shall include, but are not limited to, costs associated with claim processing, primary loss investigation, judgment, expert witnesses, and any and all fees and costs related to appellate proceedings.
8.0 State's Contractual Remedies	
8.1 Agency's Right to Carry Out the Work	<ol style="list-style-type: none">1) If the Construction Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Agency to commence and continue correction of such default or neglect with diligence and promptness, the Agency may after such ten-day period, without prejudice to other remedies the Agency may have, correct such deficiencies or cause such deficiencies to be corrected. Construction Contractor shall pay any and all costs incurred by the Agency for such corrections to the Work.2) In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Contractor the Cost of correcting such deficiencies, including compensation for the Designer's additional services and expenses made necessary by such default, neglect or failure.3) Such action by the Agency and amounts charged to the Construction Contractor are both subject to prior review and confirmation by the Designer. If payments then or thereafter due the Construction Contractor are not sufficient to cover such amounts, the Construction Contractor shall pay the difference to the Agency.4) An Agency may require that Construction Contractor provide a workplan to address the deficiencies within 48 hours of receiving the above-referenced notice from Agency.
8.2 Consequential Damages	<p>Construction Contractor and Agency waive claims against each other for consequential indirect, and incidental damages arising out of or relating to the Contract. This mutual waiver includes, but is not limited to:</p> <ol style="list-style-type: none">1) Damages incurred by the Agency for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and2) Damages incurred by the Construction Contractor for principal office expenses including, but not limited to, the compensation of personnel stationed there, for losses of financing, interest losses, bond capacity losses, business and reputation, and for loss of profit arising directly from the Work, and for indirect expenses, general office overhead, and future profits.3) This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Nothing contained in this section shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Construction Contractor documents.4) In the event the liquidated damages clause is deemed unenforceable by any tribunal or court of competent jurisdiction, the Agency's waiver of consequential damages shall be null and void.
8.3 Nonconforming Tender	<ol style="list-style-type: none">1) The Materials provided and Services performed must comply fully with the Contract, and providing Materials or performing Services or any portion thereof that do not comply fully constitutes a breach of Contract, in which event Agency will be entitled to exercise any remedy available to it under the Contract or laws.2) Any Material deviation from the final bid may be deemed a breach of contract unless specifically authorized by the Procurement Officer through a contract Change Order.



	3) The Agency will not accept a Material reduction and/or modification in the quality and/or quantity of the Work.
8.4 Non-exclusive Remedies	Agency's rights and remedies under the Contract are not exclusive.
8.5 Right to Assurance	<ol style="list-style-type: none">1) If Agency in good faith has reason to believe that Construction Contractor does not intend to, or is unable to, perform or continue performing under the Contract, Procurement Officer may demand that Construction Contractor promptly provide written assurance of intent to perform. Failure by Construction Contractor to provide the assurance within the time specified may be the basis for terminating the Contract or for Agency to exercise any other remedy available to it under the Contract or laws.2) The Agency may demand any and all documents in its reasonable discretion to assure itself that the Construction Contractor has the resources and ability to perform the Contract.
8.6 Right of Offset	<ol style="list-style-type: none">1) Agency is entitled to offset against any sums due Construction Contractor any expenses or Costs Agency incurs or damages it has assessed against it concerning Construction Contractor's non-conforming performance or failure to carry out the Work, including any expenses, Costs, and damages to which it is entitled by the Contract or laws.2) Further, the Agency is also entitled to the right of offset on this Contract for breach and defaults on other Contracts between the Agency and Construction Contractor.
8.7 Stop Work Order	The Agency may at any time require Construction Contractor to stop all or any part of the Work by written order (a "Stop Work Order"). Upon receipt of a Stop Work Order, Construction Contractor shall immediately comply with its terms and take all reasonable steps to minimize incurring of further Costs during the period of stoppage that might be chargeable to Agency associated with the portions of the Work covered by the order. If Construction Contractor incurs losses, it may make a claim under Article 10 solely for Work performed to date of the Stop Work Order subject to the limitations set forth in this Contract. Further, upon issuance of a Stop Work Order, Construction Contractor shall take all steps necessary to ensure the safety of the Site.
9.0 Contract Termination	
9.1 Agency Failure to Perform	The Construction Contractor is not liable or responsible for Agency delays or suspension of Work caused solely by Agency.
9.2 Gratuities	Agency may, by written notice, terminate the Contract, in whole or in part, if Agency determines that employment or a Gratuity was offered or made by Construction Contractor or a representative of Construction Contractor to any officer or employee of Agency for the purpose of influencing the outcome of the procurement or the administration of the Contract or any favorable treatment concerning the Contract or performance of the Contract. Agency, in addition to any other rights or remedies available to it, will be entitled to recover exemplary damages in the amount of three (3) times the value of the Gratuity offered by Construction Contractor.
9.3 Notice to Cure	Upon receipt of any Notice to Cure, the Construction Contractor receiving the Notice must prepare a report describing its program and measures to affect the Cure of the event of default and/or anticipatory breach of Contract within the time required by the Notice to Cure. The report must be delivered to the Procurement Officer at least three (3) business days prior to the required Notice to Cure meeting with the Agency.
9.4 Rights to Work Project	Should the Construction Contractor be terminated under this Contract, the Agency may continue the Project and receive copies of the Drawings, Specifications, or other documents within fourteen (14) calendar days of the termination notice. Copies will be in the format designated by the Agency. The Agency reserves the right to have these documents completed, corrected, revised or added to by another Construction Contractor
9.5 Suspension or Debarment	Agency may, by written notice to Construction Contractor, terminate the Contract immediately if Agency discovers that Construction Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Agency



	has taken Construction Contractor's submittal of the Offer and Acceptance Form and will take its performance under the Contract as Construction Contractor's attestation that it is not currently suspended or debarred. If Construction Contractor subsequently becomes suspended or debarred, it shall notify Procurement Officer immediately.
9.6 Termination for Conflict of Interest	By A.R.S. § 38-511, Agency may terminate the Contract within three (3) years after the effective date without penalty or further obligation if any Person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of Agency is or becomes an employee or agent of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. Any such termination will be effective when Construction Contractor receives Agency's written notice of the termination unless the notice specifies a later date.
9.7 Termination for Convenience	Agency may terminate the Contract for convenience and in its sole discretion, in whole or in part, at any time, and without penalty or recourse on Construction Contractor's part other than as expressly stated in the Contract. Upon receipt of Agency's written termination notice, Construction Contractor shall stop Work as directed in the notice, notify all Subcontractors of the termination and its effective date, place no further orders for Work or Materials, enter into any further Contracts for Materials or Work, terminate all Contracts regarding Work remaining to be done, take all reasonable and necessary actions to protect the Work and the Site, and minimize any further Costs that might be chargeable to Agency. Construction Contractor shall take all necessary actions to protect and preserve the Work. In the event of termination under this paragraph, all Design Requirements, plans, Specifications, Drawings, Construction Documents, data, and reports prepared by Construction Contractor under the Contract will become Agency's property and Construction Contractor shall deliver it all promptly on demand. Construction Contractor will be entitled to receive just and equitable compensation for necessary and attributable unfinished Materials on hand, Work in progress, Work completed, and Work accepted before the effective date of the termination. Should the Agency terminate the Contract under this paragraph, the Agency will not be liable for Construction Contractor lost profits or any consequential damages.
9.8 Termination for Default	<ol style="list-style-type: none">1) In addition to the rights reserved to it under the Contract, Agency may terminate the Contract in whole or in part due to Construction Contractor's failure to:<ol style="list-style-type: none">a) comply with any term or condition of the Contract;b) comply with any Warranty made by Construction Contractor under the Contract;c) obtain and maintain all required insurance policies, bonds, licenses, and permits;d) make satisfactory progress in carrying out the Work;e) fail to furnish Agency with assurances satisfactory to Agency evidencing Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents. Procurement Officer shall give written notice of the termination and the reasons for it.2) Upon termination under this paragraph, all documents, data and reports prepared by Construction Contractor under the Contract and all necessary and attributable unfinished Materials on hand, Work in progress, Work completed, and Work accepted will become Agency's property, and Construction Contractor shall deliver all of it immediately on demand. Agency may, following termination of the Contract under this paragraph, procure on terms and in the manner determined to be appropriate Materials or services to replace those that were to have been provided or performed by Construction Contractor, and Construction Contractor will be liable to Agency for any excess Cost Agency incurs in procuring such substitutes.3) In the event the Agency terminates for default, the Agency shall be entitled to recover from the Construction Contractor any and all damages, all reasonable attorney fees and court costs (including, but not limited to, primary loss investigation, judgment costs, expert witness and/or consultant fees and any



