



**TOWN OF PINETOP-LAKESIDE, ARIZONA
PUBLIC WORKS DEPARTMENT**

SPECIFICATIONS AND CONTRACT DOCUMENTS

**Porter Mountain Road Improvements
Project No. PW 24-002**

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Town of Pinetop-Lakeside, Arizona

**Construction Contract
Porter Mountain Road Safety Improvements
Project No. PW 24-002**

THIS CONTRACT, made this _____ day of _____, 2024 and entered by and between the Town of Pinetop-Lakeside, an Arizona municipal corporation (hereinafter the "Town"), and _____, (hereinafter the "Contractor").

RECITALS

- A. The Town Manager of the Town of Pinetop-Lakeside, Arizona, is authorized and empowered by approval of the Town Council to execute this Contract for construction.
- B. Project Description: Porter Mountain Road Improvements include a new sidewalk, shared use path, crossings, lighting, access and roundabout modifications to improve safety and operations adjacent to Blue Ridge Elementary School.
- C. The Contractor has represented to the Town the ability to construct the project and based on this representation the Town has engaged _____ to construct the project.

CONTRACT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the Town and the Contractor as follows:

ARTICLE 1 – INVITATION TO BID & BID DOCUMENTS

1.0 INVITATION TO BID

Req./Contract #: PW 24-002

Project Name: Porter Mountain Road Improvements

Bid Due Date / Time: Friday, March 22, 2024, at 1:00 P.M. Arizona Time

Scope of Work:

The safety improvement project includes a paved shared use path along the west side of Porter Mountain Road, new sidewalk on the east side of the roadway from Peterson Road to Amanda Road, two pedestrian refuge islands with Rectangular Rapid Flashing Beacons (RRFB) and street lighting, new roadway connection south of school property to the West of Commerce Drive and Andelyn Lane, and miscellaneous improvements near school property and roundabout.

Complete Bid Documents and Construction Plans will be available on Monday, February 26th, 2024, beginning at **8:00 A.M. Arizona Time at Pinetop-Lakeside Town Hall.**

Each bid shall be in accordance with the specifications and instructions on file with the Town Clerk at Pinetop-Lakeside Town Hall, 325 W. White Mountain Blvd., Lakeside, AZ 85929. Copies may be obtained by contacting the Town Clerk's Office (928) 368-8696. Only contractors registered with the Town of Pinetop-Lakeside will receive any modifications made to the plans, specifications or bid documents as well as any notices that are issued during bidding.

Town of Pinetop-Lakeside
Attention: Town Clerk
325 W. White Mountain Blvd.
Lakeside, AZ 85929

All bids should be delivered to the address above and must be sealed in an opaque envelope ***boldly marked: Porter Mountain Road Improvements*** and the bidder's name and address clearly indicated on the envelope. All bids must be completed in ink or typewritten on the forms contained within the specifications titled Invitation to Bid & Bid Documents. Bids will be announced directly after the bid opening at Town Hall, 325 W. White Mountain Blvd., Lakeside, AZ 85929.

The Town of Pinetop-Lakeside reserves the right to waive any informalities or irregularities in this Invitation to Bid, or to reject any or all bids; to be the sole judge of the suitability of the materials for an awarded contract or contracts that it deems to be in the best interest of the Town.

Publish Dates: White Mountain Independent Legal Ad: Friday, February 23rd, 2024 and Tuesday, February 27th, 2024.

BONDS:

Bid Bond: 10%
Payment Bond: 100%
Performance Bond: 100%

Project Completion Date: 120 calendar days or less after Notice to Proceed.

- 1.1 **RECEIPTS AND OPENING OF BIDS.** The Town of Pinetop-Lakeside, Arizona, (hereinafter called the "Town") invites Bids on the form attached hereto for the **Porter Mountain Road Improvements Project No. PW 24-002**. All blanks must be appropriately filled in. The Bidder shall also complete and submit a form listing proposed subcontractors as enclosed herein. Bids for this project will be received by the Town Clerk's Office at the Town of Pinetop-Lakeside, 325 W. White Mountain Boulevard, Lakeside, AZ 85929 until **1:00 P.M. Arizona Time on Friday, March 22, 2024**, where said Bids will be publicly opened and read aloud shortly thereafter in the Council Chambers.

The Town may, at its option, waive immaterial errors or omissions in bids not prepared and submitted in accordance with the provisions of this Invitation for Bids and/or the requirements of the Town's procurement policy or, alternatively, may reject any and all bids not prepared and submitted in accordance with the provisions of this Invitation for Bids and/or the requirements of the Town's procurement ordinance. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a Bid within ninety (90) calendar days after the actual date of the opening thereof.

- 1.2 **PREPARATION OF BID.** Each Bid must be submitted on the prescribed Form. All blank spaces for Bid prices must be filled in, in ink or typewritten, in both words and figures.

Each Bid must be submitted in a sealed opaque envelope bearing on the outside the name of the Bidder, the Bidder's address, and the name of the project for which the Bid is submitted. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed as specified in the Bid form.

- 1.4 **FACSIMILE BIDS OR MODIFICATIONS.** No facsimile ("FAX") Bids or bid modifications will be accepted. Any proposed modifications to the Bid shall be made by an authorized representative of the Bidder in original writing.

- 1.5 **QUALIFICATIONS OF BIDDER.** The Town may make such investigations as it deems necessary to determine the qualifications and the ability of the Bidder to perform the Work, and the Bidder shall furnish the Town such information and data for this purpose as the Town may request.

The Town requests other information and data from the Bidder as follows:

- A list of any actions taken by the Arizona Registrar of Contractors to suspend and/or revoke the Contractor's license of the Bidder for a period of two (2) years preceding the bid.

The Town reserves the right to reject any or all bids or withhold the award of the Contract to any Bidder for any reason the Town determines in accordance with the provisions of §34-201 (A) (4), Arizona Revised Statutes.

All Bidders and listed subcontractors must be valid Arizona Licensed Contractors at the time of Bidding, approved by the Arizona State Registrar of Contractors to do the type and amount of work specified in these documents.

- 1.6 **ARITHMETIC DISCREPANCIES IN THE BID.** For the purpose of evaluating bids, the following criteria will be utilized by Town in resolving arithmetic discrepancies found on the face of the Bid Schedule as submitted by Bidders:

- Obviously misplaced decimal points will be corrected;
- In case of discrepancy between unit price and extended price, the unit price will govern;
- Apparent errors in extension of unit prices will be corrected;

- Apparent errors in addition of lump sums and extended prices will be corrected; and
- In case of discrepancy between words and figures in unit prices, the amount shown in words shall govern.

For the purpose of Bid evaluation, the Town will evaluate the bids on the basis of the unit prices, extensions, and totals arrived at by resolution of arithmetic discrepancies as provided above.

- 1.7 **INCOMPLETE BIDS.** Failure to submit a Bid on all items in the Bid Schedule may result in that bid being considered incomplete, and the Bid may be rejected. Unit and/or lump sum prices must be shown for each Bid Item within the Schedule.
- 1.8 **BID SECURITY.** Each bid must be accompanied by a bid bond in the form of a certified or cashier's check made payable to the Town in an amount equal to ten percent (10%) of the bid submitted, or alternatively, through a surety bond issued in the form substantially similar to the one attached to these bid documents or on another form approved by the Town in the amount of ten percent (10%) of the amount of the bid submitted that conforms with the requirements of §34-201, Arizona Revised Statutes (A.R.S.). If the bid security provided by the bidder is in the form of a surety bond, solely a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona, issued by the director of the Department of Insurance, pursuant to Title 20, Chapter 2, Article 1, shall execute the surety bond. An individual surety or sureties shall not execute the surety bond, even if the requirements of §7-101 A.R.S. are satisfied. The certified check, cashier's check or surety bond submitted by each bidder as bid security shall be returned to the bidders whose proposals are not accepted, and to the successful Contractor upon the execution of satisfactory payment and performance bonds for the construction Contract, as provided for in these bid documents and under State law.
- 1.9 **LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT.** The successful Bidder, upon failure or refusal to execute and deliver the Contract, Bonds, and certificates required within ten (10) calendar days from the date of the Notice of Award, shall forfeit to the Town, as liquidated damages for such failure or refusal, their bid bond and shall owe the Town the difference between their bid and the amount of the Contract actually entered into with another party.
- 1.10 **SECURITY FOR FAITHFUL PERFORMANCE AND PAYMENT.** Simultaneously with his delivery of the executed Contract, the successful Bidder shall furnish on the forms provided herein, in a sum equal to 100% of the face amount of the Contract awarded: 1) a surety bond as security for the performance of the Contract awarded, and 2) a surety bond as security for the payment of all persons performing labor or furnishing materials in connection with the project under the Contract awarded, as specified in the General Conditions included herein. In accordance with Section §34-201 of the A.R.S., commonly known as Arizona's Little Miller Act, such payment and performance bonds shall be issued by a duly authorized surety company satisfactory to the Town and authorized to transact business in the State of Arizona. All bonds shall be issued by a surety insurer possessing at least an "A" rating, based upon the most recent issue of Best's Insurance Guide.
- 1.11 **POWER OF ATTORNEY.** Attorneys-in-fact who sign Bid bonds or Contract bonds must file with each bond a certified and effectively dated copy of their power-of-attorney.
- 1.12 **LAWS AND REGULATIONS.** The Bidder's attention is directed to the fact that all applicable Federal Laws, State Laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.
- 1.13 **METHOD OF AWARD.** The Town shall award the Contract to the lowest responsive and responsible bidder, in accordance with §34-201 and §34-221 of the Arizona Revised Statutes.
- 1.14 **OBLIGATION OF THE BIDDER.** At the time of the opening of Bids, each Bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Plans and

Contract Documents (including all Addenda, if applicable). The failure or omission of the Bidder to examine any form, instrument or document, or site changes due to natural causes, shall in no way relieve any Bidder from any obligation in respect to his Bid. Site changes due to natural causes prior to Bid opening shall not be cause for Bid alteration or withdrawal.

