

**CONSTRUCTION CONTRACT  
BETWEEN  
BUENA YUMA, LLC  
and  
CONTRACTOR**

THIS

CONTRACT is entered into as of this \_\_\_\_ day of \_\_\_\_\_, **2017**, by and between the BUENA YUMA, LLC, an Arizona Limited Liability Company ("Owner") and \_\_\_\_\_ ("Contractor"). The terms of this Contract are to be construed consistently with the other Contract Documents enumerated in Article 1 of the General Conditions of the Construction Contract.

In consideration of the mutual promises of the parties, the Owner and the Contractor agree as follows:

1. THE WORK: The Contractor shall furnish all labor, materials, equipment, supplies and other items necessary to perform the Work for the Project described as: *Evergreen Southwest Replacement Well* located at the following site: Section 33, Township 1 North, Range 3 West C(13) 33 ACC in strict accordance with the Drawings and Specifications prepared by Southwest Groundwater ("Design Professional" or "DP") and all other Contract Documents.

2. CONTRACT TIME: The Contractor shall commence the Work only if and when directed in a written Notice to Proceed signed by the Owner. The Work shall commence no later than \_\_\_\_\_. Substantial Completion, as defined herein, shall be achieved within \_\_\_\_ days from commencement. In view of the difficulty or impossibility of determining the Owner's damages from delay, should the Contractor fail to achieve Substantial Completion by that date, as extended by any Owner approved Change Orders, the Contractor agrees to pay and will pay to Owner, in addition to all other sums pursuant to the Contract Documents, the sum of \$1780.00 for each calendar day of delay as liquidated damages for such delay and not as a penalty as outlined in Maricopa Association of Governments Specification Section 108.9. This sum may be withheld from the balance of the Contract Price as it becomes due. Should liquidated damages exceed the Contract Price due or to become due, then the Contractor shall pay the Owner the difference within 3 days of receipt of written demand.

3. CONTRACT PRICE: Subject to increases and decreases for Change Orders in accordance with the Contract Documents, the Owner shall pay to the Contractor the following Contract Price, in progress payments as provided in the Contract Documents:  
\_\_\_\_\_.

4. SUPPLEMENTAL TERMS AND CONDITIONS: The following supplemental terms and conditions and/or documents are part of this Contract:

Sample Contract

- A. General Conditions of the Construction Contract.
- B. Scope of work,
- C. Special Provisions,
- D. Specifications,
- E. Storm Water Pollution Prevention,
- F. Geotechnical Evaluations,
- G. ADOT permit,
- H. Improvement Plans (civil and streetlights).
- I. Staging diagram
- J. Schedule.

This Agreement is hereby signed by an authorized representative of the Owner and the Contractor as follows:

BUENA YUMA, LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Witness:  
\_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR'S NAME

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Witness:  
\_\_\_\_\_

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## **GENERAL CONDITIONS**

### **ARTICLE 1 GENERAL DEFINITIONS**

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

"Contract Documents" or "Contract" means the Construction Contract Between Owner and Contractor, the General Conditions of the Construction Contract, any Supplemental Conditions of the Construction Contract, the Drawings, the Specifications, the Performance and Payment Bonds, the Project Manual, Addenda and Modifications.

"City" means City of Buckeye Development Services and Inspectors.

"Date of Substantial Completion" shall be the date certified by the Design Professional to the Owner that the work is in the Condition defined herein as substantial completion.

"Day" means calendar day unless specifically otherwise provided herein or by law.

"Design Professional" (DP) is that individual, partnership, or other legal entity defined in Section 1 (Design Professional) herein.

"Modifications" means Change Orders signed by the Owner, or other written amendments signed by both the Owner and the Contractor at or after the execution of the Contract, or the DP's written interpretations or directions for minor changes in the Work. A "minor change" is defined as one having no impact on cost or time or the Owner and City's approved design intent, as determined by the Owner.

"Owner" means Buena Yuma, LLC

"Project" means all components of the improvements to be constructed for the Owner, regardless of whether the Work is all or only a part.

"Project Manual" means the written volume so titled which includes the bid documents, sample forms, specifications, and description of the project.

"Substantial Completion" means the Contractor's work is sufficiently complete in accordance with the Contract Documents so that the Owner and City can occupy or utilize the work or designated portion thereof for the use for which it is intended.

"Work" consists of all labor (including supervision), materials, equipment, supplies and other items reasonably required to construct all or a portion of the Project according to the Contract Documents.

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**ARTICLE 2**  
**INTENT**

- A. The Contract represents the entire and integrated agreement between the Owner and the Contractor, and it supersedes all prior oral or written negotiations, representations or agreements. The Contract may only be changed by written modifications, and the Contractor understands and agrees that if the Contractor proceeds with any work upon verbal request only, Contractor is agreeing by his conduct that such work, or change in the work, constitutes a minor change.
- B. The Contract Documents are to include all items reasonably necessary to construct the Work, expressly or by inference. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- C. The organization of the Specifications into divisions, sections, and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Sub-contractors or in establishing the extent of Work to be performed by any trade.
- D. Generally, the Drawings indicate dimensions, positions and details of construction; the Specifications establish criteria and quality for materials and standards for workmanship. All Work shall be performed in a workmanlike manner and all materials used shall be new and of the highest quality and of the type best adapted to their purpose unless otherwise specified.

**ARTICLE 3**  
**DESIGN PROFESSIONAL (DP)**

- A. The DP is the individual or legal entity defined in the Contract Documents and/or otherwise designated by the Owner who is retained by the Owner to design and/or oversee the Project.
- B. The DP shall have the right, responsibility and authority to carry out the specific duties required of the DP, as described herein and in the contract between the DP and the Owner, including any amendments thereto. Any such amendments shall be in writing and furnished to the Contractor.
- C. The DP will visit the site as it is deemed by the DP or Owner to be appropriate in order to advise the Owner as to the quality and progress of the construction. The Contractor shall cooperate with the DP in all respects in this regard, including attending meetings as requested.

D. The DP will be the initial interpreter of the requirements of the Contract Documents. The DP shall render written interpretations with reasonable promptness following a written request from the Owner or the Contractor. These interpretations shall be consistent with the intent of the Contract Documents.

E. Any claims or controversies between the Owner and the Contractor may be referred in writing to the DP for a written determination.

F. Any disagreements with the DP's interpretations or determinations must be timely submitted and resolved in accordance with the term and conditions of this Contract.

G. The DP will review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, for conformance with the Contract Documents. Such action shall be taken with reasonable promptness as specified so as to cause no delay. The DP's approval of a specific item or component shall not indicate approval of an assembly of which the item is a component.

H. Following consultation with the Owner, the DP will take appropriate action on Change Orders and may authorize minor changes in the Work as defined above.

I. The DP and Owner will each have the authority to reject work which does not conform to the Contract documents and to require special inspection or testing but will take such action only after consultation with the other. However, neither the authority to act given to the DP and the Owner under this subparagraph nor any decision made by them in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility by them to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the work.

J. Based on the DP's observations, evaluation of applications for payment and consultation with the Owner, the DP will determine the amount owing the Contractor and will issue certificates for payment.

#### **ARTICLE 4 CONTRACTOR**

A. The Contractor is the individual or legal entity identified in the Contract Documents who is licensed to perform the Work under the laws of the State of Arizona. The Contractor shall only use duly licensed Subcontractors in connection with the Work, subject to the provisions for Owner approval contained in the Contract Documents.

#### **ARTICLE 5**

## **OTHER CONTRACTORS AND COOPERATION**

A. The Owner reserves the right to award other contracts related to the Project, or to perform certain work itself. Such other work may or may not be known to the Owner or disclosed to the Contractor prior to bidding this project. The Contractor shall afford the 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 Work with theirs in such manner as the DP may direct. The Contractor shall also assure at its own cost reasonable access of other contractors to the site and their work.

B. Upon request of the Contractor, the DP or Owner will provide the Contractor with a copy of all plans, specifications, schedules and other data relating to other contracts or work. The Contractor shall thoroughly examine these documents and shall within three (3) days of completing such examination notify the DP in writing of any conflicts with the Work to be performed by the Contractor. In no event shall such notice be given so late as to interfere with or delay the work to be performed by the Contractor. Failure of the Contractor to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the Contractor may have as a result of the necessity to coordinate the Contractor's work with other activities.

C. Should the Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim or cause of action against the Owner for such damage and hereby waives any such claim. The 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. The phrase "acts or omissions" as used in this section shall be defined to include, but not be limited to, any reasonable delay on the part of any such other contractor, whether due to negligence, gross negligence, inadvertence or any other cause.