	<p>and all expenses, fees, and costs from appellate proceedings) incurred by the Agency as a result of the default.</p> <p>4) If a termination for default is later determined to have been improper, such termination shall be automatically converted to a termination for convenience, and Construction Contractor's remedies and compensation shall be limited to those for a termination for convenience under the Contract.</p>
9.9 Work Performance Continuation Required	Construction Contractor shall carry on the Work and adhere to the Work Progress Schedule during all disputes, disagreements, or alternative resolution processes with the Agency. Construction Contractor shall not delay or postpone any Work except as Agency and Construction Contractor may agree in writing. Construction Contractor shall continue to perform in accordance with the requirements of the Contract up to the effective date of any Stop Work Notice issued or Termination, as directed by Agency in the notice.
10.0 Contract Claims	
10.1 Claim Resolution	Notwithstanding any law to the contrary, all Contract claims or controversies under the Contract are to be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9, and the rules adopted thereunder.
10.2 Mandatory Arbitration	In compliance with A.R.S. § 12-1518, the parties agree to comply in a judicial review proceeding with any applicable, mandatory arbitration requirements for the resolution of claims valued at less than \$100,000 by the State. The parties agree that any and all mandatory arbitration shall be through the American Arbitration Association ("AAA"), with the arbitrator to be selected pursuant to AAA rules and the arbitration to be conducted according to the applicable AAA rules, and with the costs of arbitration (including but not limited to the arbitrator's fees and costs) to be allocated between the parties by the arbitrator. Costs do not include attorney fees.
11.0 Construction Contractor Responsibilities	
11.1 Acceptance of Work	<p>1) Agency has the right to make acceptance of the Work subject to a complete inspection on delivery and installation, if installation is Construction Contractor's responsibility. Agency may apply as acceptance criteria conformity to the Contract, workmanship and quality, correctness of constituent Materials, and any other matter for which the Contract or applicable laws state a requirement, whether stated directly or by reference to another document, standard, reference specification, etc.</p> <p>2) Construction Contractor shall remove and replace any rejected Work; and remove any rejected Materials from the delivery location, or from any immediate environs to which it might have been reasonably necessary to move it, carry it off the delivery premises, and subsequently deliver an equal number or quantity of conforming items. Agency will not owe Construction Contractor any payment for rejected Work, and Agency may, at its discretion, withhold or make partial payment for any rejected Materials that have been returned to Construction Contractor in those instances where Agency has agreed to permit repair instead of demanding replacement.</p>
11.2 Additional Work	<p>1) AUTHORIZATION FOR ADDITIONAL WORK REQUIRED. Construction Contractor shall only provide Additional Work when authorized in a written Order signed by the responsible Procurement Officer. The Agency will not provide compensation for unauthorized Work.</p> <p>2) PROMPT NOTIFICATION. Construction Contractor shall notify the Agency with reasonable promptness when the need for additional services is identified and explain the facts and circumstances giving rise to the need. If the Agency determines that all or parts of those services are not required, the Agency shall give prompt written notice to the Construction Contractor, and the Agency shall have no further obligation to compensate the Construction Contractor for those services.</p> <p>3) PROMPT AND ACCURATE SUBMITTALS. To avoid delay in the Design Schedule, Construction Contractor shall submit any Requests for Information ("RFI's) or any other necessary documentation completely, accurately, and in a timely fashion, in accordance with the Contract.</p>



11.3 Allowances	<ol style="list-style-type: none"> 1) The Construction Contractor shall include in the Contract Cost at time of offer submission any and all Allowances stated in the Contract as separate line items. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Construction Documents may direct, but the Construction Contractor shall not be required to employ persons or entities against which the Construction Contractor makes reasonable objection. Agency shall approve all use of Allowances through the use of Authority to Use Allowance Form, Exhibit S. 2) Allowances shall: <ol style="list-style-type: none"> a) Cover the Cost to the Construction Contractor of Materials and equipment delivered to the Site and all required taxes, less applicable trade discounts; b) Construction Contractor's Costs for unloading and handling at the Site, labor, installation Costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Cost and not in the Allowances; c) Construction Contractor shall take all reasonable steps to ensure the scope and budget of Allowances are correct. When Costs are more than or less than Allowances, the Contract Cost shall be adjusted accordingly by a Change Order. Construction Contractor shall notify the Agency immediately if the scope selected for the Allowance causes Costs to be more or less than Allowance. d) Amount of Allowance must reflect reasonable Cost of providing the items, whether or not the item is actually provided.
11.4 As-Built Drawings	<p>Construction Contractor will review and update the As-Built Drawings on a weekly basis reflecting the changes in Specifications and working Drawings during the Construction of the Work and such updated As-built Drawing shall be made available at the construction site for review by agency and Design Professional. Construction Contractor will submit the fully revised set of Drawings to the Design Professional upon Final Completion of the Work for the Project. Design Professional will incorporate Construction Contractor's red-line drawings and will submit the fully revised set of As-Built Drawings to the Agency upon Final Completion of the Work for the Project.</p>
11.5 Automatic Temperature Control Design	<p>Where applicable, the Construction Contractor shall specify open protocol automatic Energy Management System (EMS)/HVAC controls systems that communicate with and are interoperable with the Agency system. The Agency's Designated Representative shall arrange an initial meeting to discuss the integration and specification of the EMS/HVAC Control System. The Construction Contractor shall thereafter incorporate these requirements into Project design and Construction Documents.</p>
11.6 Background Check	<ol style="list-style-type: none"> 1) Each of Construction Contractor personnel who is performing Work with information technology, correctional facilities, proprietary and sensitive data or confidential or access-restricted or in an Agency defined secured area, or as otherwise requested by Agency, must undergo the security clearance and background check procedure, which may include fingerprinting. 2) Construction Contractor shall obtain and pay for the security clearance and background check and shall incorporate Cost in the Construction Contractor offer submitted to perform the Work. 3) Construction Contractor personnel who will have administrator privileges on a Agency network must additionally provide identify and address verification and undergo State-specified training for unescorted access, confidentiality, privacy, and data security.
11.7 Bonds, Payment and Performance	<ol style="list-style-type: none"> 1) Construction Contractor shall furnish as required under Title 34, Chapter 2, Article 2 or Chapter 6, as applicable, payment and performance bonds executed solely by a surety company holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. §41-2574, binding



	<p>on the parties to the contract if the value of the construction award for the Contract exceeds the amount established by section A.R.S. §41-2535, or as otherwise requested by Agency. See Exhibit N and O.</p> <p>2) If a surety upon a bond loses its authority to do business in Arizona, is insolvent, or otherwise cannot meet its obligations under the bond, Construction Contractor shall, within thirty (30) days of such event, furnish a replacement bond in accordance with law at no added Cost to Agency.</p>
11.8 Clean Up of Site	<p>1) The Construction Contractor shall at all times keep the premises, Site of Construction, surrounding area, and any storage areas neat and clean, and free from accumulation of waste Materials or rubbish caused by operation of Work under the Contract.</p> <p>2) At completion of the Work the Construction Contractor shall remove from Project waste Materials, rubbish, the Construction Contractor's tools, construction equipment, machinery, surplus Material, and any excess rocks and dirt from the Work, to restore affected areas of Site to a neat and clean condition satisfactory to the Agency Designated Representative.</p> <p>3) If the Construction Contractor fails to clean up, the Agency may do so and the Cost thereof shall be charged to the Construction Contractor.</p> <p>4) Any landscaped seeded or sodded area requiring repair as a result of construction damage shall be leveled, raked, and re-seeded or re-sodded with like Material at Construction Contractor's expense.</p>
11.9 Compliance with Codes	<p>Construction Contractor shall bear full responsibility for ensuring that the Work performed under the Contract complies with all applicable laws, codes and regulations. In the case of conflicts between codes, the more stringent conditions shall apply. The Arizona Department of Administration Statutory Review is the authority having jurisdiction and is the enforcement agency for code requirements.</p>
11.10 Contractor Control of Site	<p>1) Construction Contractor shall have access to the Site after the Agency issues the Notice to Proceed. During any time at which the Construction Contractor has the primary use of, or control over, the location at which the Work is, or will be, performed, the Construction Contractor shall also bear all the responsibilities for that location as if it owned the Site.</p> <p>2) The Construction Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits, and the Contract and shall not unreasonably encumber the Site with Materials or equipment. Construction Contractor storage of any Materials at the Site shall be approved in advance by the Agency.</p> <p>3) The Construction Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work Site, which are not to be removed and which do not unreasonably interfere with the Work required under this contract. The Construction Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Construction Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Agency Designated Representative.</p> <p>4) The Construction Contractor shall protect from damage all existing improvements and utilities at or near the Work Site, and on adjacent property of a third party. The Construction Contractor is responsible for locating any and all utilities including any and all underground power, electrical, plumbing, gas, or water lines and shall bear the risk in the event of any damage to the same as a result of construction activity on the Project.</p> <p>5) The Construction Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. If the Construction Contractor fails or refuses to repair the damage promptly, the Procurement Officer may have the Work performed and charge the Cost to the Construction Contractor. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by</p>



	<p>the Construction Contractor only with the approval of the Agency Designated Representative. The temporary buildings and utilities shall remain the property of the Construction Contractor and shall be removed by the Construction Contractor at its expense upon completion of the Work.</p> <p>6) The Construction Contractor shall use only established roadways, or use temporary roadways constructed by the Construction Contractor when and as authorized by the Procurement Officer. When Materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Construction Contractor shall protect them from damage. The Construction Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.</p> <p>7) DUST CONTROL. Construction Contractor shall provide dust control in accordance with rules set forth by the authorities having jurisdiction and maintain suitable equipment on hand or at the Site for dust control on the Project.</p> <p>8) Construction Contractor is to ensure that the construction Site is safe and has taken all appropriate measures to ensure the safety of all workmen and persons who are physically present at the Site.</p> <p>9) Construction Contractor shall be responsible at its sole Cost for all measures necessary to protect any property and improvements adjacent to the project</p> <p>10) Construction Contractor shall promptly notify in writing Agency of all accidents arising out of or in connection with the Work which causes death, personal injury, and/or property damage providing full details and statements and a list of witnesses.</p>
11.11 Cooperation and Coordination	<p>1) Agency and Construction Contractor will cooperate and participate fully in coordinating at all levels and among all the parties involved in this Project, and at their own expense. Cooperation shall mean both formal and informal interaction between and among all the parties involved in the Project, including but not limited to, Agency's Representatives, Construction Contractor's Subconsultants and/or Subcontractors, Construction Contractors, Subcontractors and outside entities as designated by Agency to promote the desired goal of a successful, non-adversarial completion of the Project on time and within budget. The requirement for Cooperation shall not be construed as a change in the terms or conditions of the Contract for the Project.</p> <p>2) The Agency and Construction Contractor shall endeavor to communicate through the Design Professional. Communications by and with the Construction Contractor's Subconsultants and/or Subcontractors shall be through the Construction Contractor. Communications by and with Subcontractors and Material suppliers shall be through the Construction Contractor. Communications by and with separate Construction Contractors shall be through the Design Professional.</p>
11.12 Schedule	<p>1) SCHEDULE. The Schedule for Construction and any and all updates thereto shall include time for any and all necessary review and approvals by Agency or outside entities, as well as sufficient time for other Consultants to complete their portion of the Work. The Schedule shall be in a format and provide sufficient detailed information that is acceptable to the Agency. Construction Contractor shall provide the Agency and Design Professional with an approved baseline Schedule, within a time frame determined by the Agency, to include at a minimum initiation of construction, mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and Substantial Completion of the Work of the Contract and any other information required in the <u>Special Terms and Conditions</u>.</p> <p>2) ADDITIONAL TIME. Construction Contractor shall bear the primary responsibility for determining whether additional time is required for the review of any orders or amendments to the Contract for Construction; allowing time for Agency review and approval of any such orders or amendments; and is</p>