- 1.15 **TIME OF COMPLETION AND LIQUIDATED DAMAGES.** The Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" from the Town, and to complete all of the work and achieve Final Acceptance on or before a completion date to be specified in the written "Notice to Proceed."

The Bidder further agrees to pay as liquidated damages, the sum \$500.00 for each consecutive calendar day thereafter, plus any additional costs incurred by the Project Manager as provided in Article 7.61 of the General Conditions, for each calendar day that the Contract remains incomplete. Note that these damages apply for special scheduled completion dates for miscellaneous elements as defined in the special provisions. For the purposes of determining the calendar day rate of Liquidated Damages for the Project, the Original Contract Amount shall be that which is included in the Contract between the Town and the Contractor for the project.

- 1.16 **CONDITIONS OF WORK.** Each Bidder must research the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful Bidder of the obligation to furnish all material and labor necessary to carry out the provisions of the Contract. Insofar as possible, the Contractor, in performing the work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

- 1.17 **ADDENDA AND INTERPRETATIONS.** No interpretation of the meaning of the Plans, Specifications, or other pre-bid documents will be made to any Bidder orally.

Every request for such interpretation shall be in writing and emailed to Matt Patterson, Public Works Director mpatterson@pinetoplakesideaz.gov to be given consideration must be received at least five (5) calendar days prior to the date fixed for the opening of Bids. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the Specifications which, if issued, will be sent to all prospective Bidders of record (at the respective addresses furnished for such purposes), not later than five (5) calendar days prior to the date fixed for the opening of Bids, provided that the prospective bidders are registered specification and/or plan holders on the project with the Town of Pinetop-Lakeside. The Town will send all addenda by e-mail. Failure of any Bidder to incorporate any such Addendum or interpretation or to be registered with the Town of Pinetop-Lakeside for the project shall not relieve such Bidder from any obligation under his/her Bid as submitted. All Addenda so issued shall become part of the Contract Documents.

- 1.18 **CONFLICT OF INTEREST.** Pursuant to A.R.S. § 38-511, this Contract is subject to cancellation by the Town if any person significantly involved initiating, negotiating, securing, drafting or creating the Contract on behalf of the Town of Pinetop-Lakeside is, at any time while the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

- 1.19 **NON-COLLUSION.** The bidder will be required to complete, notarize, and submit as part of this bid package the "Non-Collusion Affidavit" form, as attached herein. Failure of the bidder to submit a properly executed affidavit may be grounds for rejection of the bid.

- 1.20 **EXAMINATION OF THE PLANS AND SPECIFICATIONS.** Each Bid shall be made in accordance with the Plans and Specifications, which may be examined at the following locations:

- Town of Pinetop-Lakeside, Town Clerk's Office, 325 W. White Mountain Boulevard, Lakeside, AZ (8am-5pm Mon. – Fri.).

ARTICLE 2 – BID PROPOSAL

The following Sections prescribe the proper form for bid proposal:

2.0 BID PROPOSAL

PROJECT No. PW 24-002

Porter Mountain Road Improvements Project No. PW 24-002

The undersigned, as Bidder, declares that we have received and examined the bid documents entitled **“Porter Mountain Road Improvements Project No. PW 24-002”** and will Contract with the Town, on the form of Contract provided herewith, to do everything required for the fulfillment of the Contract for the project at the prices and on the terms and conditions of the bid documents, drawing, etc.

We agree that the following shall form a part of this proposal:

| <u>Article</u> | <u>Title</u> |
|----------------|--------------------------------------|
| 2.0 | Bid Proposal |
| 3.0 | Bid Schedule |
| 4.0 | Arizona Statutory Bid Bond |
| 5.0 | Bidder's Statement of Qualifications |

We certify that our proposal is genuine, and not sham or collusive, nor made in the interest or behalf of any undisclosed person, organization, or corporation, and that we have not directly or indirectly induced or solicited any other bidder to put in a sham bid, or directly or indirectly induced or solicited any other potential bidder to refrain from bidding, and that we have not in any manner sought by collusion to secure an advantage over any other bidder.

The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving Bids.

Upon receipt of written notice of the acceptance of this Bid, Bidder shall execute the formal Contract attached within 10 calendar days and deliver a Performance Bond, Payment Bond and Certificates of Insurance as required by Articles 7.68 & 7.69 of the General Conditions within the same time.

We hereby declare that we have visited the site and have carefully examined the Contract Documents relating to the work covered by the above Bid or Bids.

Enclosed herewith is a certified or cashier's check or bid bond, payable to the Town of Pinetop-Lakeside, Arizona, in the amount of ten percent (10%) of the total bid. This check or bond is submitted as a guarantee that we will enter into a Contract and furnish the required bonds in the event a Contract has awarded us. The bid security attached, without endorsement, is to become the property of the Town of Pinetop-Lakeside, Arizona, in the event the Contract and Bonds are not executed within the time set forth, as a portion of the liquidated damages for delay and additional work caused thereby. (See Article 1.9)

We understand that the Town of Pinetop-Lakeside, Arizona reserves the right to reject any and/or all bids, or to waive any informalities in any bid, deemed by them to be for the best interests of the Town of Pinetop-Lakeside, Arizona.

Dated this _____ day of _____, 2024.

Respectfully Submitted By: _____ Title: _____

Name of Firm: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Arizona Contractor's License No. _____ Type _____

Seal - If bid by a Corporation:

ARTICLE 3 – BID SCHEDULE

3.0 BID SCHEDULE

CONTRACT FOR: **Porter Mountain Road Improvements Project No. PW 24-002**

The undersigned Bidder, having examined and determined the scope of the Contract Documents, hereby proposes to perform the work described therein for the following unit prices or lump sum amounts.

Note: Bids shall include sales tax and all other applicable taxes and fees. All bids shall be checked for errors. If errors are made, unit prices shall govern, and corrections will be made according to the unit price and totals will be revised to reflect the corrections. The Town of Pinetop-Lakeside, Arizona reserves the right to select any and/or all items with or without alternatives or any combination of items and alternatives, deemed to be in the best interest of the Town of Pinetop-Lakeside, Arizona.

| Line No. | Item | Description | Qty | Unit | Unit Cost | Amount |
|--|--------|---|------|------|---------------|---------------|
| General Construction Items | | | | | | |
| 1 | 105.8 | Construction Stakes, Lines and Grade | 1 | LS | | |
| 2 | 106.1 | Quality Control | 1 | LS | | |
| 3 | 107.1 | Public Relations | 1 | LS | | |
| 4 | 107.16 | Storm Water Pollution Prevention Plan (SWPPP) | 1 | LS | | |
| 5 | 109.1 | Mobilization/Demobilization | 1 | LS | | |
| 6 | 109.11 | Contingency | 1 | LS | \$ 100,000.00 | \$ 100,000.00 |
| 7 | 401.1 | Traffic Control Plan | 1 | LS | | |
| 8 | 401.2a | Barricades and Storage | 1 | LS | | |
| 9 | 401.2b | Message Boards | 1 | DAY | | |
| 10 | 401.2c | Incidental Traffic Related Items | 1 | LS | | |
| 11 | 401.3a | Flaggers | 150 | HR | | |
| General Construction Items Subtotal | | | | | | |
| Removal Items | | | | | | |
| 12 | 350.1 | Remove and Relocate Existing Sign | 1 | EA | | |
| 13 | 350.2 | Remove Existing Asphalt Pavement Pathway | 1890 | SY | | |
| 14 | 350.3 | Remove Existing Asphalt Pavement | 1030 | SY | | |
| 15 | 350.4 | Remove and Dispose Existing Rock Wall | 165 | LF | | |
| 16 | 350.5 | Remove and Dispose Existing Tree | 7 | EA | | |
| 17 | 350.6 | Obliterate Existing Pavement Marking | 4875 | SF | | |