D. Should the Contractor cause damage to the work or property of any other contractor or of the Owner, the Contractor shall upon receiving due notice, promptly attempt to settle with such other contractor by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall, to the furthest extent permitted by law, indemnify and hold harmless for, from, and against defend such proceedings, and if any judgment or award against the Owner arises there from the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or other costs which the Owner has incurred.

## **ARTICLE 6**

### **SITE CONDITIONS AND ENVIRONMENTAL MATTERS**



A. The Contractor shall thoroughly acquaint himself with all available information concerning the conditions of the Work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work.

B. The Contractor agrees that it has thoroughly examined the site, plans and specifications, boring data and all other soils information and as-built data made available and by submission of the bid herein avows that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or existing obstacles to be encountered. The Contractor acknowledges that boring data and other soils information and as-built data made available is only a general indication of materials and/or conditions likely to be found adjacent to holes bored or in existing structures or facilities or other areas. If the Contractor determines that the information is erroneous, inadequate or ambiguous, it shall immediately report its conclusions to the DP and the Owner in writing. If the Contractor determines that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the Owner, remains dissatisfied or uninformed, the Contractor shall refrain from submitting a bid, or if the Contractor does submit a bid, the Contractor shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate or ambiguous information.

C. The Contractor shall immediately, and before such conditions are disturbed, notify the DP and the Owner in writing of:

1. Subsurface or latent physical conditions encountered at the site which differ materially from those indicated in the Contract and which were not known by the Contractor or could not have been discovered by careful examination and investigation of the information available at bid time and which could adversely affect the timely performance of the Work or its cost; or

2. Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in Work of the character provided for in the Contract.

D. The DP and/or the Owner shall within ten (10) days, or such other reasonable time as necessary, investigate the conditions discovered. If the DP and/or the Owner find that conditions are so materially different as to support an equitable adjustment in the Contract Price or the Contract Time, this will be done by written Change Order. If the DP and/or the Owner determine that no Change Order will be issued, the Contractor shall continue with the Work at no additional cost and under no change in Contract Time.

E. No claim by the Contractor for an increase in the Contract Price or Contract Time hereunder shall be allowed without proper advance notice and an adequate opportunity for the Owner to investigate.

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

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

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

**“Hazardous Substance”** means any of the following: (i) any petroleum, oil, gasoline, kerosene, other petroleum product, flammable substance, volatile organic compound, volatile solvent, explosive, asbestos, polychlorinated biphenyl, dioxin, toxic herbicide or pesticide, radioactive material, radon gas and materials containing formaldehyde; (ii) any material, substance or waste now or hereafter defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “extremely hazardous substances,” “restricted hazardous wastes,” “toxic substances,” “regulated substances,” “solid wastes,” “pollutant,” or “contaminant” or words of similar import in any Environmental Law; (iii) any other material, substance or waste now or hereafter classified or regulated as “hazardous” or “toxic” under any Environmental Law; (iv) any material, substance or waste now or hereafter listed in the United States Department of Transportation Table (49 CFR 172.101) or classified by the United States Environmental Protection Agency as

“hazardous” (40 CFR Part 302) or in any successor or replacement tables or classifications as in effect from time to time; and (v) any Hazardous Waste.

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

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

**“Owner/City Hazardous Waste”** means Hazardous Waste (i) that consists of Hazardous Substances in any existing structure, facility or equipment on Owner’s/City’s property or otherwise present on Owner’s/City’s property at commencement of the Work, and (ii) that has become Hazardous Waste due to any part of the Work. However, Owner Hazardous Waste does not include any Hazardous Substance that has become a Hazardous Waste due to any Contractor Release.

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

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

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

**“Contractor Release”** means a Release of a Hazardous Substance (including, without limitation, Hazardous Substances that were on or in Owner’s property at commencement of the Work) arising from acts or omissions of Contractor or any Subcontractor or Sub-subcontractor or their employees or workers. However,

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Contractor Release does not include Releases of pre-existing Hazardous Substances on Owner's property of which Owner had not made Contractor aware and as to which Contractor, Subcontractors and Sub-subcontractors acted reasonably.

G. General Requirements.

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

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

3. Releases of Hazardous Substances. Upon any Release of any Hazardous Substance in connection with the Work, whether relating to a pre-existing condition on Owner's property (for example, arising from any demolition of, modification of, or addition to any structure, facility or equipment) or relating to acts or omissions of Contractor, a Subcontractor or a Sub subcontractor, Contractor shall take any immediate action reasonably necessary to contain the Release. Owner may elect to have Contractor control and carry out any containment, clean-up, removal and remediation activity. Alternatively, Owner shall have the right to elect to control and carry out any containment, clean-up, removal and remediation activity. Regardless of who takes the actions, Contractor shall absorb, without reimbursement from Owner, all costs and expense 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. If the amount is not paid promptly, Owner may offset the amount against any amount payable by Owner to Contractor under the Contract Documents or otherwise. Remediation, removal, and other cleanup action arising from any Release shall be in full compliance with Sample Contract

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 City and Owner to permit human use and habitation of Owner's property and to permit use of Owner's property, and (B) as reasonably consistent in the judgment of City and Owner with such habitation and uses.

4. Hazardous Waste. Contractor shall assure proper handling (including, without limitation, segregation from waste that is not Hazardous Waste) and storage of Project Hazardous Waste in full compliance with Environmental Law and OSHA. Contractor shall pay all of Owner's expenses of storing, handling and disposing of 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 Contract Documents or otherwise.

5. Notifications to Owner. Contractor shall notify Owner's Project Manager immediately upon occurrence of any of the following: (i) any discovery by Contractor, a Subcontractor or any Sub-subcontractor of any Hazardous Substance in any existing structure, facility or equipment on Owner's property. (ii) any Release of any Hazardous Substance on Owner's property in connection with the Work; (iii) the creation or generation of any Hazardous Waste resulting from the Work (including, without limitation, Hazardous Waste arising from the removal of, demolition of, modification of, or addition to any existing structure, facility or equipment); (iv) the need for any remediation or removal of any Hazardous Substance relating to the Work whether relating to a pre-existing condition on Owner's property or to acts or omissions of Contractor, a Subcontractor or a Sub-subcontractor; or (v) any claim, demand, inquiry, investigation, litigation or other action or proceeding by any governmental authority or other person relating to any Hazardous Substance, Hazardous Waste, Environmental Law or OSHA relating to the Work. Except for immediate action to contain any Release of any Hazardous Substance and except for interim handling and storage of Project Hazardous Waste, Contractor shall not take any action as to any matter in (i), (ii), (iii), (iv) or (v) without the prior written approval of Owner and Owner shall have the right to elect to control and carry out any such action or matter.

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

H. Construction Site Safety Requirements: Contractor shall have sole responsibility and liability for construction site safety. Without limiting other actions in this regard, Contractor shall, and shall cause each Subcontractor and Sub-subcontractor to, comply with worker health and safety requirements in Environmental Law and OSHA. In

Sample Contract

addition, Contractor shall take all reasonable necessary and appropriate steps to assure the health and safety of persons occupying any part of the facility in which the Work site is located or in the vicinity of or passing by the Work site and shall also take all reasonable necessary and appropriate steps to protect from damage or destruction the property of Owner and other persons in any part of the Facility in which the Work site is located or in the vicinity of or passing by the Work site. Among other actions in this regard Contractor shall comply with the requirements of the applicable fire code. Any changes in OSHA requirements during construction shall be the responsibility of the general contractor.

I. Environmental, Health and Safety Concerns by Contractor, Subcontractors or Subsubcontractors. If in the course of the Work, any environmental, health or safety concern exists or arises, whether relating to a Hazardous Substance, OSHA or otherwise, then the Work activities related to the concern must be discontinued until the concern is resolved. This means prior to disturbing a suspected Hazardous Substance or otherwise interacting with a potential health or safety hazard. The Owner's Project Manager must be notified immediately of the concern. Work shall not resume until approval has been provided by Owner. Close coordination will be maintained between Owner and Contractor so the Project schedule is impacted the least amount possible.

J. Scope of Indemnity. The indemnity in Article 17 of this Contract includes any claim by any person and Owner's attorneys' fees and other costs and expenses in defending any claim by any person that Owner is responsible or liable for any of the following arising from the acts or omissions of Contractor, any Subcontractor, any Sub-subcontractor or any of their employees or other workers relating to the Work: (i) any violation of Environmental Law or OSHA; (ii) any failure by Contractor, any Subcontractor or any Sub-subcontractor to perform or comply with any obligation or requirement in this Article (?), (iii) any Contractor Release of any Hazardous Substance; (iv) any improper disposition of any Hazardous Substance or Hazardous Waste; (v) any claim by any employee, agent, independent contractor or other worker of Contractor, any Subcontractor or any Sub-subcontractor and any claim by any other person of personal injury, death or property damage arising from any Contractor Release of any Hazardous Substance or arising from any failure by Contractor, any Subcontractor or any Sub-subcontractor to comply with any Environmental Law or OSHA or this section.