	<p>responsible for ensuring that such time is reflected in a modified Schedule in a Change Order.</p> <p>3) CONSTRUCTION CONTRACTOR REVIEW. Construction Contractor shall bear the primary responsibility for ensuring that it was allotted sufficient time in the Schedule for construction for any and all necessary reviews and approvals. The Agency and/or Design Professional shall timely review all requests for information, changes, and submittals in a timely fashion as to not delay the project.</p>
11.13 Construction Cost Control	<p>Throughout the Project, the Construction Contractor shall keep the Project's estimated construction Cost within the Construction Budget. Construction Contractor is responsible to periodically submit to Agency, at review times mutually agreeable to Agency and Construction Contractor, a current Estimated Project Construction Cost to verify that this is accomplished. If necessary, the Construction Contractor shall schedule times with Agency to review the Construction Budget.</p>
11.14 Construction Safety	<p>1) SAFETY. Construction Contractor, Subcontractors, employees and all Site visitors, at all times on the job Site, shall furnish and wear sufficient protective gear, including but not limited to, hardhats, safety shoes and safety goggles. Construction Contractor shall also provide temporary protection measures, drinking water and temporary sanitation facilities for use by construction personnel. Construction Contractor shall provide up-to-date Material safety data sheets (MSDS) as required for Materials at the Site. Construction Contractor shall have a detailed site-specific safety plan to address State and Federal safety laws.</p> <p>2) INJURIES. In the event of an incident or accident involving outside medical care for an individual on or near the Work, Construction Contractor shall notify Agency Designated Representative and other parties as may be directed promptly, but no later than twenty-four (24) hours after Construction Contractor learns that an event required medical care, supply Agency Designated Representative and Construction Contractor with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) or more workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, witness names and statements, finding of cause, and remedial plans shall be provided to Agency Designated Representative within one (1) week after occurrence, unless otherwise directed by Agency.</p> <p>3) ENVIRONMENTAL SAFETY Construction Contractor shall immediately stop Work activities impacted by encountering any previously unknown potentially hazardous Material, or other Materials potentially contaminated by hazardous Material, and secure the affected area, and notify Agency Designated Representative immediately. Agency Designated Representative will promptly engage qualified experts to investigate and issue a written report to Construction Contractor identifying the Material(s) found. The Agency shall remediate and render harmless the hazard caused by Agency or if an unknown and could not have been reasonably foreseen by Construction Contractor.</p> <p>4) TRENCHING AND EXCAVATING PLAN. Construction Contractor is required to submit a trenching and excavation plan to Agency Designated Representative prior to commencing operations unless an engineered plan is part of the Contract Documents.</p> <p>5) ASBESTOS CONTAINING MATERIAL. The Construction Contractor shall not knowingly use, specify, request or approve for use any asbestos containing Materials or lead-based paint in the Work. When a specific product is specified, the Construction Contractor shall endeavor to verify that the product does not include asbestos containing Material.</p>
11.15 Construction Meetings	<p>Construction Contractor shall attend regular construction meetings with the Agency at the Project Site with duration and frequency determined by the Agency for the Project.</p>

**11.16 Correction of Defects and Non-Compliant Work**

- 1) Construction Contractor shall use due care in inspections and observations to determine non-conformance.
- 2) Design Professional shall keep agency informed of progress and quality of Work and use due care to guard against defects and deficiencies in Construction Contractor's Work. Should the Design Professional and/or the Agency Designated Representative identify Work as noncompliant with the Contract Documents, upon notice Construction Contractor shall immediately correct such Work at no additional Cost to the Agency. The approval of Work by either Design Professional or Agency Designated Representative does not relieve Construction Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3) Construction Contractor shall take any and all steps to meet the requirements of the Project Specifications. If Construction Contractor fails to do so, the Agency will require correction and full compliance. After corrective action is taken, the Agency will retest to determine compliance with the Specifications. Construction Contractor shall be responsible for the Cost of the additional testing and inspections, and such Cost shall be deducted from progress payment to Construction Contractor.
- 4) Construction Contractor shall, at no additional Contract Cost and without entitlement to extension of any delivery deadline or specified time for performance, remove or exchange and replace any defective or non-conforming delivered or installed Materials or Work.
- 5) Construction Contractor shall bear the expense of making good all Work of Agency other contractors destroyed or damaged by removal or replacement of defective Construction Contractor Work. Agency shall equally enforce this clause against any Agency other contractors.
- 6) If Construction Contractor fails to take prompt action to comply with the Contract Documents in a timely manner, as determined by the Agency, Agency will be entitled to exercise its remedies under paragraph 8.6 [Right of Offset] of the Uniform Terms and Conditions, or any other remedies set forth in the Contract.
- 7) Whether Agency will permit Construction Contractor to repair in place or demands that Construction Contractor remove and replace is at Agency's discretion in each instance, provided that, Agency shall not apply that discretion punitively if repair in place is practicable and doing so would not create safety hazards, put property at risk, unreasonably interfere with operations, create public nuisance, or give rise to any other reasonable concern on Agency's part.
- 8) **AGENCY ACCEPTANCE OF DEFECTIVE WORK.** At the absolute discretion of the Agency, the Agency may decide to accept defective Work, instead of requiring correction or removal and replacement of defective Work. Construction Contractor shall pay all claims, Costs, losses and damages attributable to Agency's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating the Agency for the diminished value of the project resulting from the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Construction Contractor to Agency after a calculation by Agency of the diminution in value of the project resulting from defective Work.
- 9) The Construction Contractor's obligations to perform Warranty Work will survive the acceptance of any Work and any termination of the Contract.
- 10) **CONSTRUCTION CONTRACTOR NON-COMPLIANT WORK.** Should the Design Professional and/or the Agency Designated Representative identify Work as noncompliant with the Contract Documents, Design Professional and/or Agency Designated Representative shall communicate the finding to Construction Contractor, and Construction Contractor shall correct such Work at no additional Cost to the Agency. The approval of Work by either Design Professional or Agency Designated Representative does not relieve Construction Contractor from the obligation to comply with all requirements of the Contract Documents.



- 11) AGENCY MAY CORRECT NON-COMPLIANT WORK. Agency shall issue a written notice to Construction Contractor to correct and remedy any deficiency including but not limited to
 - a) Remove and replace rejected Work, or
 - b) Construction Contractor failure to perform Work in accordance with the Contract Documents; or
 - c) Construction Contractor fails to comply with other provisions of the Contract Documents.
- 12) If, in the opinion of the Agency, significant progress to correct the deficiency by the Construction Contractor has not been made, within seven (7) days, the Agency may exercise any actions necessary to remedy the deficiency including but not limited to:
 - a) Exclude Construction Contractor from all or part of the Site;
 - b) Take possession of all or part of the Work, and
 - c) Suspend Construction Contractor's services related thereto, and
 - d) Incorporate in the Work all Materials and equipment stored for the Project at the Site or for which Agency has paid Construction Contractor but which are stored elsewhere.
 - e) Hire a replacement contractor or take other measures that are reasonably necessary to correct the noncompliant Work. Any and all Costs incurred shall be paid by the Construction Contractor or deducted from any amounts due or that may be due Construction Contractor under this or any other contract with the State of Arizona. Costs, shall include, but not be limited to, repair and replacement Costs, labor and material Costs, removal Costs, design Costs, administrative expenses, and any other Costs and expenses caused by Construction Contractor's non-compliance.
- 13) Construction Contractor shall allow the Agency, its agents and employees, Agency's other Construction Contractors, Construction Contractors and Subconsultants and/or Subcontractors access to the Site to enable Agency to exercise the rights and remedies under this paragraph. All claims, Costs, losses and damages incurred or sustained by the Agency in exercising such rights and remedies will be charged against Construction Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. 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 Construction Contractor's defective Work. Construction Contractor shall not be allowed an extension of the Contract times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by Agency of Agency's rights and remedies hereunder.
- 14) CONSTRUCTION CONTRACTOR NON-COMPLIANT WORK. If the Construction Contractor Materially fails to furnish services in compliance with the approved Project Schedule or any subsequently approved amendments to the Schedule or the Construction Contractor's services, or deliverables are unusable for their intended purpose and these failures are a Material breach of this Contract, then Agency, in its reasonable discretion, and after failure of Construction Contractor to respond to the Notice to Cure, may Contract with another Construction Contractor to complete the services or Work product, and Construction Contractor shall pay the Agency for the difference between the balance under Construction Contractor's Contract with Agency and the amount charged by the replacing Construction Contractor to complete Construction Contractor's Scope of Work.
 - a) Agency will provide Construction Contractor with the itemized Costs as they are being incurred.
 - b) Prior to contracting with another Construction Contractor, the Agency shall provide Consultant with a Notice to Cure, as described in these Uniform Terms and General Conditions.
 - c) Should the Construction Contractor fail to Cure the Material breaches of this Contract, as identified in the Notice to Cure, the Agency may pursue