| | | | | | | |
|--|---------|---|-------|----|--|--|
| 18 | 350.7 | Remove and Dispose Existing Concrete Sidewalk | 885 | LF | | |
| 19 | 350.8 | Remove Existing Curb | 160 | LF | | |
| Removal Items Subtotal | | | | | | |
| Civil Improvements | | | | | | |
| 20 | 205.1 | Earthwork | 1 | LS | | |
| 21 | 301.1 | 8" Subgrade Preparation | 13816 | SY | | |
| 22 | 310.1 | 10" Aggregate Base Course (Structural Section 01) | 5177 | SY | | |
| 23 | 310.2 | 6" Aggregate Base Course (Structural Section 02) | 8639 | SY | | |
| 24 | 321.1 | 3" Asphalt Concrete Pavement (Roadway) | 6926 | SY | | |
| 25 | 321.2 | 3" Asphalt Concrete Pavement (Pathway) | 6890 | SY | | |
| 26 | 340.1 | 4" Concrete Sidewalk, Width per Plan per MAG Std Dtl 230 | 4572 | SF | | |
| 27 | 340.2 | Curb Ramp Per MAG Std Dtl 236-2 | 5 | EA | | |
| 28 | 340.3 | Sidewalk Scupper per MAG Std Dtl 206 | 2 | EA | | |
| 29 | 340.4 | Concrete Pedestrian Refuge Median | 2 | EA | | |
| 30 | 340.5 | 6" Vertical Single Curb, MAG Std Dtl 222 | 354 | LF | | |
| 31 | 340.6 | 6" Vertical Concrete Curb and Gutter, Type A per MAG Std Dtl 220-1 | 1000 | LF | | |
| 32 | 345.1 | 24" Storm Drain Pipe | 66 | LF | | |
| 33 | 402.1.1 | White Thermoplastic Left Arrow Pavement Marking | 3 | EA | | |
| 34 | 402.1.2 | White Thermoplastic Crossing Pavement Markings | 110 | LF | | |
| 35 | 403.2.1 | 4" White Solid Permanent Pavement Markings (Traffic Paint Stripe) | 7010 | LF | | |
| 36 | 403.2.2 | 4" White Broken Permanent Pavement Markings (Traffic Paint Stripe) | 300 | LF | | |
| 37 | 403.2.3 | 18" White Stop Bar (Traffic Paint Stripe) | 50 | LF | | |
| 38 | 403.2.4 | 4" Solid Yellow Double Permanent Pavement Markings (Traffic Paint Stripe) | 6055 | LF | | |
| 39 | 403.2.5 | 4" White Solid Permanent Pavement Markings (Traffic Paint Stripe) | 600 | LF | | |
| 40 | 404.1 | Perforated Sign Post and Post Foundation | 23 | EA | | |
| 41 | 404.2 | Flat Sheet Aluminum Sign Panel, Diamond Grade | 23 | EA | | |
| Civil Improvements Items Subtotal | | | | | | |
| Electrical/Lighting Improvements | | | | | | |
| 42 | 406.1 | Street Light Pole (Fiberglass) | 7 | EA | | |
| 43 | 406.2 | Pedestrian Light Pole Assembly (Alt 1) | 59 | EA | | |

| | | | | | | |
|---|--------|---|-------|----|--|--|
| 44 | 406.3 | Street Light Mast Arm (Aluminum 15') | 7 | EA | | |
| 45 | 406.4 | 120/240V, 100A Meter Pedestal With Foundation | 1 | EA | | |
| 46 | 406.5 | Electrical Conduit (1" PVC) | 3730 | LF | | |
| 47 | 406.6 | Electrical Conduit (2" PVC) | 875 | LF | | |
| 48 | 406.7 | Electrical Conduit (2.5" PVC) | 100 | LF | | |
| 49 | 406.8 | Directional Drill (2" PVC) | 320 | LF | | |
| 50 | 406.9 | LED Luminaire Pedestrian | 59 | EA | | |
| 51 | 406.10 | LED Luminaire Street Light | 7 | EA | | |
| 52 | 406.11 | Junction Box | 18 | EA | | |
| 53 | 406.12 | #12 AWG Conductor | 2518 | LF | | |
| 54 | 406.13 | #12 AWG Insulated Bond | 1259 | LF | | |
| 55 | 406.14 | #8 AWG Conductor | 16310 | LF | | |
| 56 | 406.15 | #8 AWG Insulated Bond | 7905 | LF | | |
| 57 | 406.16 | Electrical Utility Coordination | 1 | LS | | |
| Electrical/Lighting Improvements Items Subtotal | | | | | | |
| Traffic Signals | | | | | | |
| 58 | 407.1 | Pedestrian Push Button | 4 | EA | | |
| 59 | 407.2 | Rectangular Rapid Flashing Beacon | 2 | EA | | |
| Traffic Signal Items Subtotal | | | | | | |
| Landscape/Irrigation Improvements | | | | | | |
| 60 | 430.1 | Landscaping | 1 | LS | | |
| 61 | 440.1 | Landscape Irrigation | 1 | LS | | |
| Landscape/Irrigation Improvements Items Subtotal | | | | | | |
| Total Costs: | | | | | | |

Total Bid Amount:

_____ (In Words), \$_____.00

Calendar Days Vendor requires to Complete Total Project: _____ Calendar days or less after Notice to Proceed.

This Proposal is submitted by _____, a corporation organized under the laws of the State of _____, or a partnership consisting of _____

_____, or an individual trading as _____, and is
the holder of Arizona Contractor's License No. _____ Pinetop-Lakeside Business License
No. _____. (Town License not required at time of Bid but must be obtained prior to issuance
of Notice to Proceed.)

Respectfully submitted,

Company Name

Signature of Authorized Person

Address

Printed Name

City State Zip

Title

Telephone

Telephone

Fax

Fax

Email

Email

ARTICLE 4 – BID BOND

4.0 ARIZONA STATUTORY BID BOND.

PURSUANT TO TITLES 28, 34 AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must not be less than 10% of the bid amount)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter "Principal"), as Principal, and _____, (hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____, with its principal offices in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto the Town of Pinetop-Lakeside, Arizona, (hereinafter "Obligee"), as Obligee, in the amount of Ten Percent (10%) of the amount of the bid of Principal, submitted by Principal to the Obligee for the work described below, for the payment of which sum, the Principal and Surety bind themselves, and their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid of \$_____ to furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of **Project No. PW 24-002** known as the **Porter Mountain Road Improvements**.

NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of the proposal and give the bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the Contract and for the prompt payment of labor and materials furnished in the execution of the Contract, or in the event of the failure of the Principal to enter into the Contract and give the bonds and certificates of insurance, if the Principal pays to the Obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith Contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise, it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of Section §34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of that section to the extent as if it were copied at length herein.

Witness our hands this _____ day of _____, 2024.

PRINCIPAL SEAL

SURETY SEAL

By: _____
Attorney-in-Fact

By: _____

Its: _____
Agency of Record

Agency Address

ARTICLE 5 – BIDDER’S STATEMENT OF QUALIFICATIONS

5.0 BIDDER'S STATEMENT OF QUALIFICATIONS

The Undersigned certifies the truth and correctness of all statements and of all answers to questions made hereinafter.

SUBMITTED TO: Town of Pinetop-Lakeside
Attention: Town Clerk
325 W. White Mountain Boulevard
Lakeside, AZ 85929

SUBMITTED BY: NAME: _____ ☐ Corporation ☐ Partnership
ADDRESS: _____ ☐ Individual ☐ Joint Venture

☐ Other
PRINCIPAL OFFICE: _____

(NOTE: Attach separate sheets as required)

How many years has your organization been in business as a Contractor? _____
How many years has your organization been in business under its present business name? _____

If a Corporation, answer the following:

Date of Incorporation:
Fed. Tax I.D. #:
State of Incorporation:
President:
Vice President(s):

Secretary: _____
Treasurer: _____

If a Partnership, answer the following:

Date of organization:
Type of Partnership:
(General/Limited/Assoc.)