H. Contractor shall be responsible for site dust control per Maricopa County Environmental Services requirements and Storm water Pollution Prevention per Arizona Department of Environmental Quality (ADEQ) requirements, including all associated fees. Any violations to either the Dust Control or ADEQ shall be the responsibility of the Contractor.

## **ARTICLE 7**

### **DRAWINGS AND SPECIFICATIONS**

A. The Contractor shall study and compare the Contract Documents sufficiently in advance of beginning each phase or portion of the work to be performed and immediately report any material error, inconsistency, conflict, ambiguity, or omission that is discovered.

B. The Drawings are intended to show general arrangements, design and extent of Work and are not intended to serve as Shop Drawings. Where required, the Contractor shall perform no portion of the Work without approved Shop Drawings, Product Data or Samples; any Work performed in violation of this provision will be solely at the Contractor's risk regardless of DP's and/or Owner's knowledge of such Work.

C. In the event of any conflict or ambiguity, Contract Documents shall be interpreted as being complementary, requiring a complete project or designated portion thereof. In the event of conflict in the Contract Documents, the priorities stated below shall govern:

1. Addenda shall govern over all other Contract Documents and subsequent addenda shall govern over prior addenda only to the extent modified.

2. In case of conflict between plans and specifications, the plans shall govern.

3. Conflicts within the drawings: (1) Schedules, when identified as such, shall govern over all other portions of the drawings. (2) Specific notes shall govern over all other notes and all other portions of the drawings, except the schedules described in (1) above. (3) Larger scale drawings shall govern over smaller scale drawings. (4) Figured or numerical dimensions shall govern over dimensions obtained by scaling.

D. Conflicts within the specifications: Contract General Conditions shall govern over all sections of the specifications except for specific Modifications thereto that may be stated in Supplementary General Conditions or addenda. No other section of the specifications shall modify the Contract General Conditions.

E. In the event provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

F. In the event of any conflict, the Contractor shall request an interpretation by the DP before performing the Work.

G. If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, or materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Sample Contract

Contract Documents in accordance with such standard. "Minor detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

H. The Contractor shall maintain at the site, for the use of the Owner and of the DP, one copy of all Drawings, Specifications, bulletins, addenda, Change Orders, field orders, approved Shop Drawings, approved Submittals, supplementary instructions, requests for information, catalog data, manufacturers' operating and maintenance instructions, certificates, warranties, guarantees and other contract related documents and their Modifications, if any, in good order and marked daily by the Contractor to record all approved changes made during construction. These shall be turned over to the DP by the Contractor at the time of Substantial Completion for the purpose of assembling and correlating the material for use by the Owner and City.

I. The Contractor shall submit to the DP, with such promptness as to cause no delay in its Work or in that of any other Contractor, all Submittals and Shop Drawings as required by the Contract Documents, or as necessary to illustrate details of the Work.

J. Each Submittal and Shop Drawing must be accompanied by a transmittal letter containing a list of the titles and numbers of the Shop Drawings. Each series shall be numbered consecutively for ready reference and each Submittal and Shop Drawing shall be marked with the following information:

1. Date of Submission
2. Name of Project
3. Location of Project
4. Branch of Work
5. Project Number
6. Name of Submitting Contractor
7. Name of Subcontractors
8. Revision Number

K. All Subcontractor Submittals and Shop Drawings shall be submitted to the DP by the Contractor and shall bear written approval by the Contractor. Any Submittals or Shop Drawings submitted without this approval will be returned for resubmission; the



Submittals or Shop Drawings will be considered as not having been submitted, and any delay caused thereby shall be the Contractor's sole responsibility.

L. The Contractor shall include with Submittals and Shop Drawings, a letter indicating all deviations from the DP's Drawings and Specifications. Failure to so notify the DP of such deviations will be grounds for subsequent rejection of the related Work or materials. If, in the opinion of the DP, the deviations are not acceptable, the Contractor will be required to furnish the item as specified or as indicated on the DP's Drawings.

M. It is the Contractor's obligation and responsibility to check all of its Submittals and Shop Drawings and to be fully responsible for them and for coordination with connecting Work. Submittals and Shop Drawings shall indicate in detail all parts of an item of work, including erection and setting instructions and engagements with Work of other trades or other separate contractors.

N. By approving or submitting Submittals and/or Shop Drawings, the Contractor thereby represents that it has determined and verified availability, field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that it has checked and coordinated each Submittal and/or Shop Drawing with the requirements of the Work and of the Contract Documents. If any specified material item or part is not available, the Contractor shall so indicate to the DP.

O. The DP shall review Submittals and Shop Drawings and return them to the Contractor within twenty (20) calendar days of receipt unless otherwise previously agreed in writing. For scheduling purposes, the Contractor must assume a 20-day review period for each Submittal or set of Shop Drawings. For complex Submittals, the Contractor must assume two 20-day review cycles. If review and approval are delayed beyond twenty (20) calendar days, the DP shall notify the Contractor and the Owner in writing stating the reason for the delay. Approval shall not relieve the Contractor from the responsibility for deviations from the drawings and specifications, unless it has been called to the DP's attention, in writing, at the time of submission. Any Modification will be approved only if it is in the interest of the Owner to effect an improvement in the Work and does not increase the Contract Price or Contract Time. Any such Modification is subject generally to all other provisions of the Contract Documents, and is without prejudice to any and all rights under any surety bond.

P. If the DP returns a Submittal or Shop Drawing to the Contractor with the notation "rejected, revise, and resubmit", or "approved as noted," the Contractor, so as not to delay the Work, shall promptly submit a Submittal or Shop Drawing conforming to the requirements of the Contract Documents and indicating in writing on the Submittal or Shop Drawing and on the transmittal what portions of the resubmittal have been altered in order to meet with the approval of the DP. Any other differences

between the resubmittal and the prior submittal shall also be indicated on the Shop Drawing and on the resubmittal as a special note.

Q. No extension of time will be granted to the Contractor because of its failure to submit Submittals or Shop Drawings in ample time to allow for review, possible resubmittals and approval. Fabrication of Work shall not commence until the Contractor has received written approval. The Contractor shall furnish prints of its approved Submittals and Shop Drawings to all the Contractors whose work is in any way related to the Work. Only prints bearing this approval will be allowed on the site.

## **ARTICLE 8**

### **PRODUCT SAMPLES, TESTS, AND CERTIFICATES**

A. The Contractor shall furnish Product Samples of all items requested or required by the Specifications. Product Samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the DP, Owner and the City. The DP, Owner and/or City will review Product Samples in accordance with "Submittals, Drawings, and Shop Drawings" above.

B. Each Product Sample must be accompanied by a letter of transmittal containing the following information:

1. Date of Submission
2. Name of Project
3. Location of Project
4. Branch of Work
5. Project Number
6. Name of Submitting Contractor
7. Name of Subcontractor

C. The Contractor shall furnish to the DP a certificate stating that material or equipment submitted complies with Contract Documents. If a certificate originates with the manufacturer, the Contractor shall endorse it and submit it to the DP together with a statement of compliance in its own name.

D. No tests, inspections or approvals performed or given by the Owner or the DP or others acting for the Owner or any agency of Federal, State or Local government nor any acts or omissions by the Owner or the DP in administering this Contract shall relieve the

Contractor from its duty to perform the Work in accordance with the Contract Documents and applicable law.

E. Unless the DP is authorized at the time of submittal to return samples at the Contractor's expense, rejected samples will be destroyed.

F. After delivery of materials, the DP may make such tests as it deems necessary, with samples required for such tests being furnished by and at the cost of the Contractor. Any test is for the benefit of the Owner and shall not relieve Contractor of the responsibility for providing quality control measurements to assure that Work strictly complies with the Contract Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

G. On the basis of the test results, materials, workmanship, equipment or accessories may be rejected even though general approval has been given. If items have been incorporated in Work, the DP shall have the right to cause their removal and replacement by items meeting Contract Document requirements or to demand and secure appropriate reparation to the Owner from the Contractor.

## **ARTICLE 9 AS-BUILT DRAWINGS**

A. Prior to Substantial Completion, the Contractor shall complete and turn over to the DP the As-Built Drawings. The As-Built Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from contract Change Orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the As-Built Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built Drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color.

B. For any changes or corrections in the Work which are made subsequent to Substantial Completion, revisions shall be submitted to the DP prior to Final Payment.