	<p>any of the available remedies for breach of Contract available in Section 8 above.</p> <p>d) It is understood that if the Construction Contractor materially breaches this Contract and the Agency Terminates for Default under this Contract, Construction Contractor shall not be entitled to any sums due or that may become due under this Contract.</p>
11.17 Corrective Action Required	<ol style="list-style-type: none"> 1) Notwithstanding any other guarantees, general warranties, or particular warranties Construction Contractor has given under the Contract, if Construction Contractor fails to perform any Material portion of the Work, including failing to complete any contractual deliverable, or if its performance fails to meet agreed-upon service levels or service standards set out in or referred to in the Contract, then Construction Contractor shall perform a root-cause analysis to identify the source of the failure and use all commercially reasonable efforts to correct the failure and meet the Contract requirements as promptly as is practicable. 2) Construction Contractor shall provide to Agency a report detailing the identified cause and setting out its detailed corrective action plan promptly after the date the failure occurred (or the date when the failure first became apparent, if it was not apparent immediately after occurrence). 3) Agency may demand to review and approve Construction Contractor's analysis and plans, and Construction Contractor shall make any corrections Agency instructs and adopt Agency's recommendations so far as is commercially practicable, provided that, Agency may insist on any measures it determines within reason to be necessary for safety or protecting property and the environment. 4) Construction Contractor shall take the necessary action to avoid any like failure in the future, if doing so is appropriate and practicable under the circumstances
11.18 Cutting and Patching	<ol style="list-style-type: none"> 1) The Construction Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. 2) The Construction Contractor shall not damage or endanger a portion of the Work or fully or partially completed Construction of the Agency or separate Construction Contractors by cutting, patching, or otherwise altering such Construction, or by excavation. The Construction Contractor shall not cut or otherwise alter such Construction by the Agency or a separate Construction Contractor except with written consent of the Agency and of such separate Construction Contractor; such consent shall not be unreasonably withheld. The Construction Contractor shall not unreasonably withhold from the Agency or a separate Construction Contractor the Construction Contractor's consent to cutting or otherwise altering the Work.
11.19 Contractor Agreements, Communication	<p>The Agency will ensure that Construction Contractors receive the necessary communication to perform the required Work, and shall promptly notify Construction Contractors of any and all communications that the Agency determines may materially affect the Construction Contractor's Work.</p>
11.20 Energy Efficiency	<p>Upon request by the Agency, Construction Contractor will analyze the Work or related components for energy efficiency gains including, but not limited to Life Cycle Costing, pursuant to A.R.S. 34-452.</p>
11.21 Examination of Site	<ol style="list-style-type: none"> 1) The Construction Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its Cost. Construction Contractor and its key personnel shall visit the Project Site to become familiar with existing Site conditions for the Agency Project and visually survey for coordination of the Work, which may include but not limited to, the Site location and size, Site and adjacent perimeter, utility capacities, conditions bearing upon transportation, disposal, handling, and storage of Materials, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during Work



	<p>performance, and connection options of external utilities, all relevant areas of any existing buildings to be altered, ceiling, interior, exterior, and concealed spaces, prior to submitting an Offer for the Work.</p> <p>2) The Construction Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Construction Contractor with the solicitation prior to bid submittal and Contract before commencing Work.</p> <p>3) The Construction Contractor acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface Materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site, including all exploratory Work done by the Agency, as well as from the drawings and specifications made a part of this Contract. Any failure of the Construction Contractor to take the actions described and acknowledged in this paragraph will not relieve the Construction Contractor from responsibility for estimating properly the difficulty and Cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Agency.</p> <p>4) The Agency assumes no responsibility for any conclusions or interpretations made by the Construction Contractor based on the information made available by the Agency. Nor does the Agency assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this Contract.</p>
11.22 Forced Substitutions	Forced substitutions will not be permitted; Construction Contractor shall obtain Agency's prior written consent before making any substitution for any Material or Service covered by the Contract.
11.23 Hazardous Materials, Substances, or Waste	<p>1) The rights and liabilities of the parties when a hazardous substance is encountered are specified by A.R.S. § 32.-1129.03.</p> <p>2) Construction Contractor shall timely provide Agency with any "Safety Data Sheets" (SDS) and any other hazard communication documentation required under the US Department of Labor's Occupational Safety and Health Administration (OSHA) "Hazard Communication Standard" (often referred to as the "HazCom 2012 Final Rule") that is reasonably necessary for Agency to comply with regulations when it or its other Construction Contractors install, handle, operate, repair, maintain or remove any Materials. Note that, in the past, those documents might have been referred to as "Material Safety Data Sheets" or "Product Safety Data Sheets", but Agency (and this Contract) use only the more up-to-date "SDS" reference.</p> <p>a) Construction Contractor shall ensure that all its relevant personnel, to the extent they are Construction Contractor's responsibility under the Contract, understand the nature of and hazards associated with, the design, shipping, handling, delivery, installation, repair and maintenance of any portion of the Work that is, contains or will become upon use a hazardous Material, with "hazardous Material" being any Material or substance that is:</p> <p>b) Identified now or in the future as being hazardous, toxic or dangerous under applicable laws; or</p> <p>c) Subject to statutory or regulatory requirement governing special handling, disposal or cleanup.</p> <p>d) Construction Contractor shall provide and maintain SDS on-Site as required for the Work.</p> <p>3) CONSTRUCTION CONTRACTOR HAZARDOUS WASTE RELEASE. Construction Contractor shall refrain from release of a Hazardous Substance on Agency property during the Work. This includes a Release of a Hazardous Substance pre-existing on Agency property under the following circumstances:</p> <p>a) If Agency has made Construction Contractor aware of the existence of the Hazardous Substance pre-existing on Agency's property and if Agency has provided an area free from the Hazardous Substance sufficient for Construction Contractor to perform the Work; or</p>



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	<p>b) If Agency has not made Construction Contractor aware of the pre-existing Hazardous Substance on Agency's property, but Construction Contractor or any Subcontractor failed to act reasonably when it encountered the Hazardous Substance.</p> <p>4) Construction Contractor shall report immediately to Agency Designated Representative any spills of oil, gas, chemicals or any hazardous Materials. Construction Contractor shall expedite all approved mitigation measures.</p>
11.24 Inclement Weather Day	<p>1) RAIN DELAY. Construction Contractor bears the risk of rainfall activity unless delayed on a critical path for more than 7 days.</p> <p>2) Construction Contractor shall immediately notify the Agency Designated Representative on the day, and any subsequent days throughout the Project, the Construction Contractor is unable to perform Work at the Site on the critical path for more than seven (7) continuous normal Work hours due to inclement weather or rain. The Agency Designated Representative shall confirm the weather conditions and provide a written confirmation to the Construction Contractor.</p> <p>3) Construction Contractor shall submit to the Design Professional and Agency Designated Representative for review a Proposed Change Order request with the number of days the Construction Contractor is requesting a no Cost time extension for Substantial Completion for inclement weather or rain in excess of normal rainfall, along with documentation of the weather days that occurred, and the impact on the critical path Work no later than the end of the month in which the inclement weather day or days occurred. Failure of Construction Contractor to submit a Change Order Request in accordance with this paragraph requirement shall constitute a waiver of additional time for Substantial Completion. Agency Representative shall be the final decision maker on the number of inclement weather days in any Construction Contractor properly submitted Proposed Change Order for extension of time for Substantial Completion in the event of disagreement between the Construction Contractor and Agency Designated Representative. Average days of rain per month will be determined by meteorological data obtained from the closest National Weather Service Station to the Project Site.</p>
11.25 Inspection and Material Testing	<p>1) All Materials and equipment used in the construction of the Project shall be subject to inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.</p> <p>2) CONSTRUCTION CONTRACTOR RESPONSIBILITIES. Construction Contractor shall provide, at Construction Contractor's expense, the testing and inspection services required by the Contract Documents. Construction Contractor shall provide such equipment and facilities as are required for conducting field tests and for collecting and forwarding samples of sufficient size for test purposes. No Materials or equipment represented by samples are to be used until tests, if required, have been made and the Materials or equipment are found to be acceptable.</p> <p>3) UNFIT FOR USE AFTER APPROVAL. Any Material which becomes unfit for use after approval thereof shall not be incorporated into the Work. Approvals or failures to properly inspect or test shall not relieve Construction Contractor from its obligation to perform the WORK in accordance with the requirements of the Contract Documents and to also inspect Construction Contractor's own Work. Failure to discover, inspect, or timely report shall not excuse Construction Contractor from full performance of the Work.</p> <p>4) TIMELY NOTICE. Construction Contractor shall notify Agency Designated Representative and/or Design Professional in writing if any Work will need to be inspected, tested, or approved by someone other than Construction Contractor. Construction Contractor shall coordinate with the Agency and Design Professional well in advance of such testing, inspection, or approval process. Should an inspection, test, or approval be required under this paragraph, Construction Contractor shall bear the sole responsibility for updating the Work Progress Schedule.</p>