Name and Address of all partners:

If other than a Corporation or Partnership, describe Organization and name Principals:

What percent of the work do you normally perform with your own forces? _____ List trades:

Has any Officer or Partner of your Organization ever been an Officer or Partner of another Organization that failed to complete a construction Contract? _____

If so, state circumstances:

List major construction projects your Organization has under Contract on this date:

| Project Name | Name, Address & Telephone Number of Owner | Engineer | Contract Amount | Contract Date | Percent Complete | Scheduled Completion |
|--------------|---|----------|-----------------|---------------|------------------|----------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

List similar construction projects your Organization has completed in the past five years:

| Project Name | Owner | Engineer | Contract Amount | Date Awarded | Date Completed | Percent with Own Forces |
|--------------|-------|----------|-----------------|--------------|----------------|-------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

List the construction experience of the principal individuals in your Organization:

| Individual's Name | Construction Experience – Years | Within Your Organization | | |
|-------------------|---------------------------------|-------------------------------------|------------------------------|--------------------------------------|
| | | Present Position & Years Experience | Dollar Volume Responsibility | Previous Position & Years Experience |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Have you ever failed to complete any work awarded to you? If so, indicate when, where and why:

List states and categories in which your Organization is legally qualified to do business:

Bank References:

Trade References:

Name of Bonding and Insurance Companies and Name and Address of Agents: Maximum Bonding
Capacity

Is there any pending litigation by or against your organization or its officers? _____
If yes, please provide details:

Have you had any OSHA violation within the last 10 years by or against your organization or its officers?
_____ If yes, please provide details:

Are there any judgments that have been entered by a court of competent jurisdiction against your
organization or its officers during the last three years? If yes, please provide details:

List of Subcontractors In accordance with Article 1, Section 1.1 of the Invitation to Bid & Bid Documents, the following is a breakdown of subcontractors anticipated to be used for completing this project and their approximate percentage of work to be performed. The Contractor is not required to submit with their bid a complete list of all subcontractors contemplated to be utilized on the project, and failure to submit a complete list shall not render a bid incomplete or unresponsive. A complete list of all subcontractors proposed on the project is not considered a material part of the bid submittal. Refer to Article 7.73 of the General Conditions for additional information.

The Bidder certifies that all subcontractors listed are eligible to perform work on Public Works projects pursuant to A.R.S. §34-241.

| <u>Subcontractor</u> | <u>Description of Work</u> | <u>% Total Project</u> |
|--|----------------------------|------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| Total % of all subcontractors' work on project | | _____ |
| Total % for Prime Contractor | | _____ |

Dated at _____ this _____ day of _____, 2024.

Name of Organization:

By: Title:

5.1 **AFFIDAVIT OF NON-COLLUSION.**

AFFIDAVIT OF CONTRACTOR
CERTIFYING THAT THERE WAS NO
COLLUSION IN BIDDING FOR
CONTRACT

STATE OF)
) ss
COUNTY OF)

(NAME OF INDIVIDUAL)

BEING DULY SWORN, DEPOSES AND SAYS:

THAT HE/SHE IS _____
(TITLE)

OF _____
(NAME OF BUSINESS)

THAT PURSUANT TO SECTION 34-253 OF THE ARIZONA REVISED STATUTES, HE/SHE CERTIFIES
AS FOLLOWS:

THAT NEITHER HE/SHE NOR ANYONE ASSOCIATED WITH SAID

(NAME OF BUSINESS)

HAS DIRECTLY, OR INDIRECTLY, ENTERED INTO ANY CONTRACT, PARTICIPATED IN
ANY COLLUSION OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE
COMPETITIVE BIDDING IN CONNECTION WITH THIS PROJECT.

By:

NAME

TITLE

NAME OF BUSINESS

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 2024.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC: _____

ARTICLE 6 – CONTRACT

PROJECT NO. PW 24-002

6.0 CONTRACT

THIS CONTRACT is made this _____ day of _____, 2024 by and between the Town of Pinetop-Lakeside (hereinafter the “Town”), and _____ (hereinafter the “Contractor”).

WITNESSETH THAT

WHEREAS, the Town has developed conceptual plans for and desires to have constructed the **Porter Mountain Road Improvements Project No. PW 24-002**; and

WHEREAS, Contractor represents that it possesses the experience, competence, equipment, and financing to properly perform such work, and has formally proposed to do so, and to furnish all necessary labor, materials, and equipment and services therefore in accordance with said plans, and subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of these premises and the mutual covenants herein set forth, it is hereby agreed as follows:

1. The Contractor will commence and complete in its entirety the construction of the improvements in the **Porter Mountain Road Improvements Project No. PW 24-002** area.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the project described herein.
3. The Contractor will commence the work required by the Contract Documents within ten (10) calendar days after the date of the Notice To Proceed and will complete the same as follows:

All work shall be completed within 120 calendar days or less after Notice to Proceed.

The period for completion may be extended by a properly executed Change Order approved by the Town.

4. Liquidated Damages: Town and Contractor recognize that time is of the essence of this Contract and that Town will suffer financial loss if the project is not completed within the time specified in paragraph 3 above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual losses or damages (including special, indirect, consequential, incidental and any other losses or damages) suffered by Town if a complete acceptable project is not delivered on time.

Accordingly, and instead of requiring proof of such losses or damages, Town and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay to the Town sum \$500.00 as defined in Article 1.15 per calendar day that expires after the time specified in paragraph 3 above for delivery of acceptable bid items, plus any costs incurred by the Project Manager as provided in Article 7.61 of the General Conditions.

5. The Contractor agrees to perform all of the work described in the Contract Documents and comply with the terms therein for the sum of \$_____ as shown in the bid schedule.

6. The term "Contract Documents" means and includes the following, which documents shall be interpreted pursuant to Article 7.80.
 - Invitation to Bid / Bid Documents
 - Bid Proposal
 - Bid Schedule
 - Bid Bond
 - Bidder's Statement of Qualifications
 - Non-Collusion Affidavit
 - Contract
 - Performance Bond
 - Payment Bond
 - Notices
 - Notice of Award
 - Notice to Proceed
 - Certificate of Completion
 - General Conditions
 - Special Provisions
 - Technical Specifications
7. The Town will pay Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.
8. This Contract shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assignees.

PROJECT NO. PW 24-002

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Contract as approved by Town Council via Resolution No. _____ on _____, 2024.

THE TOWN OF PINETOP-LAKESIDE

By: _____
Keith Johnson, Town Manager

Date

ATTEST:

APPROVED AS TO FORM:

Kristi Salskov, CMC
Town Clerk

William J. Sims, III
Town Attorney

CONTRACTOR:

By: _____
Its: _____

Date

STATE OF _____)
_____)ss
COUNTY OF _____)

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 2024.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC: _____

APPROVAL OF DEPARTMENT DIRECTOR

By: _____ Date _____
Kenneth M. Patterson, Public Works Director

Mail all invoices to:

Town of Pinetop-Lakeside
Finance Department
325 W. White Mountain Boulevard
Lakeside, AZ 85929

6.1 **ARIZONA STATUTORY PERFORMANCE BOND.**

PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: _____(hereinafter "Principal"), as Principal, and _____(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____with its principal office in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto Town of Pinetop-Lakeside, Arizona (hereinafter "Obligee") in the amount of _____ Dollars (\$_____), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 2024, to furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of Porter Mountain Road Safety Improvements Project No. PW 24-002, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts of the Contract during the original term of the Contract and any extension of the Contract, with or without notice of the Surety, and during the life of any guarantee required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts 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 same extent as if it were copied at length in this Contract.

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

Witness our hands this _____ day of _____, 2024.

PRINCIPAL SEAL

AGENCY OF RECORD BY: _____

AGENCY ADDRESS SURETY SEAL

BY: _____

6.2 **ARIZONA STATUTORY PAYMENT BOND.**

PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: _____
(hereinafter "Principal"), as Principal, and _____
(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____
with its principal office in the City of _____, holding a certificate of authority to transact surety
business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety,
are held and firmly bound unto Town of Pinetop-Lakeside, Arizona (hereinafter "Obligee") in the amount of
_____ Dollars (\$_____), for the payment whereof,
Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns,
jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____
day of _____, 2024, to furnish all of the material, supplies, tools, equipment, labor and other services
necessary for the construction and completion of Porter Mountain Road Safety Improvements Project No.
PW 24-002, which Contract is hereby referred to and made a part hereof as fully and to the same extent as
if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THE 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 execution 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 it were copied at length in this Contract.

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.

Witness our hands this _____ day of _____, 2024.