## **ARTICLE 10 SUPERINTENDENCE BY THE CONTRACTOR**

A. The Contractor shall have a competent superintendent on the site at all times during the progress of the Work. Contractor's superintendent must be acceptable to the Owner. The superintendent shall have such assistants with such individual specialized competencies including, but not limited to, CPM scheduling, as may be necessary to fully understand and oversee all aspects of the Work. The superintendent and his

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assistants all shall be physically fit for their Work and capable of going to all locations where Work is being performed. A communication to the superintendent or his designated assistants by the Owner or DP is binding upon the Contractor. The Contractor's superintendent shall be responsible for the prevention of accidents at the site. The Commercial Construction Safety Code of the Arizona Industrial Commission shall apply to all Work, and a copy of the Code shall be available at the site.

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

C. The Contractor shall competently and thoroughly direct and superintend all of the Work and shall be solely responsible for all construction safety, means, methods, techniques, sequences and procedures. It shall coordinate and schedule all Work under this contract, the performance of all its employees, Subcontractors, and Suppliers, and the timely procurement of all necessary labor, materials, equipment, supplies, and all else needed to do the Work.

## **ARTICLE 11 SUBCONTRACTS**

A. The Contractor shall supply with its bid to the Owner a written list of all proposed subcontractors and suppliers. The Owner will promptly reply to the Contractor in writing stating whether the Owner or the DP, after due investigation, has any objection to any such proposed subcontractor or supplier. The Contractor shall not employ any subcontractor or supplier against whom the Owner or the DP has reasonable objection. If, prior to the award of the Contract, the Owner or DP has a reasonable objection to any subcontractor or supplier and refuses in writing to accept such person or organization, the apparent low bidder may, prior to the award, either withdraw his bid without forfeiture of bid security or may propose an acceptable substitution thereof provided that same results in no change in the bid price. Failure of the bidder to submit an acceptable substitute in a timely manner shall render its bid nonresponsive.

B. No substitution or change shall be made by the Contractor in the subcontractor/supplier list after its submission to the Owner without prior written

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approval by the Owner. Unapproved or untimely substitutions may be cause for invalidation of the Contractor's bid in the Owner's discretion, thereby rendering the Contract voidable.

C. All work performed for the Contractor by a subcontractor shall be pursuant to an appropriate written agreement which specifically binds the subcontractor to all applicable terms and conditions of the Contract Documents, but no contractual relationship shall exist between any subcontractor or supplier of any tier and the Owner, unless the Owner invokes the assignment provisions of the following subsection. Upon request, the Contractor shall provide fully executed copies of any subcontracts and purchase orders to the Owner.

D. The Contractor hereby assigns to the Owner (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by the Contractor for performance of any part of the Work, which assignment will be effective upon termination of the Contract by the Owner and only as to those subcontracts and purchase orders which the Owner assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by the Contractor to the Owner and its assigns. Such assignment is part of the consideration to the Owner for entering into this Contract with the Contractor and may not be withdrawn prior to final completion.

E. The Owner may require each proposed subcontractor whose subcontract will exceed \$750,000 to furnish a performance bond and a payment bond on Owner-approved forms in the full amount of its subcontract.

## **ARTICLE 12 COMMUNICATIONS**

A. All project notices, requests, instructions, modifications, approvals, and claims must be in writing, unless expressly specified otherwise in the Contract.

B. Copies of all such communications from the Contractor to the DP shall be delivered to the Owner.

C. Communications will be deemed to have been made if delivered in person or if mailed to the address designated in the Contract or otherwise agreed upon by the parties.

## **ARTICLE 13 PERMITS, TAXES AND FEES**

A. Construction Plan Permit fees to release the construction from the City of Buckeye shall be paid by the Owner. The Contractor shall secure and pay for any other necessary permits and for all other permits, fees, licenses and inspections necessary for

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the proper execution and completion of the Work, and shall immediately deliver copies to the Owner and DP. The Contractor shall be responsible for complying with all applicable Federal, State and local laws, codes, notice requirements, and regulations applicable to the site and prosecution of the Work. Contractor shall be responsible for and pay any costs associated with or arising from any non-compliance. Usual Owner building permit and inspection fees are not applicable to work constructed on the Owner's property.

B. The Contractor shall pay all taxes for and related to the Work or its portion thereof which are legally enacted at the time bids are received, whether or not yet effective.

#### **ARTICLE 14 BONDS**

A. The Contractor shall file with the Owner and City at or prior to the time of execution of the Contract, a performance bond , a payment bond, and a warranty bond on Owner and City-approved forms, each in the full amount of the Contract. The Surety furnishing these bonds shall be satisfactory to the Owner and shall be authorized to do business in the State of Arizona.

#### **ARTICLE 15 INSURANCE**

A. Insurance Requirements: Concurrently with the execution of the Contract, the Contractor shall furnish the Owner a certificate of insurance on a standard insurance industry ACORD form. The ACORD form shall be issued by an insurance company authorized to transact business in the State of Arizona.

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

C. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

D. The Owner in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents,

representatives, employees, subcontractors or subconsultants and Contractor is free to purchase such additional insurance as may be determined necessary.

E. Minimum Scope And Limits Of Insurance. Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below. The Contractor waives all rights of subrogation under the following policies.

(1) Commercial General Liability-Occurrence Form Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional insured language: "Buena Yuma, LLC, the City of Buckeye, and Southwest Groundwater" shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

The policy shall contain a waiver of subrogation against Buena Yuma, LLC

(2) Automobile Liability- Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: "Buena Yuma, LLC, the City of Buckeye, and Southwest Groundwater" shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor including automobiles owned, leased, hired or borrowed by the Contractor".

(3) Workers Compensation and Employers Liability

<u>Workers Compensation</u>	<u>Statutory</u>
Employers' Liability	
Each Accident	\$ 1,000,000
Disease-Each Employee	\$ 1,000,000
Disease-Policy Limit	\$ 1,000,000

(4) Umbrella/Excess Liability: Umbrella/Excess Liability insurance with a limit of not less than \$5,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above.

The policy shall contain a waiver of subrogation against Buena Yuma, LLC, the City of Buckeye, and Southwest Groundwater

F. Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

(1) On insurance policies where Buena Yuma, LLC, the City of Buckeye, and Southwest Groundwater is named as an additional insured, Buena Yuma, LLC, the City of Buckeye, and Southwest Groundwater shall be an additional insured 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.

(2) The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

(3) Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

G. Subconsultant's and Subcontractor's Insurance. Contractor's certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. All coverage's for subcontractors and subconsultants shall be appropriate to cover all of its work performed herein.

H. Notice Of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to:

<u>City</u>	<u>Owner</u>
Chris Williams Contracts Manager City of Buckeye 423 Arizona Eastern Ave. Buckeye, AZ 85326	Buena Yuma, LLC c/o IMH Financial Corporation 7001 N. Scottsdale Road, Ste. 2050 Scottsdale, Arizona 85253



I. Acceptability Of Insurers. Insurance is to be placed with insurers duly licensed in the State of Arizona and with an A. M. Best's rating of no less than A -. The Owner in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

J. Verification of Coverage

(1) Contractor shall furnish the City and Owner Certificates of Insurance (ACORD form or equivalent approved by the City and Owner) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. *Any policy endorsements that restrict or limit coverages shall be clearly noted on the certificate of insurance.*

(2) All certificates and endorsements are to be received and approved by the City and Owner before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract or the signing of 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.

(3) All certificates of insurance required by this Contract shall be sent directly to the City of Buckeye, Contracts Manager and Owner. The contract number and project description shall be included on the Certificates of Insurance. The City and Owner reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.

K. Approval. Any modification or variation from the insurance requirements in this Contract shall be approved by the City and Owner, whose decision shall be final.

L. Liability Notwithstanding Insurance: Approval, disapproval or failure to act by Owner regarding any insurance supplied by Contractor or its Subcontractors shall not relieve the Contractor of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. Neither the bankruptcy or insolvency of Contractor's insurer nor any denial of liability by Contractor's insurer shall exonerate Contractor from the liability or responsibility of Contractor set forth in this Contract.

## **ARTICLE 16 ALLOWANCES**

A. If required by the Bid Documents issued by the Owner for the Work, the Contract price shall include an allowance or allowances as specified in the request for Sample Contract

bids. The Contractor's price for the Work shall include all of the Contractor's costs associated with such allowance or allowances. If the actual costs to the Contractor of such allowance or allowances are different from the specified sum, increases or decreases in the cost of the allowance and associated Contractor's cost may be adjusted in accordance with Section 28.3 (Changes) of this Contract.