	<p>5) NON-CANCELLATION OF SCHEDULED INSPECTIONS. Construction Contractor shall bear all Costs, for any and all instances, in which Construction Contractor fails to cancel no less than twenty-four (24) hours in advance any Construction Contractor scheduled inspection or testing date and time in which the Work will not be or is not ready for the scheduled inspection or testing.</p> <p>6) RETESTING FOR WORK. Construction Contractor shall be responsible for and shall pay all Costs in connection with non-cancellation of scheduled inspections, retesting for Work or Materials found defective or unsatisfactory, including tests covered in this section below entitled "Agency Responsibilities". All Costs for the purpose of paragraph 11.32.4-5 include the standby and travel time for the Agency testing representative, the Design Professional and Agency Designated Representative when due to Construction Contractor's inability to be prepared for the untimely or non-cancelled testing time and date scheduled and retesting due to Construction Contractor defective or unsatisfactory Work. Agency may withhold these Cost expenses from any payment due to Construction Contractor.</p> <p>7) COVERED WORK. Any Work covered by Construction Contractor contrary to the Contract Documents or written instructions of Design Professional or Agency Designated Representative, shall be uncovered at the request of the Design Professional or the Agency Designated Representative for observation and replaced at Construction Contractor's expense. Construction Contractor shall furnish all necessary labor, Materials, tools, and equipment to uncover, expose, or otherwise make available for observation, testing, or inspection any covered Work portion the Agency Designated Representative or Design Professional may require for inspection or testing by others. If Work is found defective, Construction Contractor shall bear all expenses of such uncovering, exposure, observation, inspection and testing, and of satisfactory reconstruction. If Work is not found defective, Construction Contractor shall be allowed an increase in the Contract Cost, or an extension of time, or both, through an issued Change Order directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.</p> <p>8) OBSERVABLE DEFECTS. Observable defects are those that are discoverable by routine testing and inspection procedures or by implementing special tests as required or implied by the Specifications. Defects discovered shall be repaired or removed by Construction Contractor as these are identified.</p> <p>9) SUBMITTALS. Written reports of tests and engineering data furnished by Construction Contractor for Design Professional's review of Materials and equipment proposed to be used in the WORK shall be submitted as specified for Shop Drawings.</p> <p>10) AGENCY RESPONSIBILITIES. Agency will provide any inspection and testing services not provided by the Construction Contractor as required by the Contract Documents. Tests will be made by an accredited testing laboratory selected by the Agency. Except as otherwise provided in the <u>Special Terms and Conditions</u>, or the Specifications, sampling and testing of all Materials and the laboratory methods and testing equipment will be in accordance with the latest standards and methods of the applicable national standards.</p>
11.26 Key Personnel	<p>1) AUTHORITY. The Construction Contractor shall designate which of its employees have the authority to enter into agreements with the Agency on behalf of the Construction Contractor, and which of its employees, its Subcontractors, Subconsultants and/or Subcontractors, will bear the primary responsibility for the completion of the Work.</p> <p>2) REMOVAL OF PERSONNEL. Notwithstanding that Construction Contractor is in every circumstance responsible for hiring, assigning, directing, managing, training, disciplining, and rewarding its personnel, Agency may at its discretion and, without the obligation to demonstrate cause, instruct Construction Contractor to remove any of its personnel from Agency's facilities or from further assignment under the Contract. In such cases, Construction Contractor shall promptly replace them with other personnel having equivalent qualifications, experience, and capabilities. The Agency Designated Representative may</p>



	<p>require, in writing, that the Construction Contractor remove from the Work any employee the Agency Designated Representative deems incompetent, careless, or otherwise objectionable.</p> <p>3) PERSONNEL SUBSTITUTIONS. Construction Contractor shall not be permitted to substitute Construction Contractor Key Personnel, Subcontractors, or Subconsultants and/or Subcontractors after offer submittal, without the prior written approval of the Agency Designated Representative. Requests shall be made in writing detailing the reasons for the requested change and shall not commence without written approval from Agency. The Agency has the right to the same kind and quality of the employee initially offered.</p> <p>4) ROLE APPROVALS. Construction Contractor Key Personnel designated in <u>Offer Documents</u> shall be deemed approved for the roles and responsibilities stated unless expressly stated otherwise by the Agency prior to execution of the Contract.</p>
11.27 Labor and Materials	<p>1) Construction Contractor shall perform Work during regular business hours unless such non-normal Work hours are required by the Contract Documents and not permit overtime Work. Agency Designated Representative may approve alternate Work hours that neither add additional Cost nor time to the Contract Cost or Project Substantial Completion.</p> <p>2) All equipment, Materials, and articles incorporated into the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, shall be stored, applied, installed, connected, erected, used, cleaned and conditioned by Construction Contractor in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, unless otherwise specifically provided in the Contract Documents.</p> <p>3) References in the Specifications to equipment, Materials, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality, function, and type, and shall not be construed as limiting competition.</p> <p>4) All Work under this Contract shall be performed in a skillful and workmanlike manner. Construction Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.</p> <p>5) Construction Contractor is solely responsible for construction means, methods, techniques, sequences or procedures, for safety precautions and programs, protection of installed Work, for coordinating all portions of the Work under the Contract and quality controls in connection with the Work. and will utilize the above so as not to destroy Materials for reuse or to remain the property of the Agency</p> <p>6) The Construction Contractor shall be responsible for all Materials delivered and Work performed until completion and acceptance of the entire Work, except for any completed unit of Work which may have been partially accepted under the Contract. Construction Contractor shall remain responsible for the care and protection of Materials and Work in the areas where Punch List items are completed until Final Completion.</p> <p>7) The Construction Contractor shall provide and pay for labor, Materials, equipment, tools, construction equipment and machinery, drinking water, water, heat, ventilation, utilities, barricades, lighting, construction and warning signs, temporary fire protection, transportation, temporary facilities, fencing, appliances, fuel, power, light, heat, telephone, sanitary facilities, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work. Any temporary sanitation facilities shall be serviced a minimum of one (1) time weekly.</p> <p>8) Construction Contractor shall install and maintain temporary fencing with lockable gates as indicated or directed by the Agency Designated Representative.</p> <p>9) Materials, equipment or items required for Work which are shown on the Drawings but not mentioned in the Specifications or Materials, equipment or items required by the Specifications but not shown on the Drawings, shall be</p>



	<p>furnished and installed the same as though both shown on the Drawings and required by the Specifications.</p> <p>10) Materials as-shipped must comply with applicable safety regulations and standards. Unless expressly stated otherwise in the <u>Scope of Work</u>, Agency is not responsible for making any Materials safe or compliant following acceptance and is relying exclusively on Construction Contractor to deliver and install only products that are already safe and compliant.</p> <p>11) Construction Contractor shall pursue with diligence the procurement of any long-lead-material or equipment required for the Work and provide the Agency Designated Representative with an anticipated and consistently updated schedule for the delivery.</p> <p>12) Materials and equipment procured and installed by the Construction Contractor shall be in accordance with Specifications and derived from the energy life cycle Cost analysis pursuant to the latest revision of A.R.S. §34-452.</p> <p>13) For any Agency furnished equipment or Material that will be in the care, custody, and control of Construction Contractor, Construction Contractor is responsible for damage or loss. Agency shall deliver to Construction Contractor a complete list and respective values of such Materials or equipment and make an equitable adjustment to the contract amount for any increase in Cost of Builder's Risk insurance.</p> <p>14) Construction Contractor shall provide and install weather-tight or temporary enclosures for protection of in progress and completed construction Work from exposure and weather. Construction Contractor shall remove protection when no longer needed.</p> <p>15) Construction Contractor shall store Materials in their original packaging with any and all seals and labels intact and visible.</p> <p>16) Construction Contractor shall remove Agency-salvaged items with care and in a workmanship-like manner and deliver items not being reinstalled, ready for use, to a nearby area as instructed by the Agency Designated Representative.</p>
11.28 Liquidated Damages	<p>The Construction Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract time.</p> <p>Time limits stated in the Contract are of the essence of the Contract. By executing the Contract, the Construction Contractor confirms that the Contract time is a reasonable period for performing the Work. Any Construction Contractor delay beyond Substantial and Final Completion dates shall be subject to liquidated damages. Liquidated damages shall be assessed as detailed in the <u>Special Terms and Conditions</u>.</p>
11.29 Meeting Minutes	<p>Construction Contractor or Agency authorized Construction Contractor substitute, shall attend and draft complete minutes of each Project design and construction meeting between Construction Contractor, Agency and Design Professional, and submit them to Agency for approval within five (5) calendar days after each Project conference.</p>
11.30 Observations	<p>Design Professional, Agency Designated Representative, and/or Construction Contractor observations shall be for the purpose of ascertaining the progress of the Work, to include but is not limited to, the character, scope, quality and detail of construction (including workmanship and Materials) compliance with the design expressed in the Contract Documents, directives of the Agency Designated Representative, approved product data and samples and clarification drawings.</p> <p>Observations shall be separate from any inspections which may be provided by the Agency. Any Agency provision of inspection services, if any, shall not relieve Construction Contractor of its responsibilities under this Contract.</p>
11.31 Pre-Bid Conference Site Visit	<p>Agency's Procurement Officer may conduct, and Construction Contractor and its Subconsultants and/or Subcontractors shall attend and participate in pre-bid conferences and pre-bid Site visits with potential bidders to help identify questions that bidders may raise during the Bidding phase. Questions from prospective Bidders shall be collected by the Agency's Procurement Officer during these conferences and Site visits. No questions shall be answered at these events which require interpretation, clarification or modifications of the Contract Documents</p>