PRINCIPAL SEAL

AGENCY OF RECORD

AGENCY ADDRESS

BY: _____

SURETY SEAL

BY: _____

Article 7 – GENERAL CONDITIONS

- 7.0 **General Conditions.** This section of the Contract Documents is pre-printed. Any modifications to the following Articles, as may be required for this project, are made in the Special Provisions.
- 7.1 **Definitions.** Wherever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:
- 7.2 **Addenda.** Written or graphic instruments issued prior to the opening of bids, which modify or interpret the Contract Documents, drawings, and specifications, by additions, deletions, clarifications, or corrections.
- 7.3 **As Approved.** The words “as approved”, unless otherwise qualified, shall be understood to be followed by the words “by the Town”.
- 7.4 **As Shown, and as Indicated.** The words “as shown” and “as indicated” shall be understood to be followed by the words “on the drawings” or “in the specifications”.
- 7.5 **Award.** The acceptance, by the Town, of the successful bidder’s proposal.
- 7.6 **Bid.** The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the work to be performed.
- 7.7 **Bidder.** Any individual, firm partnership or corporation, or combination thereof submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
- 7.8 **Bonds.** Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.
- 7.9 **Calendar Day.** Every day shown on the calendar, measured from midnight to the next midnight.
- 7.10 **Change Order.** A written order to the Contractor, signed by the Town, covering changes in the plans, specifications, or proposal quantities, and establishing the basis of payment and Contract time adjustment, if any, for the work affected by such changes.
- 7.11 **Contract.** The “Contract” is the written Contract covering the performance of the work and the furnishing of labor, materials, incidental services, tools, and equipment in the construction of the work. It includes supplemental Contracts amending or extending the work contemplated in the manner hereinafter described and which may be required to complete the work in a substantial and acceptable manner to the Town. The Contract may include Contract change orders.
- 7.12 **Contract Documents.** The “Contract Documents” consist of the bidding requirements, Contract forms, conditions of the Contract including General and/or Supplemental General Conditions, Special Provisions, the technical specifications, and the drawings, including all Addenda and modifications thereafter incorporated into the documents before their execution and including all other requirements incorporated by specific reference thereto.
- 7.13 **Contract Price.** The total monies payable by Town to the Contractor under the terms and conditions of the Contract Documents.
- 7.14 **Contract Time.** The number of calendar days stated in the Contract Documents for the completion of the work.

- 7.15 **Contractor.** The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the work contracted for and the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete the Contract work.
- 7.16 **Days.** Unless otherwise specifically stated, the term "days" will be understood to mean calendar days.
- 7.17 **Drawings.** The term "drawings", also described as "plans", refers to the official drawings, profiles, cross sections, elevations, details, and other working drawings, and supplementary drawings, or reproductions thereof, which show the locations, character, dimensions, and details of the work to be performed. Drawings may either be bound in the same book as the balance of the Contract Documents or bound in separate sets, and are a part of the Contract Documents, regardless of the method of binding.
- 7.18 **Project Manager.** The Town's Public Works Director or designee will act as the Town Project Manager, authorized by the Town to be responsible for managing the Contract work and acting directly or through an authorized representative.
- 7.19 **Field Order and Change Orders.** A field order is a written order issued by the Project Manager to the Contractor during construction, which interprets either the technical specifications and/or drawings for the work to be performed by Contractor, including all addenda and modifications, which may be incorporated into the technical specifications and/or the drawings before the Bid Opening Date. A change order is a written order effecting a change in the work which involves: 1) any adjustment in the Contract price; 2) any change in the plans, specifications and/or drawings for performance of the work by the Contractor; or 3) any extension of the Contract time. Field orders, which only involve an interpretation of the plans, drawings and/or technical specifications contained within the Contract Documents, may be issued by the Project Manager to the Contractor during construction. All change orders must be approved, in advance, by the Town. Contractor agrees and acknowledges that Contractor shall not be entitled to any payment for work performed in reliance upon or as a result of a change order unless the Town has approved the change order in advance of the work performed by the Contractor.
- 7.20 **Final Acceptance.** Upon due notice from the Contractor of presumptive completion of the entire project, the Town will make an inspection. If all construction provided for and contemplated by the Contract is found completed to his satisfaction that inspection shall constitute the final inspection and the Town will make the final acceptance. The Contractor will be notified in writing of this acceptance as of the date of the final inspection.
- If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Town will give the Contractor the necessary instructions for correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed. In such event, the Town will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of the final inspection.
- 7.21 **Inspector.** An authorized representative of the Town or Project Manager assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.
- 7.22 **Immigration Reform And Control Act.** The Contractor shall comply with the Immigration Reform and Control Act of 1986 (IRCA). Contractor understands and acknowledges the applicability of the IRCA to Contractor. Contractor agrees to comply with the IRCA in performance of any resultant Contract and to permit Town inspection of their personnel records to verify such compliance. Contractor represents by signing this Contract that they are in compliance with IRCA and that they will remain in compliance throughout the performance of this Contract.

Compliance with Legal Worker and Immigration Laws. The Offeror/Contractor warrants that it and any subcontractors it may use in performance of this Contract are in compliance with state law (see A.R.S. § 23-214.A) and all Federal Immigration laws and regulations (see Immigration and Control Act of 1986 as

amended) that relate to its employees and employees of its subcontractors. The Offeror/Contractor acknowledges that pursuant to A.R.S. § 41-4401 a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract, and that the Town retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with this warranty. The Offeror/Contractor understands that it may be selected for random verification by the Town as required under A.R.S. § 41-4101(B) to ensure compliance with A.R.S. § 41-4401(A) and will promptly respond to any requests for information from the Town with regard to its verification process.

- 7.23 **Methodology and Quality of Workmanship.** The manner and sequence of construction that is considered to be the acceptable standard for the trade and/or profession performing the work. The Contractor's performance and completeness of the work shall be in accordance with the Contract Documents.
- 7.24 **Notice.** The term "notice" or the requirement to notify, as used in the Contract Documents or applicable State or Federal statutes, shall signify a written communication delivered in person or by certified or registered mail to the individual, or to a member of the firm, or to an officer of the corporation for whom it is intended. Certified or registered mail shall be addressed to the last business address known to him who gives the notice.
- 7.25 **Notice of Award.** The written notice of the acceptance of the bid from the Town to the successful bidder.
- 7.26 **Notice to Proceed.** Written communication issued by the Town to the Contractor authorizing him to proceed with the work and establishing the date of commencement of the work. Contractor acknowledges, understands, and agrees that Town shall not be liable to compensate Contractor for any work initiated by the Contractor prior to the issuance of a Notice to Proceed by the Town.
- 7.27 **Or Equal.** The term "or equal" shall be understood to indicate that the "equal" product is the same or better than the product names in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Town.
- 7.28 **Owner.** The Town of Pinetop-Lakeside.
- 7.29 **Payment Bond.** The approved form of security furnished by the Contractor and his surety as a guaranty that he will pay in full all bills and accounts for materials and labor used in the construction of work.
- 7.30 **Performance Bond.** The approved form of security furnished by the Contractor and his surety as a guarantee that the Contractor will complete the work in accordance with the terms of the Contract and guarantee the work for a period of one (1) year after acceptance of the work by Town.
- 7.31 **Plans.** "Plans" shall have the same meaning as "drawings", see Article 7.17.
- 7.32 **Project.** The undertaking to be performed as provided in the Contract Documents, see Article 7.12.
- 7.33 **Proposal.** The offer of the bidder for the work when made out and submitted on the prescribed proposal form, properly signed, and guaranteed.
- 7.34 **Proposal Guarantee.** The cash, or cashier's check or certified check, or bidder's bond accompanying the proposal submitted by the bidder, as a guarantee that the bidder will enter into a Contract with the Town for the construction or performance of the work, if it is awarded to bidder, and will provide the Contract bonds and insurance required of bidder.
- 7.35 **Shop Drawings.** All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a subcontractor, manufacturer, supplier, or distributor, which illustrate how specific portions of the work shall be fabricated or installed.

- 7.36 **Specifications.** The directions, provisions and requirements herein contained pertaining to the method and manner of performing the work or to the quantities and qualities of the materials to be furnished under the Contract, together with all other directions, provisions and requirements herein contained, plus such amendments, deletions from or additions thereto which may be provided for by supplemental Contract or change orders.
- 7.37 **Subcontractor.** A subcontractor is a person or entity that has a direct or indirect Contract with a contractor to perform any of the work at the site. For convenience, the term subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender but includes the plural and feminine gender and includes a subcontractor or an authorized representative thereof. The term subcontractor does not include any separate contractor or his subcontractors.
- 7.38 **Substantial Completion.** "Substantial Completion" shall be that degree of completion of the project or a defined portion of the project, sufficient to provide the Town, at his discretion, the full-time use of the project or defined portion of the project for the purposes for which it was intended. "Substantial Completion" shall not be considered as final acceptance.
- 7.39 **Supplemental General Conditions.** Modifications to General Conditions required by a Federal Agency for participation in the project and approved by the agency for participation in the project and approved by the agency in writing prior to inclusion in the Contract Documents and such requirements that may be imposed by applicable state laws. The term also includes modifications or additions to the General Conditions required by the Town or Project Manager.
- 7.40 **Supplier.** Any person or organization that supplies materials or equipment for the work, including that fabricated to a special design, but who does not perform labor at the site.
- 7.41 **Surety.** The corporation, partnership, or individual, other than the Contractor, executing payment, or performance bonds, which are furnished to the Town by the Contractor.
- 7.42 **Work.** The word "work" within these Contract Documents shall include all material, labor, tools, utilities, and all appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure. As used herein, "provide" shall be understood to mean, "provide complete in-place", that is, "furnish and install".
- 7.43 **Working Day.** A working day shall be any day, other than a legal holiday, Saturday, or Sunday, on which the normal working forces of the Contractor may proceed with regular work.
- 7.44 **Written Notice.** Any notice to any party to the Contract relative to any part of this Contract in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his given address or delivered in person to said party or his authorized representative for the work.
- 7.45 **Notice to Proceed.** After the Town has issued the Notice of Award; the Contractor shall provide the performance bond, the payment bond, the certificate of insurance, the work schedule, the monthly cash flow, and a signed Contract within ten (10) calendar days. The Town's attorney will review each document and, if they are found to be acceptable, the Town will sign and execute the Contract. Within a period of sixty (60) calendar days after executing the Contract, the Town will issue the Notice to Proceed. Within ten (10) calendar days of the effective date of the Notice To Proceed, the work shall commence. The Contractor shall not commence any work until such time that the Notice to Proceed has been issued. The contractor shall not be entitled to any compensation for any work from the Town until such time as the Town has issued a Notice To Proceed to Contractor.