## **ARTICLE 17 INDEMNIFICATION**

A. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold Owner, its officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of Owner, its officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **ARTICLE 18 PROGRESS AND SCHEDULING**

A. Planning, scheduling and progress monitoring are essential functions of the Contractor. Within ten (10) days after the award of the Contract, the Contractor shall prepare and submit for the Owner and the DP a Schedule of Values allocating the Contract Price among the various portions of the Work for purposes of progress payments. The Schedule of Values shall be substantially equivalent to AIA Forms G702 and G703 or as specified by Owner. In addition, Contractor shall submit Construction Progress Schedules in full accordance with the requirements and provisions located in Division 1 of the Specifications.

B. The Contractor shall also furnish the DP with a Narrative Report corresponding with each bi-monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, fragmentary networks (fragnet) of delays, and an explanation of corrective action taken or proposed. If the Project is behind schedule in any month, the Contractor's Narrative Report shall indicate precisely what measurements it will take in the next thirty days to put the Work back on schedule.

C. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Progress Schedule, to prevent work stoppage, and to ensure completion of the Project within the Contract Time.

D. The Contractor shall be responsible to prepare, submit and maintain the schedules and Narrative Reports indicated above, and the failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain the schedules shall be solely the Contractor's obligation and shall not be charged to the Owner.

## **ARTICLE 19**

### **DAILY LOG**

A. The Contractor shall maintain a daily log of construction activities for each calendar day of the Contract Time, using a form approved by the DP. The Contractor shall document all activities at the Project site, including:

1. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job site, and any other weather conditions which adversely affect Work at the site;
2. Soil conditions which adversely affect Work at the site;
3. The hours of operation by Contractor and individual Subcontractor personnel;
4. The number of Contractor and Subcontractor personnel present and working at the site, by subcontract and trade, and updated schedule activity number.
5. The equipment active or idle at the site;
6. A description of the Work being performed at the site, by updated schedule activity number.
7. Any delays, disruptions or unusual or special occurrences at the site;
8. Materials received at job site; and
9. A list of all visitors at the site.

B. The Contractor shall provide copies of the daily logs to the Owner and DP on a weekly basis. The daily log does not constitute written notice to the Owner or DP when such notice is required by the Contract Documents.

## **ARTICLE 20**

### **MISCELLANEOUS DUTIES**

A. The Contractor shall submit to the Owner upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor payment

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applications and each Subcontractor's progress payment check. The requirements of this subsection shall be provided in all contracts between the Contractor and its Subcontractors.

B. During construction and for five (5) years after Final Payment, the Contractor shall retain and shall also require all Subcontractors to retain for review and/or audit by the Owner all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs, and all other matters related to the bidding and performance of the Work.

Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the Contractor at any time during or after construction as the Owner may request.

C. The Contractor shall be responsible for laying out its own Work and for any damage which may occur to work of any other contractor because of the Contractor's own errors or inaccuracies. The Contractor shall also be responsible for unloading, uncrating, securing, storing and handling all materials and equipment to be erected or placed by it, whether furnished by the Contractor or others. No payment shall be provided for any material removed from the site post delivery.

D. The 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 the Contractor.

E. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, wiring, conduit, ductwork, trim and other parts required for or in connection with any item or material to make a complete, serviceable, finished and quality installation shall be furnished and installed as part of the item whether or not expressly called for by the Drawings or Specifications.

F. All materials shall be shipped and stored and handled in a manner that will afford protection and ensure their being in factory-new condition at the time they are incorporated in the Work. After installation, they shall be properly protected against damage or deterioration until Final Completion of the Project.

G. When standards and specifications issued by The American Society of Testing and Materials, the American Institute of Steel Construction, the U.S. Department of Commerce (Commercial Standards), or other technical or standard setting organizations are cited in the Contract Documents, such standards or specifications (and all related standards or specifications) shall be equally as binding and have the full force and effect

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as though incorporated word for word. Unless otherwise specifically stated, the standards and specifications referred to shall be the latest edition or revision of such specifications that is in effect on the date of the public bid.

H. Any part of the Work damaged during installation or prior to final acceptance of Work shall be repaired so as to be unnoticeable and to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced. After installation, all exposed surfaces and parts of an item or of the Work shall be cleaned in a manner that will not damage the finish or any of the parts of the item, so that the completed work is left in first class condition, free of all defects. All damaged or defaced Work shall be repaired or replaced to the Owner's satisfaction at the expense of Contractor.

I. The Contractor shall procure and furnish to the Owner all guarantees, warranties, manuals and spares that are called for by the specifications or that are mentioned in the manufacturer's product literature. Guaranties and warranties shall commence as of the date of Substantial Completion of the Project.

J. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for loss attributable when a particular design, process or the product of a particular manufacturer or manufacturers is specified. If the Contractor has any reason to believe that the design, process or product specified could be an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information in writing to the DP and Owner.

K. The Contractor shall limit its operations to the confines of the Project, except as necessary to connect to existing utilities, and shall not, without the prior written permission of the affected property Owner, and encroach on property outside the site. Contractor shall not permit unauthorized persons or activities on the site and shall maintain the site in a safe and secure manner.

L. The Contractor shall prearrange time with the DP and City whenever it becomes necessary to interrupt any service to make connections, alterations or relocations and shall fully cooperate with the Owner in doing Work so as to cause the least annoyance and interference with the continuous operation of the City's business or official duties. Any existing plumbing, heating, ventilating, air conditioning or electrical disconnections which may affect portions of this construction or building or any other building must be coordinated with the DP to avoid any disruption of operation within the building or construction or other building or utilities. In no case, unless previously approved in writing by the DP, shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities, whether negligently, intentionally, or

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accidentally, shall not relieve the Contractor's responsibility for the interruption or from liability for loss or damage caused by such interruption even though such loss or damage was not foreseeable by Contractor or subcontractor, or from responsibility for repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workmen responsible for the repair and restoration leave the job.

M. The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to properly clean up during construction, or if a dispute arises between the Contractor and/or separate Contractors as to their responsibility for cleaning up, the Owner may clean up and charge the costs thereof to the Contractors responsible as determined by the Owner and/or DP. At the completion of the work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up at the completion of the work, the Owner may do so and the cost thereof shall be charged to the Contractor.

## **ARTICLE 21 INSPECTION OF WORK**

A. All Work done and all materials are subject to inspection by the Owner, City and/or the DP to determine if they conform to the Contract Documents. The Owner, DP and City shall at all times have access to the Work, including materials being fabricated or stored off site. The Contractor shall furnish at the Contractor's cost any facilities necessary for sufficient and safe access to the Work.

B. Inspections, tests, measurements, or other acts of the Owner and/or the DP are for the sole purpose of assisting the Owner and/or the DP in determining that the Work, materials, rate of progress, and quantities comply with the Contract Documents and/or Contractor's requests for payment. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with contract requirements nor relieve the Contractor from any of the quality, compliance and responsibility for the Work assigned to it by the Contract Documents. No inspection by the Owner, City and/or the DP shall constitute or imply acceptance or waiver of rights.

C. 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 the Owner, City and/or the DP or even if the Owner, City and/or the DP failed to observe the unsuitable Work or materials.

D. Any Work required to be inspected by the Owner, DP and/or the City prior to being covered, which is covered up without prior inspection or without prior consent of the Owner, DP and/or the City, must be uncovered and recovered by the Contractor, if requested by the Owner, DP or the City, at no cost to Owner, notwithstanding the provisions of the following subsection.

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E. Contractor shall notify the Owner, City and DP in writing at least 48 hours prior to the time at which the Owner, City or DP must be present to perform an inspection. Failure to provide such notice will place the Contractor at risk for all consequences of non-inspection and having to uncover work.

## **ARTICLE 22 CORRECTION OF WORK**

A. If any portion of the Work is covered over contrary to the request of the Owner, DP or City or as required by the Contract or the applicable building standards, it must be uncovered for observation at the Contractor's expense if requested by the DP or Owner in writing.

B. If any portion of the Work, other than those portions required to be inspected by the Owner, DP and/or the City prior to being covered, has been covered over, the Owner, DP or City may request that it be uncovered for observation. If such portion is found not to be in accordance with the requirements of the Contract Documents, the Contractor shall bear such costs.

C. The Contractor shall promptly remove from the site and replace any material or correct any Work found by the Owner, DP or City to be defective or failing to conform to the requirements of the Contract, whether or not fabricated, installed or completed, and whether discovered before or after Substantial Completion. The Contractor shall bear all costs of correcting such Work or material, including the cost of necessary additional professional services and the cost of repairing or replacing all work of separate contractors or subcontractors damaged by such removal or correction. The DP shall notify the Contractor and Owner immediately in writing upon its knowledge that additional professional services will be necessary and of the extent and estimated costs of the additional services. The City, with the recommendation of the DP, may consent to accept such Work or material with an appropriate adjustment in Contract Price.