11.32 Preconstruction Conference	Agency may conduct a Preconstruction conference after Contract award and before Construction Contractor starts Work at the Project Site. Conference discussion will establish the lines of communication among the parties as to the Work, coordination of Work, and procedures and handling of the Schedule of Values, Shop Drawing and other submittals, Construction Schedule, and Payment Application processing. The Construction Contractor, Construction Contractor's Superintendent, and Construction Contractor's designated safety officer shall attend the Pre-Construction Conference. The Design Professional shall attend if requested by Agency.
11.33 Project Close Out	Construction Contractor shall submit Project Close Out documents as listed in Exhibit M in appropriate quantities as indicated in the Contract Documents to the Construction Contractor. Construction Contractor shall ensure documents are complete and accurate and provide written acceptance to the Agency. Construction Contractor shall not submit final Application for Payment until documents are accepted by the Agency.
11.34 Proposed Change Order Review	During performance of Construction Phase Services, the Agency shall review Construction Contractor's proposed Change Order(s) for fairness of pricing and make recommendations to the Agency on fairness of pricing for the Materials and Work. Any Construction Contractor proposed Change Order shall include the estimate of Cost and of probable effect of delay on progress of the Work if any.
11.35 Proprietary Specifications	<ol style="list-style-type: none"> 1) Under A.R.S. § 34-104, if a Contractor or the Agency includes bidding, contracting, or purchasing specifications that are proprietary to one supplier, distributor, or manufacturer, then the details of the essential characteristic of that product will be included in the <u>Special Terms and Conditions</u> with a statement indicating that the Contractor shall consider alternative products which have the aforementioned desired essential characteristics. 2) Design Professional shall consider, and provide recommendations to the Agency to either approve or reject, any and all alternative product proposals that are submitted at least eight (8) days prior to the deadline for receiving bids for this Solicitation. If any alternative product proposal is approved, the Design Professional shall modify the bidding documents to include the alternative product proposal by the end of the fifth day prior to the deadline for receiving bids and publish the documents that same day. If the Design Professional considers rejection of any alternative product proposal, the Design Professional shall provide the Agency with notice of that rejection, including the details of the alternative product proposal, prior to the deadline for receiving bids. 3) No modification shall be made without the approval of Agency.
11.36 Recalls	The Construction Contractor shall provide the Agency with timely notice of any recall notice, technical service bulletin, or other important notification affecting the Work. (collectively, "recalls" hereinafter). Notwithstanding whatever protection Construction Contractor might have under A.R.S. § 12-684 with respect to a manufacturer, Construction Contractor shall handle recalls entirely and without obligation on Agency's part, other than to permit removal of installed products, retrieval of stored products, etc., as necessary to implement the recall.
11.37 Recovery of Work Effort	At any time, the Construction Contractor presents a Work Progress Schedule and the forecast indicates the Construction Contractor will not finish critical path or milestone Work within fourteen (14) days of the time originally scheduled for completion of the Work (potentially causing a delay of the Substantial Completion date), the Construction Contractor shall provide a new recovery plan for Work to the Agency Designated Representative. The Construction Contractor new recovery plan for Work shall address at a minimum additional efforts for concurrent operations, logic and sequence changes, additional manpower, additional shifts, or overtime Work at no Cost or extension of time for Substantial Completion to the Agency. Upon approval of the Agency Designated Representative the recovery plan for Work will become the updated Work Progress Schedule.
11.38 Record Documents	<ol style="list-style-type: none"> 1) UPDATING RECORD DOCUMENTS. Design Professional or other party specified by Agency shall be responsible for updating the Record Documents for all Construction Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs. Design Professional shall be responsible for updating the Record Documents



	<p>for any addenda, Change Orders, Construction Contractor supplemental instructions and any other alterations to the Contract Documents generated by Construction Contractor or Agency.</p> <p>2) MAINTAIN AT SITE. Construction Contractor shall maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, schedules, and all Project correspondence and provide Agency and Construction Contractor access to these documents for reference and examination. Construction Contractor Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction, and reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise.</p> <p>3) MONTHLY UPDATE. Record Documents shall be updated a minimum of monthly prior to submission of a Payment Application or as otherwise directed by Agency. Construction Contractor failure to maintain current Record Documents shall constitute cause for Agency denial of a Progress Payment otherwise due.</p> <p>4) TRANSFER OF RECORD DOCUMENTS TO AGENCY. Construction Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents prior to requesting Substantial Completion inspection with the Construction Contractor. After review by the Construction Contractor and acceptance by the Agency Designated Representative, one (1) electronic media copy and one (1) reproducible copy of the Record Documents shall be provided in the format designated by the Agency Designated Representative.</p> <p>5) PREPARATION OF RECORD DOCUMENTS. Record Documents shall be carefully and neatly prepared by a competent drafter familiar with the Work.</p>
11.39 Requirements at Location	<p>1) Construction Contractor acknowledges that the location of its Work for the Project might be inside an industrial building, institutional building, or one of various office types and classes and Construction Contractor personnel shall conduct themselves cordially and professionally with Agency personnel and the public.</p> <p>2) When performing the Work requires Construction Contractor personnel to Work inside a secured perimeter at certain institutional facilities such as prisons where prior clearances are required, Construction Contractor shall contact the facility directly to confirm its most-current security clearance procedures, allowable hours for Work, visitor dress code, and other applicable rules. Agency will neither allow extra charges for wait time, comebacks, or the like nor excuse late performance if Construction Contractor has failed to make the confirmation or comply with the applicable conditions.</p> <p>3) Construction Contractor shall ensure Construction Contractor personnel and Subconsultants and/or Subcontractors performing Work at the Project Site:</p> <ol style="list-style-type: none"> Park in any assigned location at the Site; Have proper State or federal issued identification within their possession at all times; No eating, drinking, or smoking except in designated areas. <p>4) Construction Contractor shall adequately monitor and control noise levels.</p>
11.40 Returns	<p>1) Agency may, at its discretion, return for full credit and with no restocking charges any delivered Materials unused in the original packaging, including any instruction manuals or other incidental item that accompanied the original shipment, within 30 (thirty) days after receipt.</p> <p>2) If Agency elects to return delivered Materials, then Agency shall pay all freight, delivery, and transit insurance Costs to return the products to the place from which Construction Contractor shipped them, provided that, if Agency returns delivered Materials because they are defective or non-conforming or for any</p>



	other reason having to do with Construction Contractor fault or error, then Agency will not be responsible for paying freight, delivery, or transit insurance Costs to return the products and may, at its discretion, either have those billed directly to Construction Contractor or offset them under paragraph 8.6 [Right of Offset].
11.41 Schedule of Values	Prior to the execution of Work, the Construction Contractor shall submit to the Agency for approval a Schedule of Values (See Exhibit R) allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy. This Schedule of Values, unless objected to by the Design Professional and/or Agency Designated Representative, shall be used as a basis for reviewing the Construction Contractor's Payment Applications. The Schedule of Values shall include quantities and unit prices aggregating the Contract Cost, and for lump sum items shall subdivide the Work into component parts in sufficient detail to serve as the basis for Progress Payments during construction
11.42 Shop Drawings, Product Data and Samples	<ol style="list-style-type: none"> 1) The Construction Contractor shall maintain at the Site for the Agency one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Professional and/or Agency and shall be delivered to the Design Professional for submittal to the Agency upon completion of the Work. 2) Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Construction Contractor proposes to conform to the information given and the design concept expressed in the Contract. 3) The Construction Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved or other appropriate action taken by the Design Professional and/or Agency. Such Work shall be in accordance with approved submittals. 4) The Construction Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by the Design Professional's and/or Agency's review and approval of Shop Drawings, Product Data, Samples or similar submittals unless the Construction Contractor has specifically informed the Design Professional and/or Agency's in writing of such deviation at the time of submittal and the Design Professional and/or Agency has given written approval to the specific deviation. The Construction Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Professional's and/or Agency's approval thereof. 5) The Construction Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, product Data, Samples or similar submittals, to revisions other than those requested by the Design Professional on previous submittals. 6) When professional certification of performance criteria of Materials, systems or equipment is required by the Contract, the Construction Contractor shall be entitled to rely upon the accuracy and completeness of such calculations and certifications but shall use due care and identify and notify the Agency of any palpable errors. 7) Construction Contractor shall submit Shop Drawings to the Design Professional and State Fire Marshall or appropriate authority having jurisdiction for any required modifications to sprinkler or alarm system Work. 8) Construction Contractor will update to show actual conditions for Work specified and shall submit final Shop Drawings to Agency.
11.43 Special Inspections and Testing	The Agency shall recommend special inspection or testing and any retesting of the Work in accordance with the provisions of the Contract Documents if, in Agency's reasonable opinion, such inspection or testing or retesting is necessary or advisable for the implementation of the Contract Documents, regardless of the state of completion of the Work subject to such inspection or testing or retesting.
11.44 Statutory Review	<ol style="list-style-type: none"> 1) The Design Professional shall design and prepare the Construction Documents in compliance with all applicable laws, codes, regulations, and generally accepted engineering and design standards, and shall incorporate any and all Agency Standards where applicable to their Work.



	<ol style="list-style-type: none"> 2) The Design Professional shall submit final Construction Documents for review to the Agency Designated Representative for submittal to the Statutory Review. Design Professional shall verify presentation requirements for the review with the Agency's Designated Representative. The Arizona Department of Administration Statutory Review is the authority having jurisdiction and is the enforcement agency for code requirements. 3) The initial submission fee and one (1) re-review fee for submission to the Statutory Review may be paid by the Agency or paid by Design Professional firm a part of a Reimbursable Expense as requested by the Agency. Any subsequent submission fees shall be paid by the Design Professional firm in accordance with the Solicitation Performance Guarantee requirements. 4) Design Professional shall give Agency sufficient rights and privileges to use to any and all Design Professional Work in furtherance of the Scope of Work including, but not limited to, distribution and submission of Design Professional Work. 5) A State Inspector will conduct regular inspections and the Work must be in compliance before permanent occupancy will be allowed. Regular inspections must be performed at each stage of construction prior to concealment or cover.
11.45 Structural, Mechanical, Electrical, Calculations	Construction Contractor shall provide Agency the Project structural, mechanical, and electrical calculations upon request. Calculations shall be checked and stamped by an engineer registered in the applicable discipline.
11.46 Submittal Register	The Construction Contractor shall prepare and keep current, for the Design Professional's approval, a schedule of submittals which is coordinated with the Construction Contractor's Construction Schedule and allows the Construction Contractor reasonable time to review Submittals.
11.47 Substantial and Final Completion	<ol style="list-style-type: none"> 1) When the Construction Contractor considers the Work, or a portion thereof is Substantially Complete the Construction Contractor shall prepare and submit to the Agency and/or Design Professional a comprehensive list of items (Punch List) to be completed or corrected prior to final payment. Failure to include an item on the Punch List does not alter the responsibility of the Construction items the Construction Contractor is requesting to be deferred for completion. 2) The Agency and/or Design Professional will perform an inspection of the Work within five (5) days to accept or reject the Punch List to determine whether the Work or designated portion thereof is substantially complete. If the Agency and/or Design Professional's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents, the Contractor shall complete and or correct those items and then submit a request to the Owner and Design Professional for another inspection to determine Substantial Completion of the Work. 3) EXHIBIT K - SUBSTANTIAL COMPLETION CERTIFICATE. When the Work, or designated portion thereof, is Substantially Complete, the Design Professional and/or Owner will prepare a Certificate of Substantial Completion (Certificate) that shall establish the Substantial Completion date, establish responsibilities of the Owner and Contractor to include, but not limited to: security, maintenance, heat, air conditioning, utilities, damage to the Work and insurance. The Certificate will establish the date and time within which the Contractor shall finish all Punch List items attached thereto. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided in the Certificate of Substantial Completion. 4) Construction Contractor shall submit an Exhibit H-Application for Payment for payment of all Work, less retention if retention was held. If retention was not held, final payment will not be issued until all items listed on Exhibit M-Contractor Project Closeout have been received by the Agency. 5) PARTIAL OCCUPANCY. The Agency may occupy or use a portion of the Project prior to Contract completion if the authority having jurisdiction over the Project authorizes the Agency to occupy the portion of the Project. The Construction Contractor shall proceed with submission to the Agency for a Substantial Completion inspection for the portion of the Work Project prior to the Agency occupying or using a portion of the Project.