- 7.46 **Additional Instructions and Detail Drawings.** The Project Manager may furnish additional instructions to the Contractor, by means of drawings or otherwise, during the progress of the work as necessary to make clear or to define in greater detail the intent of the specifications and Contract drawings.

The additional drawings and instruction thus supplied will become a part of the Contract Documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

- 7.47 **Schedules, Reports and Records.** The Contractor shall submit to the Town payrolls, reports, estimates, records, and other data where applicable as are required by the Contract Documents for the work to be performed.

The Contractor, after the Contract award and prior to the Pre-Construction Conference, shall prepare for submittal to the Project Manager for review, a detailed progress schedule. The progress schedule shall be brought up to date and submitted to the Project Manager prior to each progress payment request and at such other time intervals as the Project Manager may request.

- 7.48 **Progress Schedule.** The schedule shall be a time-scaled critical path progress schedule showing in detail the proposed sequence of activity. The critical path analysis shall consist of a graphic network diagram and shall clearly show start and completion dates and percentage of work completed.

The Contractor shall also forward to the Project Manager, prior to each progress payment request, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work. These progress reports shall indicate the date of the purchase order, the current percentage of completion, estimated delivery, and cause of delay, if any.

If the completion of any part of the work or the delivery of materials is behind the approved schedule, the Contractor shall submit in writing a plan acceptable to the Project Manager for bringing the work up to schedule.

The Town shall have the right to withhold progress payments for the work if the Contractor fails to update and submit the progress schedule and reports as specified, and such withholding shall not constitute grounds for additional claims by the Contractor against the Town.

The Contractor shall submit an estimated monthly cash flow, based upon the progress schedule with the bonds, schedules, and certificate of insurance.

- 7.49 **Drawings and Specifications.** The intent of the drawings and specifications is that the Contractor shall furnish all labor, materials, tools, equipment, utilities, and transportation necessary for the proper execution of the work in accordance with the Contract Documents and all incidental work necessary to complete the project in an acceptable quality and manner, ready for use, occupancy, or operation by the Town.

In case of conflict between the drawings and specifications, the specifications shall govern. Figure dimensions on drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings.

Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported verbally and within 24 hours of such a discovery, in writing to the Project Manager, who shall promptly facilitate the correction of said inconsistencies or ambiguities. Work done by the Contractor after discovering such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk, and the Contractor shall assume full responsibility therefore and shall bear all costs attributable thereto, if not acceptable to the Town.

- 7.50 **Shop Drawings.** The Contractor shall provide seven (7) copies of the shop drawings as specified or as may be necessary for the execution of the work as required by the Contract Documents. All drawings and

schedules shall be submitted sufficiently in advance to allow the Project Manager not less than 20 regular working calendar days for checking the submittal. The Project Manager's approval of any shop drawings shall not release the Contractor from responsibility for deviations from the Contract Documents.

When submitted for the Project Manager's review, shop drawings shall bear the Contractor's certification by means of a signed stamp, that he has reviewed, checked, and approved the shop drawings and that they are in conformance with the requirements of the Contract Documents. Shop drawings, which, in the opinion of the Project Manager, are incomplete or unchecked by the Contractor, will be returned to the Contractor for resubmission in the proper form.

If shop drawings or submittals are rejected by the Project Manager, all costs incurred by the Project Manager and/or the Town for reviewing the re-submittals shall be charged to the Contractor, and the Town has the right to deduct such costs from any monies owed the Contractor by the Town.

When shop drawings have been reviewed by the Project Manager, two sets of submittals will be returned to the Contractor, appropriately stamped. If major changes or corrections are necessary, the shop drawing may be rejected and one set will be returned to the Contractor with such changes or corrections indicated, and the Contractor shall correct and resubmit the shop drawings. No changes shall be made by the Contractor to resubmitted shop drawings other than those changes indicated by the Project Manager, unless such changes are clearly described in a letter accompanying the resubmitted shop drawings.

The review of such shop drawings and catalog cuts by the Project Manager shall not relieve the Contractor from responsibility for corrections of dimensions, fabrication details, and space requirements, or for deviations from the Contract drawings or specifications, unless the Contractor has called attention to such deviations in writing by a letter accompanying the shop drawings and the Project Manager approves the change or deviation in writing at the time of submission; nor shall review by the Project Manager relieve the Contractor from the responsibility for errors in the shop drawings. When the Contractor does call such deviations to the attention of the Project Manager, the Contractor shall state in his letter whether or not such deviations involve any deduction or extra cost adjustment.

Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the Project Manager. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Project Manager.

7.51 **Record Drawings.** During construction, the Contractor shall keep an accurate record of the following:

- A. Deviations between the work as shown on the plans and the work as actually installed.
- B. The specific locations of piping, valves, electric conduits, ductwork, equipment, and other such work which was not located on the plans. The record drawings shall show distances to these locations from known points on the plans.
- C. Equipment schedules indicating manufacturer's names and model numbers.

When all revisions showing work as installed are made, the corrected set of plans shall be delivered to the Project Manager before the final pay request is processed. These plans shall be clearly marked "Record Drawings" and shall be signed and dated by the Contractor. By submittal of these Record Drawings to the Project Manager, the Contractor is certifying that the work performed was done in accordance with the drawings and is an accurate representation of the improvements completed. The Contractor shall employ the services of an Arizona Registered Land Surveyor (RLS) to certify on the Record Drawings any approved changes to the locations of facilities that were installed.

Nothing contained in this section shall be construed as authorizing any deviation in the work as shown on the Contract drawings, plans and /or specifications without a written change order approved by Town.

- 7.52 **Materials, Services and Facilities.** It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

The Contractor shall furnish the Town a list of materials and the source of supply of each of the materials on the list. The source of supply of each of the materials shall be approved by the Town before the delivery of said materials is started. Only materials conforming to these specifications and approved by the Town shall be used in the work. All materials proposed for use may be inspected or tested at any time during their preparation and use. After trial, if it is found that sources of supply, which have been approved, do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. No material, which, after approval, has in any way become unfit for use shall be used in the work.

The Contractor warrants to the Town and Project Manager that the materials and equipment furnished under the Contract will be new and of a quality equal to that specified or approved and, that all work will be of good quality, free from faults and defects and in conformance with the Contract Documents. Mechanical and electrical equipment shall be the products of manufacturers of established good reputations and regularly engaged in the fabrication of such equipment. Unless otherwise noted, any equipment offered shall be current models, which have been in successful regular operation under comparable conditions for a period of at least two years. This time requirement, however, does not apply to minor details or to thoroughly demonstrated improvements in design or in material of construction. Work shall be done and completed in a thorough and workmanlike manner and if required by Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used.

All materials which the Project Manager, or his authorized inspector, has determined do not conform to the requirements of the plans and specifications will be rejected. They shall be removed immediately from the vicinity of the work by the Contractor at his own expense, unless otherwise permitted by the Project Manager. No rejected material, the defects of which have been subsequently corrected, shall be used in the work, unless approval in writing has been given by the Project Manager. Upon failure of the Contractor to comply promptly with any order of the Project Manager made under the provisions in this section, the Project Manager shall have authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any monies due or to become due the Contractor.

If any part or portions of the work done or material furnished under this Contract shall prove defective or nonconforming with the drawings and specifications, and if the imperfection in the same shall not be of sufficient magnitude or importance as to make the work dangerous or unsuitable, or if the removal of such work will create conditions which are dangerous or undesirable, the Project Manager shall have the right and authority to retain such work but shall make such deductions in the final payment therefore as may be just and reasonable. Such adjustment shall be affected whether or not the final payment has been made.

Materials and equipment shall be so stored (at the Contractor's expense) as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.

Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer.

Materials, supplies or equipment, to be incorporated into the work shall not be purchased by the Contractor or subcontractor subject to a chattel mortgage or under a conditional sale Contract or other Contract by which an interest is retained by the seller.