D. If the Contractor does not promptly replace or correct such Work or material, the Owner may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor.

E. If, within two (2) years after the date of Substantial Completion, any of the Work is found to be defective or not in accordance with the requirements of the Contract, the Contractor shall correct it promptly after receipt of a written notice from the Owner or City to do so. If the Contractor does not promptly replace or correct such Work or material, the Owner may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor. Nothing contained in this section shall be construed to

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establish a period of limitation with respect to any obligation of the Contractor under the Contract or the law. The obligation of the Contractor under this section shall be in addition to and not in limitation of any obligations imposed by special guaranties or warranties required by the Contract, given by the Contractor, or otherwise recognized or prescribed by law.

F. If, during the running of a guarantee or warranty period, the Contractor must perform repair work to any portion of the Work, the running of the warranty or guarantee period is tolled from the time the defect or deficiency is discovered through the time when the Contractor successfully completes all repairs and retesting and start-up activities.

### **ARTICLE 23 DELAYS AND TIME EXTENSIONS**

A. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the DP, or by any separate Contractor employed by the City, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, adverse soil conditions, unavoidable casualties, delays specifically authorized by the Owner, or by causes beyond the Contractor's control, avoidance, or mitigation, and without any fault or negligence of the Contractor or Subcontractor or Supplier at any tier, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine that such event has delayed the critical path of the Work or individual milestone or overall completion of the Work after considering the advice of the DP, if the Contractor complies with the notice and documentation requirements set forth below. The Contractor shall pay any additional fees or costs incurred by the Owner or DP as the result of delays caused by the Contractor for circumstances not excused as provided herein.

B. Initial notice of any delay in the Work shall be made in writing to the Owner immediately but in no event later than 24 hours after discovery of the event giving rise to the delay. Then, Contractor shall provide additional details of the delay in writing to the Owner within seven (7) calendar days from the beginning of the delay. Failure to meet these time requirements shall absolutely bar any and all later claims. The detailed notice shall indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Work, and potential mitigation plans. If the cause of the delay is continuing, the Contractor must give written notice bi-monthly at the same time it submits the updated progress Narrative Report to the Owner. Within fifteen (15) days after the elimination of any such delay, the Contractor shall submit further documentation of the delay and, if applicable, a formal written request covering an extension of time for such delay. The written request for time extension shall state the cause of the delay, the number of days extension requested and provide a fully documented analysis of the Progress Schedule, including a fragnet and any other data demonstrating a delay in the critical path of the Work or

Sample Contract



individual milestone or the overall project completion. If the Contractor does not comply with the notice and documentation requirements set forth above, the claim for delay is absolutely barred.

C. If the Contractor incurs damages related to expenses caused by a delay for which the Owner is solely responsible, which is unreasonable under the circumstances, and which was not contemplated by the parties at the time of formation of this Contract, then the parties shall attempt to reach an agreement on the Contractor's claim, provided that the Contractor has notified the Owner in writing as specified above, including why the Owner is believed by the Contractor to be solely responsible for the delay. Failure to provide such timely notice shall be deemed an absolute and final waiver of any rights to additional sums.

D. The Contractor shall have no right to claim for alleged extended or unabsorbed home office overhead; claims for delays shall be limited to provable extended site costs.

E. The date of beginning and the time for completion as specified herein are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the notice to proceed or at a preconstruction meeting, but in no event later than ten (10) days after the execution of this Contract, whichever first occurs. Said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. The time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any extension thereof granted by the Owner, then the Contractor does hereby agree to pay to Owner the per diem amount specified in the Contract. This amount is agreed to be liquidated damages for such breach and not a penalty therefore. The per diem amount shall be paid for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. The amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. Said sums may be withheld by the Owner from any amounts due to the Contractor from the Owner, whether as the result of this Contract or any other obligation between the Owner and the Contractor.

F. The parties hereby agree that if the Contractor submits an original or updated schedule which shows the project and/or individual Milestone(s) completing earlier than required by the adjusted contractual completion date(s), the differences between the forecasted early completion and the required completion shall be considered Project-owned float available for use by both the Owner and the Contractor.

G. The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential

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logic, using extensive crew/resource sequencing, etc. Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the adjusted Contract completion date. Since float time within the Construction Schedule is jointly owned, it is acknowledged that Owner-caused delays on the project may be offset by Owner-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all Owner-caused time savings are exceeded and the Contract completion date or milestone date is also exceeded.

H. It is agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated Construction Schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.

#### **ARTICLE 24 SUSPENSION OF WORK**

A. The Owner may, at any time and without cause, order the Contractor in writing or cause the Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as the Owner may determine to be appropriate for its convenience. Equitable adjustment shall be made for any increase in the Contract Time necessarily caused by such suspension or delay by written Change Order.

#### **ARTICLE 25 RIGHT TO STOP WORK**

A. If the Contractor fails to correct defective Work as required, or fails to carry out the Work in accordance with the Contract Documents, the Owner by written notice, may order the Contractor to stop the Work or any portion of the Work, until the cause for the order has been eliminated to the satisfaction of the Owner.

B. The DP may stop Work without written notice for 24 hours whenever in its professional opinion such action is necessary or advisable to ensure conformity with the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time under this subsection. The right of the Owner or the DP to stop the Work shall not give rise to a duty on the part of the Owner or DP to exercise this right for the benefit of the Contractor or others.

#### **ARTICLE 26 CHANGES**

A. After this Contract is signed, Modifications in the Contract Price, the Contract Time or Scope of the Work may only be made by written Change Order.

B. By written directive at any time, the Owner may make any changes within the general scope of the Contract or issue additional instructions, require additional or modified Work or direct deletion of Work. The Contractor shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the Owner and shall proceed in accordance with the procedures set forth in this section. If the Contractor proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this paragraph, the Contractor hereby waives all rights or claims Contractor may have as a result of the change. The Owner's right to make changes shall not invalidate the Contract or relieve the Contractor of any liability. Any requirement of notice of change to the Surety shall be the responsibility of the Contractor.

C. The cost or credit to the Owner resulting from a change in Work shall be determined in one or more of the following ways:

1. By unit prices stated in the Contract.

2. By cost, as defined below, properly itemized and supported by sufficient, substantiating data to permit evaluation, plus a fee of ten percent (10%) of items (a) through (d) described below. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly allocable to the change in the Work:

(a) Cost of materials, including delivery but excluding Subcontractor-supplied materials.

(b) Fully-burdened cost of labor, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by agreement or routinely paid by contractor, and worker's or workman's compensation insurance but excluding Subcontractor's labor.

(c) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, contractor must prove reasonable rental rate pursuant to actual ownership costs.

(d) Cost of Subcontracted work calculated as above and Subcontractor's Field Supervision calculated in accordance with paragraph (e) below, plus Subcontractor's insurance and bond premiums as applicable. Insurance and bond premium cost shall not exceed a total of two percent (2%) of Subcontractor's documented cost.

(e) Contractor's Field Supervision not to exceed five percent (5%) of (a), (b) and (e) above; the parties agree that this mark-up shall fully cover all contractor Field Supervision overhead.

(f) Contractor's insurance and bond premiums not to exceed a total of two percent (2%), or documented cost.

(g) Sales tax at full value.

(h) If this method of cost or credit calculation is selected, in no event shall the combined total fee including all levels or tiers of Subcontractors exceed fifteen percent (15%) of the total cost of paragraphs (a),( b), (c) and (d). Field Supervision is to be excluded at all levels for the purposes of the limit imposed by this paragraph.

3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; provided that such lump sum shall not exceed that amount calculated under item 2. above.

D. If none of the above methods is agreed upon, the Contractor shall promptly proceed with performing the change, upon receipt of a written order signed by the Owner. Any dispute regarding the pricing methodology or cost of the change shall not relieve the Contractor from proceeding with the change as directed by the Owner. The cost or credit to the Owner shall be determined by the DP on the basis of the preceding subsection.

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

F. In an emergency affecting the safety of life, or of the structure, or of adjoining property, the Contractor, without special instruction or authorization from the Owner, is permitted to act at its discretion to prevent threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be determined in accordance with this section.

G. No changes in contract amount will be accepted related to material cost increase due to contractors failure to lock in all pricing at the time of construction award and notice to proceed.

## **ARTICLE 27**

### **PAYMENT**

A. Payments on account of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered and securely stored on site during a period ending on the last calendar day of each month, shall be submitted to the Owner by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized, shall be supported by such data substantiating the Contractor's right to payment as the Owner may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract. If requested by the Owner, each Application for payment prior to final payment shall be accompanied by a sworn statement of Contractor and/or correctly completed waivers of lien, in a form approved by Owner and executed by the Contractor, each Subcontractor, Sub-contractor and supplier entitled assert a lien or claim against the Project and providing more than \$5,000 worth of labor, services or materials to the Project. Contractor shall also provide any invoices over \$5,000 to Owner with payment application.

B. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the Owner. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the Owner to require fulfillment of all terms of Contract Documents.

C. The Owner, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

D. The issuance of a Certificate for Payment will constitute a representation by the Owner, observations at the site and the data comprising the Application for Payment, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

E. Payment may be withheld in whole or in part to protect the Owner on account of:

1. Unsatisfactory job progress as determined by the Owner.
2. Defective Work or materials not remedied.

3. Disputed Work or materials.
4. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
5. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
6. A reasonable doubt as determined by the Owner that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
7. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the Owner.
8. Deficiencies or claims asserted by Owner against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate of Payment, the Owner shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the site. The remaining 10% shall be retained by the Owner until the Contract is 50% completed at which time the retainage may be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the Owner's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the Owner shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The Owner's sole judgment concerning the satisfactory progress of the Work shall be final.

F. Within sixty (60) days after the issuance of the Certificate of Final Completion by the Owner and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

1. The Final Payment shall not become due until the Contractor delivers to the Owner full and final unconditional releases from Subcontractors and major Suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.

2. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the Owner all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

G. If any payment of the Contract Price is not made within thirty (30) days and without just cause, interest shall thereafter accrue on the unpaid principal balance at the minimum rate allowed by state law (A.R.S. § 44-1201) on the due date.

## **ARTICLE 28 WARRANTY**

- A. The Contractor warrants that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in strict conformance with the Contract Documents.
- B. Neither provision of manufacturers' warranties nor Final Payment nor use or occupancy of all or a portion of the Premises by the Owner shall constitute an acceptance of Work not performed in accordance with the Contract Documents or relieve the Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship.
- C. The Contractor or its sureties shall remedy any defects in the Work and any resulting damage to the Work or the Work of others at its own expense.
- D. The Contractor shall be liable for correction of all damage resulting from defective Work. If the Contractor fails to remedy any defects or damage, the Owner may correct the Work or repair the damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Contractor.
- E. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Contract Documents.

## **ARTICLE 29 SUBSTANTIAL COMPLETION**

- A. When the Contractor requests a Substantial Completion Inspection for the Work or a designated portion thereof, the Owner and City shall determine the validity of the request. A list of items to be completed or corrected shall be prepared by the Contractor and presented to the Owner and City with the request for inspection. By submitting a request for Substantial Completion Inspection the Contractor thereby certifies that it has performed a thorough inspection of the Project in preparing the list of items to be completed or corrected, has consulted with its subcontractors, and that the remaining incomplete or defective work shall be completed within thirty (30) days of submission of the request. The Owner and City shall evaluate the Contractor's request and list of uncompleted items and, if appropriate in their judgment, add to or delete items from the list necessary to complete the work. The failure to include items on any punch list shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. By submitting a request for Substantial Completion Inspection, the Contractor thereby certifies that the remaining incomplete

or defective Work required by the Contract Documents shall be completed within thirty (30) days.

B. If the Owner and City, on the basis of Substantial Completion inspection, determines that the Work has been substantially completed in accordance with the Contract Documents, then the Owner and City will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion; shall state the responsibilities of the Contractor for remaining punchlist items, maintenance, heat and utilities, security, and damage to the work; and shall fix the time, not to exceed thirty (30) days, within which the Contractor shall complete the punch list. The Certificate of Substantial Completion shall be submitted by the Owner and City to the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Project shall not be deemed substantially complete until the Certificate is issued irrespective of occupancy.

### **ARTICLE 30 FINAL INSPECTION**

A. When the Contractor submits in writing to the Owner and City a request for a final inspection of the Work, the Owner and City shall determine the validity of the request. Following the inspection, if there are items to be completed or corrected, the Owner, City, and DP will determine the dollar value to be withheld in accordance with the retainage provisions of the Contract. In the event that the Contractor has not completed the punch list items within the time designated in the Certificate of Substantial Completion, the Owner and City retains the right to have these items corrected at the expense of the Contractor, including all architectural, engineering and inspection costs and expenses incurred by the Owner.

B. The Owner shall not be required to release the retainage until such items have been completed and inspected.

### **ARTICLE 31 ASSIGNMENT OF CLAIMS**

A. The Owner and Contractor recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by Owner. Therefore, the Contractor hereby assigns to Owner any and all claims for such overcharges. The Contractor in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the Owner.



## **ARTICLE 32 DISPUTES**

A. All of Contractor's claims and disputes shall first be referred to the DP for initial determination, by written notice, not more than seven (7) days from the occurrence of the event which gives rise to the dispute, or not more than seven (7) days from the date that the Contractor knew or should have known of the problem. Unless the claim is made in accordance with these time requirements, it is irrevocably waived. The Owner shall render a written decision within a reasonable time. Any claim not timely filed or not complete at the time of filing is irrevocably waived.

B. Any failure of the Owner to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of the Contractor's claim for relief. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any claims and controversy proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

## **ARTICLE 33 FORUM**

A. No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court, and only after all contractual and administrative procedures have been fulfilled in accordance with Maricopa Association of Governments Specification Section 110.

## **ARTICLE 34 TERMINATION BY THE OWNER**

A. This Contract may be terminated by the Owner under the conditions stated in A.R.S. § 38-511.

## **ARTICLE 35 TERMINATION FOR CAUSE**

A. The Owner may terminate the Contract upon the occurrence of any one or more of the following events:

1. If the Contractor refuses or fails to prosecute the Work, or any separable part, with such diligence as will ensure its completion within the Contract Time; or if the Contractor fails to complete the Work within the Contract Time;

2. If the Contractor or any of its key subcontractors is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if the Contractor

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or any of its key subcontractors or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor or any of its key subcontractors, or if a trustee or receiver is appointed for the Contractor or any of its key subcontractors or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest or any of its key subcontractors does not provide adequate assurance of future performance in accordance with the Contract within ten (10) days after receipt of a request for assurance from the Owner;

3. If the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment;

4. If the Contractor fails to make prompt payments to subcontractors or suppliers at any tier, or for labor, materials or equipment;

5. If the Contractor fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

6. If the Contractor fails to follow any reasonable instructions by the Owner;

7. If the Contractor performs Work which deviates from the Contract Documents, and neglects or refuses to correct rejected Work; or

8. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the Owner determines that sufficient cause exists to justify the action, the Owner may terminate the Contract without prejudice to any other right or remedy the Owner may have, after giving the Contractor and its Surety seven (7) days notice by issuing a written Declaration of Default. The Owner shall have the sole discretion to permit the Contractor to remedy the cause for the contemplated termination without waiving the Owner's right to terminate the Contract.

B. If the Contract is terminated, the Owner may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The Owner may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor, without liability to the Contractor. In exercising the Owner's right to prosecute the completion of the work, the Owner may also take possession of all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere, and finish the Work as the Owner deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

C. If the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work, and all Owner damages including liquidated damages and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work it performed and a reasonable allowance for overhead and profit. If such costs exceed the unpaid balance, the Contractor shall immediately upon demand pay the difference to the Owner. In exercising the Owner's right to prosecute the completion of the Work, the Owner shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work, and the Owner shall not be required to obtain the lowest figure for Work performed in completing the contract. If the Owner takes bids for remedial Work or completion of the project, the Contractor shall not be eligible for the award of such contracts.

D. If the Contract is terminated, the Owner may demand that the Contractor's Surety take over and complete the Work on the Contract. The Owner may require that in so doing, the Contractor's Surety not utilize the Contractor in performing the Work. Upon the failure or refusal of the Contractor's Surety to take over and begin completion of the Work within 20 days after the demand, the Owner may take over the Work and prosecute it to completion as provided above.

E. The Owner shall have the option of requiring any, all or none of the Subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.

F. If the Owner takes over the Work, unexecuted orders entered into by the Contractor for performance of any part of the Work will be effective upon acceptance by the Owner in writing and only as to those subcontracts and purchase orders which the Owner designates in writing.

G. The Contractor shall be liable for any damage to the Owner resulting from the termination or from the Contractor's refusal or failure to complete the Work, and for all costs necessary for repair and completion of the Project over and beyond the amount of the Contract. The Contractor shall be liable for all legal fees and costs required to enforce the provisions of the Contract.

H. If the Owner terminates the Contract, the Contractor shall remain liable for liquidated damages for delay until such reasonable time as may be required for final completion of the Work. Such damages shall be in addition to and not in lieu of any other damages sustained by Owner in completing the Work.