	6) EXHIBIT L - FINAL COMPLETION CERTIFICATE. The date of Final Completion of the Contractor's Work is the date signed by the Design Professional, Contractor, Compliance Officer and Project Manager that all Work is 100% complete in accordance with the Contract Documents including all those items listed on Exhibit M-Contractor Project Closeout. The Construction Contractor will submit an Application for Final Payment for certification by the Agency.
11.48 Substitution of Material or Equipment	<ol style="list-style-type: none"> 1) Construction Contractor shall not order or install any substitute Material or equipment without the Agency Designated Representative prior written approval of the substitute. 2) If Contract is a firm fixed price, all substitution requests shall be submitted by the Construction Contractor in accordance with the <u>Solicitation Instructions to Offerors</u> and approved by the Agency Designated Representative prior to the Bid Opening Date listed in the State e-procurement system. Prior to the Bid Opening Date, the Procurement Officer issued Addenda authorizing use of the substitute shall serve as the written approval. 3) Agency Designated Representative shall review all Construction Contractor furnished data for review to include maintenance, repair, and replacement for the proposed substitute. 4) The Agency may not approve any extension of Contract time for Construction Contractor Project completion due to a substitute unless Agency determines the time extension is in the best interest of the Agency.
11.49 Supervision and Project Administration	<ol style="list-style-type: none"> 1) The Construction Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract either by activities or duties of the Agency in the Agency's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Contractor. 2) The Construction Contractor shall supervise and direct the Work using the Construction Contractor's best skill and attention. 3) Construction Contractor shall provide project administration for all Construction Contractor's Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the Construction Contractor and Agency Designated Representative. 4) Construction Contractor's project administration includes periodic daily reporting on weather, Work progress, labor, Materials, equipment, any and all obstructions to prosecution of the Work, accidents and injuries, and transmitted no less frequently to the Agency Designated Representative than on a weekly basis. 5) The Construction Contractor shall be responsible to the Agency for acts and omissions of the Construction Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work for the Construction Contractor.
11.50 Surplus of Materials Purchased	<ol style="list-style-type: none"> 1) After completion of installation the Construction Contractor shall return any unused Materials purchased under an Allowance to the supplier or manufacturer (when allowed by manufacturer) for credit to the Agency for the Cost of Work if determined economically practical by the Agency. 2) If Agency determines unused Materials are not economically practical to return, the Construction Contractor shall dispose of Material or place in Agency storage as directed by the Agency Designated Representative.
11.51 Survey Reference Points	Construction Contractor shall be responsible for laying out the Work, shall protect and preserve the established survey reference points and shall make no changes or relocations without the prior written approval of the Agency. Construction Contractor shall report to Agency Designated Representative whenever any monument or reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations. Construction Contractor shall be responsible for replacement or relocation of such reference points by a licensed surveyor.
11.52 Training	Construction Contractor shall provide training to Agency designated personnel including operation and maintenance for all newly installed equipment or controls for the Project.



11.53 Transition	If needed, during commencement, Construction Contractor shall attend transition meetings with any outgoing Construction Contractors to coordinate and ease the transition so that the effect on Agency's operations is kept to a minimum. Agency may elect to have outgoing Construction Contractors complete some or all of their Work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Upon the expiration or termination of the Contract, Construction Contractor shall Work closely with any new (incoming) Construction Contractor and Agency to ensure as smooth and complete a transfer as is practicable. Agency's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Construction Contractor and the incoming vendor.
11.54 Unknown, Unforeseen, or Concealed Conditions	<ol style="list-style-type: none">1) If conditions are encountered at the Site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty four hours after first observance of the conditions.2) It is understood that Construction Contractor, prior to award, has inspected the Site, was free to do its own tests and inspections, and in undertaking this contract, warrants that the Site is suitable for construction and accepts the risk of all Site conditions.3) Any reports and Materials provided to Construction Contractor prior to construction are for informational purposes only. However, if Construction Contractor believes that the Agency materially misrepresented the condition of the Site then the Agency will promptly investigate such conditions. Should the Agency determine that the Site differs from the Contract Documents such that there will be a material change to Construction Contractor's Contract Cost and/or Schedule for the performance of any part of the Work, then the Agency will recommend an equitable adjustment in the Contract Cost and/or Contract time. If the Agency determines that the conditions at the Site are not materially different from those indicated in the Contract Documents, and no change in the Construction Contractor's Cost or Schedule is justified, then the Agency shall so notify the Construction Contractor in writing stating the reasons.
11.55 Utilities	<ol style="list-style-type: none">1) The Construction Contractor is responsible for locating all existing utilities prior to Work.2) Unless otherwise provided in the Contract, the amount of each utility service consumed shall be charged to or paid for by the Construction Contractor at prevailing rates charged to the Agency or, where the utility is produced by the Agency, at reasonable rates determined by the Contracting Officer. The Construction Contractor shall carefully conserve any utilities furnished without charge.3) Contract shall provide temporary heat and ventilation as required to maintain environmental conditions for installation or installed Material to meet, protect, dry, or cure conditions. Use of heating or ventilation equipment types shall be authorized by Agency Designated Representative or Design Professional.4) Temporary lighting shall be adequate for construction and traffic conditions.5) The Construction Contractor, at its expense and in a workmanlike manner satisfactory to the Agency Designated Representative, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the Work by the Agency, the Construction Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.6) Construction Contractor temporary utilities shall fulfill any and all security, protection, and safety requirements.



11.56 Utility Shut Down and Start-Up	Construction Contractor shall coordinate all utility shutdown and start-up required for performance of Work through the Agency Designated Representative.
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12.0 Agency Responsibilities

12.1 Access to Work Site	The Agency will provide Construction Contractor with access to the Work Site, as necessary, for the preparation for, and review of, the Work.
12.2 Accuracy of Information	Agency may provide in the <u>Solicitation, or by other means</u> , any reports of investigations and tests of subsurface and latent physical conditions at the Site, and any reports of conditions that otherwise may affect cost. These reports are not intended to constitute any explicit or implicit representation as to the nature of the subsurface and latent physical conditions which may be encountered at the Site or to constitute explicit or implicit representations as to any other matter contained in any report. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.

12.3 Errors or Omissions	The Agency will promptly notify the Construction Contractor in writing if it becomes aware of a material error, potential error, or omission in the Work, Design Requirements, and/or Construction Documents.
12.4 Site Information	The Agency will provide the Construction Contractor with basic information regarding the Site locations at which the Work will be performed. This basic information may include surveys, Site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.
12.5 Communications	The Agency will facilitate communication between Construction Contractor and other Agency contractors, as needed.
12.6 Contractor Agreements, Related Construction	The Agency will meet with the Construction Contractor to coordinate its Work prior to finalizing a related Construction Contract. Any related Construction Contracts will be made available through the State's eProcurement system.
12.7 Promotional Materials	Agency will endeavor to timely review and respond to any written Construction Contractor request for permission for use of photographic or other artistic representation of the Work for promotional or other professional materials. Agency shall have full discretion to determine whether to allow Construction Contractor use of the representations.
12.8 Substitutions of Material	Design Professional and/or Agency shall approve any and all substitutions that would cause a change in the Work of the Construction Contractor.
12.9 Timely Review	The Agency and/or Design Professional will endeavor to timely review and respond to any requests from the Construction Contractor deemed necessary to avoid delay or modification to the Schedule.