- 7.53 **Inspections and Testing.** All material and equipment, used in the construction of the project, shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

The Town shall provide all inspection and testing services not required by the Contract Documents.

The Contractor shall provide at his expense the testing and inspection services required by the Contract Documents.

If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Project Manager timely notice of readiness, the minimum of which shall be forty-eight (48) hours. The Contractor will then furnish the Project Manager the required certificates of inspection, testing or approval.

Inspections, tests or approvals by the Project Manager or others shall not relieve the Contractor from his obligations to perform the work in accordance with the requirements of the Contract Documents.

The Project Manager and his representative will at all times have access to the work. In addition, authorized representatives, and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.

If any work is covered contrary to the written instructions of the Project Manager or prior to inspection, it must, if requested by the Project Manager, be uncovered for his observation, and replaced at the Contractor's expense.

If the Project Manager considers it necessary or advisable that work that has already been approved be inspected or tested by the Project Manager or others, the Contractor, at the Project Manager's request, will uncover, expose, or otherwise make available for observation, inspection or testing as the Project Manager may require, that portion of the work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the Contractor will be allowed an increase in the Contract price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.

7.54 **Substitutions.** Whenever a material, article or piece of equipment is identified on the drawings or specifications by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalogue number, and if, in the opinion of the Project Manager, such material, article, or piece of equipment is of equal substance and function to that specified, the Project Manager may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract price and the Contract Documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract price or Contract time. Any substitutions not properly approved and authorized by the Project Manager may be considered defective and the Project Manager may require the Contractor to remove the substituted material, article, or piece of equipment. In such an event, the Contractor shall bear any, and all costs associated with the removal of the substituted item(s), including, but not limited to, all engineering, inspection, testing, or surveying costs incurred by the Town.

The term "or equal" shall be understood to indicate that the "equal" product is the same or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Town. "Equal" products shall

not be purchased or installed by the Contractor without the Town's written approval. Contractor shall have seven (7) calendar days after award of the Contract for submission of data substantiating a request for substitution of an "or equal" item.

Regarding the supplying of equipment, products or materials not specifically identified by reference to brand name or catalogue number in the Contract Documents, this section supersedes any pre-approval language that may exist in any other portion of the Contract Documents. There is no pre-approval process available prior to bid opening for this project, and the Contractor is advised to submit their bid based on the specified equipment, products, and materials. As stipulated in Article 7.54, the Contractor shall have seven (7) calendar days after award of the Contract for submission of data substantiating a request for substitution of an "or equal" item.

7.55 **Patents.** The Contractor shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and indemnify and hold the Town harmless from loss on account thereof, except that the Town shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Project Manager.

7.56 **Surveys, Permits, Regulations.** The Town shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of benchmarks adjacent to the work as shown in the Contract Documents. The Contractor shall satisfy himself as to the accuracy of all measurements before constructing any permanent structure and shall not take advantage of any errors, which may have been made in laying out the work. From the information provided by the Town, unless otherwise specified in the Contract Documents, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

Such stakes and markings as the Project Manager may set for either his own or the Contractors guidance shall be scrupulously preserved by the Contractor. In the event the Contractor, or his employees, destroy or otherwise remove or obliterate such stakes or markings, an amount equal to the cost of replacing the same may be deducted from subsequent estimates due the Contractor at the discretion of the Town.

Permits and licenses of a temporary nature necessary for the execution of the work shall be secured and paid for by the Contractor unless otherwise stated in the supplemental general condition's easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Town, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. If the Contractor perceives that the Contract Documents are at variance therewith, he shall promptly notify the Project Manager in writing, and any necessary changes shall be adjusted as provided in Article 7.60, "CHANGES IN THE WORK". If the Contractor performs and works knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Project Manager, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

7.57 **Protection of Work, Property and Persons.** The Contractor shall have sole responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to, all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and other items not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. He shall erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. He shall notify owners of adjacent utilities when

execution of the work may affect them. The Contractor shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Town or the Project Manager or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Project Manager or Town, shall act to prevent threatened damage, injury, or loss. He shall give the Project Manager prompt written notice of any significant changes in the work or deviations from the Contract Documents caused thereby, and a change order shall thereupon be negotiated and issued covering the changes and deviations involved, as provided in Article 7.60, Changes in the Work.

The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents and the safety of all those at the site. The person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Town and the Project Manager. The Project Manager will not be responsible for safety precautions and programs in connection with the work or for the Contractor's failure to properly perform his responsibilities with respect to initiating, maintaining, and supervising all safety precautions and programs. The Contractor is required to provide a copy of its written safety programs to the Town for review by the Project Manager Prior to commencing work.

- 7.58 **Public Safety.** Contractor shall furnish, at his own expense, and without any additional cost to the Town, such flagmen and guards as are reasonable necessary to give adequate warning to the public of any dangerous conditions which may be encountered by motorists and/or pedestrians, and the Contractor shall furnish, erect and maintain such fences, barricades, lights, signs and other traffic control devices as are necessary to prevent accidents and avoid damage or injury to the public which may be required by the most recent edition of the *Maricopa Association of Governments (MAG) Standards for Public Works Construction and Manual for Uniform Traffic Control Devices*, the text of which is incorporated herein by reference and made a part of the Contract Documents.

Should the Contractor appear to be neglectful or negligent in furnishing warning and protective measures as above provided, the Project Manager may direct attention to the existence of a hazard and the necessary warning and protective measures shall be furnished and installed by the Contractor at his own expense without cost to the Town. Should the Project Manager point out the inadequacy of warning and protective measures, such action on the part of the Project Manager shall not relieve the Contractor from responsibility for public safety or abrogate his obligation to furnish and pay for these devices.

Should the Contractor fail to be neglectful or be negligent in furnishing and/or maintaining warning and protective facilities as required herein, the Town may furnish and/or maintain such facilities and charge Contractor therefore by deducting the cost thereof from periodic progress payments due the Contractor as such costs are incurred by Town.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the right-of-way open for use by public traffic.

- 7.59 **Supervision By Contractor.** The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site, and who shall have been approved by the Project Manager, which approval shall not be unreasonably withheld. The supervisor shall have full authority to act on behalf of the Contractor and

all communications given to and by the supervisor shall be as binding as if given to and by the Contractor. The Contractor shall be responsible to the Town for the acts and omissions of the employees, subcontractors, and the agents and employees, and other persons performing any other work under the Contract with the Contractor.

- 7.60 **Changes in the Work.** The Town may at any time, as the need arises, order changes within the scope of the work without invalidating the Contract. If such changes increase or decrease the amounts due to Contractor under the Contract Documents, or results in changes in the time required for performance of the work, such adjustment shall be authorized by a written change order approved by the Town.

The Town may, at any time, by issuing a change order, make changes in the plans, specifications, or other details of the work. Contractor shall proceed with the performance of any changes in the work so ordered by the Town, unless the Contractor believes that such change order entitles him to a change in the Contract price or time, or both, in which event he shall give the Project Manager written notice thereof within seven (7) calendar days after the receipt of the ordered change. The Contractor shall justify the basis for the change in Contract price or time through written documentation submitted to Project Manager within fourteen (14) calendar days after Contractor's receipt of the change order. Contractor shall not execute any changes in the work until and unless Contractor has received an executed change order approved by the Town.

If the Contractor wishes to make a claim for an increase in the Contract price, he shall give the Project Manager written notice thereof within fourteen (14) calendar days after the occurrence of the event-giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property, in which case Contractor shall proceed in accordance with the provisions of the Contract. No such claim shall be valid, unless made by Contractor in accordance with the provisions of the Contract. Any change in the Contract price resulting from such claim shall be authorized in a written change order approved by Town.

The value of any work covered by a change order shall be determined by one or more of the following methods in the order of precedence listed below:

- A. Unit prices previously approved.
- B. An agreed lump sum.
- C. Cost plus percentage.

- 7.61 **Time for Completion and Liquidated Damages.** The date of beginning and the time for completion of the work are essential conditions of the Contract Documents and the work embraced shall be commenced on a date specified in the Notice To Proceed.

The Contractor shall proceed with the work at such rate of progress to insure full completion within the Contract time. It is expressly understood and agreed, by and between the Contractor and the Town, that the Contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

The Contractor shall only work an eight (8) hour day during normal regular hours, which will consist of Monday through Friday, 6:00 a.m. to 6:00 p.m., and do not include local municipal holidays. If the Contractor desires to carry on work more than eight (8) hours each day, or work at night or outside the normal regular hours, he shall give timely notice (72 hours) to the Project Manager and receive the Town's written approval to allow satisfactory arrangements to be made for inspecting the work in progress. Should the execution of the work be discontinued for any reason, the Contractor shall notify the Project Manager at least 24 hours in advance of resuming operations. The Contractor shall be responsible for any extra compensation due, or costs incurred as a result of Contractor's desire to carry out work beyond an eight (8) hour day, or at night or outside normal regular hours, including but not limited to, any additional costs or compensation due the Project Manager and Town or his employees or agents as a result of having to be present at the site. The costs or extra compensation necessitated by the Contractor's work beyond an eight (8) hour day, or at

night or outside normal regular business hours may be deducted or withheld from progress payment or any other payments due to Contractor.