I. In the event the Contract is terminated, the termination shall not affect any rights of the Owner against the Contractor. The rights and remedies of the Owner under this section are in addition to any other rights and remedies provided by law or under

this Contract. Any retention or payment of monies to the Contractor by the Owner will not release the Contractor from liability.

J. If the Contract is terminated under this section, and it is determined for any reason that the Contractor was not in default under the provisions of this Section, the termination shall be deemed a Termination for Convenience of the Owner and, the rights and obligations of the parties shall be determined in accordance with the following section.

### **ARTICLE 36**

#### **TERMINATION FOR CONVENIENCE OF THE OWNER**

A. The Owner, by written notice to the Contractor, may terminate this Contract in whole or in part when sufficient appropriated or other funds are not available or in the sole discretion of the Owner it is in the Owner's best interest. In such case, the Contractor shall be paid for all Work executed and reasonable termination expenses, and a reasonable allowance for profit and overhead on Work done, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by other contract payments previously made to the Contractor and as further reduced by the value of the Work as yet not completed. The Contractor shall not be entitled to profit and overhead on Work, which was not performed.

### **ARTICLE 37**

#### **ASSIGNMENT OF CONTRACT**

A. Contractor shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless Contractor has the prior written approval of the Owner and the Contractor's Surety has been given notice and has given written consent to any such assignment.

### **ARTICLE 38**

#### **LAW TO GOVERN**

A. This Contract is made under and shall be construed in accordance with the laws of the State of Arizona. If any portion of this Contract is found to be unenforceable the rest and remainder of the Contract shall remain in full force and effect so as to effectuate the intent of the parties. Each party acknowledges that it has had an opportunity to review this Contract with counsel and this document shall be construed fairly and equitably so as to effectuate the intention of the parties irrespective of who is determined to have been the drafter of the document.

BUENA YUMA, LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Witness:

\_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR'S NAME

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Witness:

\_\_\_\_\_

**PERFORMANCE BOND**

**KNOW ALL PERSONS BY THESE PRESENTS THAT:**

\_\_\_\_\_  
Name of CONTRACTOR

\_\_\_\_\_  
Address of CONTRACTOR

a \_\_\_\_\_, hereinafter called PRINCIPAL and  
(Corporation), (Partnership) or (Individual)

\_\_\_\_\_  
Name of SURETY

\_\_\_\_\_  
Address of SURETY

hereinafter called SURETY, are held and firmly bound unto

Buena Yuma, LLC, c/o IMH Financial Corporation  
\_\_\_\_\_  
Name of OWNER

7001 N. Scottsdale Road, Scottsdale, Arizona 85253  
\_\_\_\_\_  
Address of OWNER

hereinafter called OWNER, in the total aggregate penal sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$\_\_\_\_) in lawful money of the United States, for the payment of which  
sum well and truly to be made, we bind ourselves, our heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that, whereas the PRINCIPAL entered into  
a certain contract with the OWNER, DATED THE \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
a copy of which is hereto attached and made a part of the construction contract for  
EVERGREEN SW REPLACEMENT WELL

**NOW, THEREFORE**, the condition of this obligation is such, that if the principal faithfully  
performs and fulfills all of the undertakings, covenants, terms, conditions and  
agreements of the contract during the original term of the contract and any extension of  
the contract, with or without notice to the surety, and during the life of any guaranty  
required under the contract, and also performs and fulfills all of the undertakings,  
covenants, terms, conditions and agreements of all duly authorized modifications of the  
contract that may hereafter be made, notice of which modifications to the surety being  
hereby waived, the above obligation is void. Otherwise it remains in full force and  
effect.

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of title 34,  
chapter 2, article 2, Arizona Revised Statutes, and all liabilities on this bond shall be  
determined in accordance with the provisions of title 34, chapter 2, article 2, Arizona  
Revised Statutes, to the extent as if it were copied at length in this Contract.

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The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

**IN WITNESS WHEREOF**, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

PRINCIPAL'S ATTEST:

\_\_\_\_\_  
PRINCIPAL

By: \_\_\_\_\_

Attorney-in-Fact

(SEAL)

Address: \_\_\_\_\_

\_\_\_\_\_  
Witness as to PRINCIPAL

\_\_\_\_\_  
Address

SURETY'S ATTEST:

\_\_\_\_\_  
By: \_\_\_\_\_

Address: \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
Witness as to SURETY

\_\_\_\_\_  
Address

**PLEASE NOTE:**

1. *Date of BOND must not be prior to date of CONTRACT.*
2. *If CONTRACTOR is partnership, all partners should execute BOND.*
3. *Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*
4. *Use of this form as an instrument of SURETY for this project is not mandatory. Use of other forms normally deemed acceptable in the State wherein the project is located may be allowed.*

**PAYMENT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS THAT:**

\_\_\_\_\_  
Name of CONTRACTOR

\_\_\_\_\_  
Address of CONTRACTOR

a \_\_\_\_\_, hereinafter called PRINCIPAL and  
(Corporation), (Partnership) or (Individual)

\_\_\_\_\_  
Name of SURETY

\_\_\_\_\_  
Address of SURETY  
hereinafter called SURETY, are held and firmly bound unto

\_\_\_\_\_  
Buena Yuma, LLC, c/o IMH Financial Corporation  
Name of OWNER

\_\_\_\_\_  
7001 N. Scottsdale Road, Scottsdale, Arizona 85253  
Address of OWNER

hereinafter called OWNER, in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$\_\_\_)  
in lawful money of the United States, for the payment of which sum well and truly to be made,  
we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that, whereas the PRINCIPAL entered into a  
certain contract with the OWNER, DATED THE \_\_\_\_\_ day of \_\_\_\_\_, 2017, a copy  
of which is hereto attached and made a part of the construction contract for EVERGREEN  
SOUTHWEST REPLACEMENT WELL

**NOW, THEREFORE**, the condition of this obligation is such, that if the principal promptly pays all  
monies due to all persons supplying labor or materials to the principal or the principal's  
subcontractors in the prosecution of the work provided for in the contract, this obligation is  
void. Otherwise it remains in full force and effect.

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of title 34,  
chapter 2, article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined



in accordance with the provisions, conditions and limitations of title 34, chapter 2, article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

**IN WITNESS WHEREOF**, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**PRINCIPAL'S ATTEST:**

PRINCIPAL

By: \_\_\_\_\_  
Attorney-in-Fact

(SEAL) Address: \_\_\_\_\_

**SURETY'S ATTEST:**

SURETY

By: \_\_\_\_\_  
Attorney-in-Fact

(SEAL) Address: \_\_\_\_\_

**PLEASE NOTE:**

1. *Date of BOND must not be prior to date of CONTRACT.*
2. *If CONTRACTOR is partnership, all partners should execute BOND.*
3. *Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*
4. *Use of this form as an instrument of SURETY for this project is not mandatory. Use of other forms normally deemed acceptable in the State wherein the project is located may be allowed.*

## WARRANTY BOND

### KNOW ALL PERSONS BY THESE PRESENTS THAT:

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Name of CONTRACTOR

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Address of CONTRACTOR

a \_\_\_\_\_, hereinafter called PRINCIPAL and  
(Corporation), (Partnership) or (Individual)

---

Name of SURETY

---

Address of SURETY

hereinafter called SURETY, are held and firmly bound unto

---

Buena Yuma, LLC, c/o IMH Financial Corporation

Name of OWNER

---

7001 N. Scottsdale Road, Scottsdale, Arizona 85253

Address of OWNER

hereinafter called OWNER, in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that, whereas the PRINCIPAL entered into a certain contract with the OWNER, DATED THE \_\_\_\_\_ day of \_\_\_\_\_, 2017, a copy of which is hereto attached and made a part of the construction contract for EVERGREEN SOUTHWEST REPLACEMENT WELL

**NOW, THEREFORE**, the condition of this obligation is such, that if the principal promptly pays all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of title 34, chapter 2, article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of title 34, chapter 2, article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

**IN WITNESS WHEREOF**, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**PRINCIPAL'S ATTEST:**

PRINCIPAL

By: \_\_\_\_\_  
Attorney-in-Fact

(SEAL) Address: \_\_\_\_\_

**SURETY'S ATTEST:**

SURETY

By: \_\_\_\_\_  
Attorney-in-Fact

(SEAL) Address: \_\_\_\_\_

***PLEASE NOTE:***

1. *Date of BOND must not be prior to date of CONTRACT.*
2. *If CONTRACTOR is partnership, all partners should execute BOND.*
3. *Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*
4. *Use of this form as an instrument of SURETY for this project is not mandatory. Use of other forms normally deemed acceptable in the State wherein the project is located may be allowed.*