13.0 Data and Information Handling

13.1 Applicability	Article 13 applies to the extent the Work includes handling of any (a) Agency's proprietary and sensitive data or (b) confidential or access-restricted information obtained from Agency or from others at Agency's behest.
13.2 Data Protection and Confidentiality of Information	<p>1) Construction Contractor warrants that it will establish and maintain procedures and controls acceptable to Agency for ensuring that Agency's proprietary and sensitive data is protected from unauthorized access and information obtained from Agency or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Construction Contractor in any way related to the Contract, provided to Construction Contractor by the Agency, or prepared by others for the Agency are proprietary to Agency, and all information by those same avenues is Agency's confidential information. To comply with the foregoing warrant.</p> <p>a) Construction Contractor shall:</p>



	<ul style="list-style-type: none">i) Notify Agency immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse;ii) Cooperate with Agency to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; andiii) Notify Agency promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and <p>b) Construction Contractor shall not:</p> <ul style="list-style-type: none">i) Release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless Agency has agreed otherwise in advance and in writing; orii) respond to any requests it receives from a third party for such data or information, and instead route all such requests to Agency's designated representative.
13.3 Personally Identifiable Information	<p>1) Construction Contractor warrants that it will protect any personally identifiable information ("PII") belonging to Agency's employees' or other Construction Contractors or members of the general public that it receives from Agency or otherwise acquires in its performance under the Contract.</p> <p>2) For purposes of this paragraph:</p> <ul style="list-style-type: none">a) PII has the meaning given in the [federal] Office of Management and Budget (OMB) Memorandum M-07-16 Safeguarding Against and Responding to the Breach of Personally Identifiable Information; andb) "Protect" means taking measures to safeguard personally identifiable information and prevent its breach that are functionally equivalent to those called for in that OMB memorandum and elaborated on in the [federal] General Services Administration (GSA) <i>Directive CIO P 2180.1 GSA Rules of Behavior for Handling Personally Identifiable Information</i>. <p>NOTE (1): For convenience of reference only, the OMB memorandum is available at: https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf</p> <p>NOTE (2): For convenience of reference only, the GSA directive is available at: http://www.gsa.gov/portal/directive/d0/content/658222</p>
13.4 Protected Health Information	<p>1) Construction Contractor warrants that, to the extent performance under the Contract involves individually identifiable health information (referred to hereinafter as protected health information ("PHI") and electronic PHI ("ePHI") as defined in the Privacy Rule referred to below), it:</p> <ul style="list-style-type: none">a) Is familiar with and will comply with the applicable aspects of the following collective regulatory requirements regarding patient information privacy protection: (1) the "Privacy Rule" in CFR 45 Part 160 and Part 164 pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (2) Arizona laws, rules, and regulations applicable to PHI/ePHI that are not preempted by CFR 45-160(B) or the Employee Retirement Income Security Act of 1974 ("ERISA") as amended; and (3) Agency's current and published PHI/ePHI privacy and security policies and procedures;b) Will cooperate with Agency in the course of performing under the Contract so that both Agency and Construction Contractor stay in compliance with the requirements in (a) above;c) and will sign any documents that are reasonably necessary to keep both Agency and Construction Contractor in compliance with the requirements in



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	<p>(a) above, in particular "Business Associate Agreements" in accordance with the Privacy Rule.</p> <p>NOTE: For convenience of reference only, the Privacy Rule is available at: http://www.hhs.gov/hipaa/for-professionals/privacy/index.html</p>
14.0 Information Technology Work	
14.1 Applicability	Article 14 applies to any Invitation for Bids, Request for Qualifications, or Request for Quotations for "Information Technology," as defined In A.R.S. § 41-3501(6): "computerized and auxiliary automated information processing, telecommunications and related technology, including hardware, software, vendor support and related services, equipment and projects" if and to the extent that the Work is or includes Information Technology.
14.2 Information Access	<ol style="list-style-type: none">1) SYSTEM MEASURES. Construction Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting State's proprietary data or confidential information.2) INDIVIDUAL MEASURES. Construction Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Construction Contractor is responsible to Agency for ensuring that any State Access IDs and passwords are used only by the person to whom they were issued. Construction Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Construction Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.3) ACCESS CONTROL. Construction Contractor is responsible to Agency for ensuring that hardware, software, data, information, and that has been provided by Agency or belongs to or is in the custody of Agency and is accessed or accessible by Construction Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. Agency may restrict access by Construction Contractor personnel, or instruct Construction Contractor to restrict their access, if in its determination the requirements of this subparagraph are not being met.



14.3 Pass-Through Indemnity	<ol style="list-style-type: none">1) INDEMNITY FROM THIRD PARTY. For computer hardware or software included in the Work as discrete units that were manufactured or developed solely by a third party, Construction Contractor may satisfy its indemnification obligations under the Contract by, to the extent permissible by law, passing through to Agency such indemnity as it receives from the third-party source (each a "Pass-Through Indemnity") and cooperating with Agency in enforcing that indemnity. If the third party fails to honor its Pass-Through Indemnity, or if a Pass-Through Indemnity is insufficient to indemnify State Indemnitees to the extent and degree Construction Contractor is required to do by the Uniform Terms and Conditions, then Construction Contractor shall indemnify, defend and hold harmless State Indemnitees to the extent the Pass-Through Indemnity does not.2) NOTIFY OF CLAIMS. Agency shall notify Construction Contractor promptly of any claim to which a Pass-Through Indemnity might apply. Construction Contractor, with reasonable consultation from Agency, shall control of the defense of any action on any claim to which a Pass-Through Indemnity applies, including negotiations for settlement or compromise, provided that:<ol style="list-style-type: none">a) Agency reserves the right to elect to participate in the action at its own expense;b) Agency reserves the right to approve or reject any settlement or compromise onc) reasonable grounds and if done so timely; andd) Agency shall in any case cooperate in the defense and any related settlemente) negotiations.
14.4 Redress of Infringement.	<ol style="list-style-type: none">1) REPLACE, LICENSE, OR MODIFY. If Construction Contractor becomes aware that any Materials or Services infringe, or are likely to be infringing on, any third party's intellectual property rights, then Construction Contractor shall at its sole Cost and expense and in consultation with Agency either:<ol style="list-style-type: none">1) Replace any infringing items with non-infringing ones;2) Obtain for Agency the right to continue using the infringing items; or3) Modify the infringing item so that they become non-infringing, so long as they continue to function as specified following the modification.2) CANCELLATION OPTION. In every case under 14.5, if none of those options can reasonably be accomplished, or if the continued use of the infringing items is impracticable, Agency may cancel the relevant Order or terminate the Contract and Construction Contractor shall take back the infringing items. If Agency does cancel the Order or terminate the Contract, Construction Contractor shall refund to Agency:<ol style="list-style-type: none">a) For any software created for Agency under the Contract, the amount Agency paid to Construction Contractor for creating it;4) For all other Materials, the net book value of the product or actual monies paid by the Agency provided according to generally accepted accounting principles; and5) For Services, the amount paid by Agency or an amount equal to twelve (12) months of charges, whichever is less.3) EXCEPTIONS. Construction Contractor will not be liable for any claim of infringement based solely on any of the following by a State Indemnitee:<ol style="list-style-type: none">a) Modification or use of Materials other than as contemplated by the Contract or expressly authorized or proposed by a Construction Contractor Indemnitor;6) Operation of Materials with any operating software other than that supplied by Construction Contractor or authorized or proposed by a Construction Contractor Indemnitor; or7) Combination or use with other products in a manner not contemplated by the Contract or expressly authorized or proposed by a Construction Contractor Indemnitor.



14.5 First Party Liability Limitation	<ol style="list-style-type: none">1) LIMIT. Subject to the provisions that follow below and unless stated otherwise in the <u>Special Terms and General Conditions</u>, Agency's first party liability arising from or related to the Contract is limited to the lesser of \$1,000,000 (one million dollars) or 3 (three) times the purchase price of the specific Materials or Services giving rise to the claim.2) PROVISIONS. This paragraph limits liability of any and all damages to which Construction Contractor is entitled under this Contract or that comes out of performance or concerns this contract, regardless of the legal theory under which the liability is asserted. This paragraph 14.5 does not limit the effect of Paragraph 6.2 of this Contract.3) PURCHASE PRICE DETERMINATION. If the Contract is for a single-agency and a single Order (or if no Order applies), then "purchase price" in Subparagraph 14.15.1 above means the aggregate Contract price current at the time of Contract expiration or earlier termination, including all change orders or other forms of Contract Amendment having an effect on the aggregate price through that date. In all other cases, "purchase price" above means the total price of the Order for the specific equipment, software, or services giving rise to the claim, and therefore a separate limit will apply to each Order.4) NO EFFECT ON INSURANCE. This paragraph does not modify the required coverage limits, terms, and conditions of, or any insured's ability to claim against, any insurance that Construction Contractor is required by the Contract to provide, and Construction Contractor shall obtain express endorsements that it does not.
14.6 Information Technology Warranty	<ol style="list-style-type: none">1) SYSTEM MEASURES. Construction Contractor shall employ appropriate system management and maintenance, fraud prevention and detection, and encryption application and tools to any systems or networks containing or transmitting Agency's proprietary data or confidential information.2) INDIVIDUAL MEASURES. Construction Contractor personnel shall comply with applicable State policies and procedures regarding data access, privacy, and security, including prohibitions on remote access and obtaining and maintaining access IDs and passwords. Construction Contractor is responsible to Agency for ensuring that any State Access IDs and passwords are used only by the person to whom they were issued.3) Construction Contractor shall ensure that personnel are only provided the minimum only such level of access necessary to perform his or duties. Construction Contractor shall on request provide a current register of the access IDs and passwords and corresponding access levels currently assigned to its personnel.4) ACCESS CONTROL. Construction Contractor is responsible to Agency for ensuring that hardware, software, data, information, and that has been provided by Agency or belongs to or is in the custody of Agency and is accessed or accessible by Construction Contractor personnel is only used in connection with carrying out the Work, and is never commercially exploited in any manner whatsoever not expressly permitted under the Contract. Agency may restrict access by Construction Contractor personnel, or instruct Construction Contractor to restrict access their access, if in its determination the requirements of this subparagraph are not being met.
14.7 Specific Remedies	Unless expressly stated otherwise elsewhere in the Contract, Agency's remedy for breach of warranty under paragraph includes, at Agency's discretion, re-performance, repair, replacement, or refund of any amounts paid by Agency for the nonconforming Work, plus (in every case) Construction Contractor's payment of Agency's additional, documented, and reasonable Costs to procure Materials or services equivalent in function, capability, and performance at that first called for. For clarification of intent, the foregoing obligations are limited by the limitation of liability. If none of the forgoing options can reasonably be effected, or if the use of the Materials by Agency is made impractical by the nonconformance, then Agency may seek any remedy available to it under law.

End of Uniform Terms and Conditions