If for any reason a suspension of the work should occur; the Contractor, at his own expense, shall do all the work necessary to provide a safe, smooth, and unobstructed passageway through construction for use by public traffic or to provide for the proper and efficient operation of sewer, drainage, and other facilities within the site of the work, during the period of such suspension. In the event that the Contractor fails to perform the work specified in this Subsection, the Town will perform such work and the cost thereof will be deducted from periodic progress payments due the Contractor.

During inclement weather and other conditions, the Contractor shall pursue only such portions of the work as shall not be damaged thereby. No portions of the work whose satisfactory quality or efficiency will be affected by an unfavorable condition shall be constructed while these conditions remain, unless by special means or precautions, approved by the Project Manager, the Contractor is able to overcome them.

Delays in delivery of equipment or material purchased by the Contractor or his subcontractor, including Project Manager-selected equipment, shall not be considered as a just cause for delay as this is not beyond the control of the Contractor. The Contractor shall be fully responsible for the timely ordering, scheduling, expediting, delivery, and installation of all equipment and materials.

In case of failure on the part of the Contractor to complete his Contract within the time provided in the Contract, or such written extension thereof as may be agreed upon by Town, the Contract may be terminated by written notice given by the Project Manager as specified in Article 7.64.

In the event the Contract should be terminated, the Town shall have the right to take over the work and to proceed with the same until it is completed, either by performing said work itself directly or by contracting it out to some other person or persons, and in such event the Town may take possession of and utilize, in completing the work, such materials, appliances and plant as may be on the site of the work and necessary for its completion. Nothing herein contained shall be deemed to limit the right of the Town in the event of any breach of Contract by the Contractor; but all rights herein given to the Town are and shall be deemed to be additional to any other rights or remedies which the Town shall have under any provision of law.

Should the Contractor fail to complete the work, or any part thereof, in the time agreed upon in the Contract or within such extra time as may have been allowed for delays by extensions granted as provided in the Contract, the Contractor shall reimburse the Town for the additional expense and damage for each calendar day that the Contract remains uncompleted after the Contract completion date. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the work is the per diem rate, as stipulated in article 1.15 TIME OF COMPLETION AND LIQUIDATED DAMAGES, plus any costs incurred by the Project Manager including, but not limited to: the Project Manager's costs for additional inspection, testing or surveying as a result of the Contractor's failure to complete the work in the time agreed upon. The said amounts are hereby agreed upon as liquidated damages for the loss to the Town on account of expense due to the employment of engineers, inspectors, and other employees after the expiration of the time of completion, and on account of the value of the operation of the works dependent thereon. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages, which have accrued against the Contractor. The Town shall have the right to deduct such damages from any amount due, or that may become due the Contractor, or the amount of such damages shall be due and collectible from the Contractor or his Surety.

The Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the work is due to one or more of the following: acts of God; acts of the Town; acts of another Contractor in the performance of a separate Contract with the Town; fire, flood, epidemics, or quarantine restrictions; strikes or freight embargoes; and extraordinary weather conditions. Written Notice of a delay must be submitted to the Project Manager for approval within three (3) calendar days of the occurrence. In the event notice is not given as provided, liquidated damages may be assessed.

- 7.62 **Correction of Work.** The Contractor shall promptly correct all work rejected by the Project Manager as defective or as failing to conform to the Contract Documents, whether observed before or after substantial completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such rejected work, including compensation for the Project Manager's additional services made necessary thereby. Contractor shall also bear the costs of making good all work of the Town or separate Contractor destroyed or damaged by such correction or removal.

All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) calendar days after receipt of Written Notice, the Town may remove such work and store the materials at the expense of the Contractor, including compensation for the Project Manager's additional services made necessary thereby.

- 7.63 **Subsurface Conditions.** The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the Town by Written Notice of:

- A. Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
- B. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

Unless indicated elsewhere in the Contract Documents a geotechnical exploration was not conducted for this project, and the Contractor shall be responsible for their own investigations and research to confirm the conditions of the project. If no geotechnical exploration was conducted, there may be risk of perched pockets of groundwater during trench excavations. If encountered, the Contractor shall immediately formalize a dewatering plan for Town review and approval.

The Town shall promptly investigate any physical conditions identified by the Contractor, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the work, an equitable adjustment shall be made, and the Contract Documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given the required Written Notice; provided that the Town may, if they determine the facts so justify, consider, and adjust any such claims asserted before the date of final payment.

- 7.64 **Suspension of Work, Termination and Delay.** The Town may suspend the work or any portion thereof for a period of not more than ninety (90) calendar days or such further time as agreed upon by the Contractor. Such suspension shall be initiated by the Town. Written Notice documenting said suspension shall be delivered to the Contractor. The Contractor shall resume work upon receiving another Written Notice, from the Town, to do so. The second notice shall have the Project Manager's seal affixed. The Contractor may negotiate an increase in the total Contract price or an extension of the Contract time, or both, directly attributable to any suspension.

In addition to any other reasons for termination provided in the Contract, the Contractor shall be considered in default of his Contract and such default will be considered as cause for the Town to terminate the Contract for any of the following reasons if the Contractor:

- A. Fails to begin the work under the Contract within the time specified in the "Notice to Proceed," or
- B. Fails to perform the work or fails to provide sufficient workers, equipment, or materials to assure completion of work in accordance with the terms of the Contract, or
- C. Performs the work unsuitably or neglects or refuses to remove materials or to perform such new work as may be rejected as unacceptable and unsuitable, or
- D. Discontinues the execution of the work, or

- E. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- F. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- G. Allows any final judgment to stand against him unsatisfied for a period of 10 calendar days, or
- H. Makes an assignment for the benefit of creditors, or acceptable manner, or
- I. Is otherwise in breach of the Contract and has failed to remedy the breach within ten (10) calendar days of written notice of the existence of such breach, or
- J. Fails to provide safe conditions for his workers and/or the general public, or
- K. Fails to pay his subcontractors in accordance with Article 7.66 Payments to Contractor.

Should the Town consider the Contractor in default of the Contract for any reason hereinbefore, the Town shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Town's intentions to terminate the Contract.

If the Contractor or Surety, within a period of 10 calendar days after such notice, does not proceed in accordance therewith, then the Town shall have, upon written notification of the facts of such delay or neglect, the power and authority without violating the Contract, to take the execution of the work out of the hands of the Contractor. The Town may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into a Contract for the completion of said Contract according to the terms and provisions thereof or use such other methods as in the opinion of the Town will be required for the completion of said Contract in an acceptable manner.

All costs and charges incurred by the Town, together with the cost of completing the work under Contract, will be deducted from any monies due or which may come due the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the Surety shall pay to the Town the amount of such excess.

Where Contractor's services have been so terminated by the Town, the termination will not affect any rights or remedies of the Town against Contractor then existing or which may thereafter accrue. Any retention or payment of monies due Contractor by the Town will not release Contractor from liability.

Upon seven (7) calendar days written notice to the Contractor, the Town may, without cause and without prejudice to any other right or remedy of the Town, elect to terminate the Contract. In such case, the Contractor shall be paid (without duplication of any items):

- A. for completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work;
- B. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead on such expenses;
- C. for reasonable costs incurred in settlement of terminated Contracts with subcontractors, suppliers, and others; and
- D. for reasonable expenses directly attributable to termination.

Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

If the work should be stopped under an order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of the Contractor or of anyone employed by him, or if the Town should fail to pay the Contractor within 45 calendar days after the time specified in the Payments To Contractor, Article 7.66, then the Contractor may, upon 15 calendar days Written Notice to the Town, stop work until payment of the amount owing has been received.

The Town may terminate the Contract or a portion thereof if conditions encountered during the progress of the work make it impossible or impracticable to proceed with the work or a local or national emergency exists.

When Contracts, or any portion thereof, are terminated before completion of all work in the Contract, adjustments in the amount bid for the pay items will be made on the actual quantity of work performed and accepted, or as mutually agreed for pay items of work partially completed or not started. No claim for loss of anticipated profits will be considered.

Termination of the Contract or any portion thereof shall not relieve the Contractor of his responsibilities for the completed work or the surety of its obligation for and concerning any just claims arising out of the work performed.

- 7.65 **Issuance of Notice of Completion and Final Acceptance By Town.** Upon completion of the project, a final inspection shall be requested by the Contractor, in writing, and the Town will make an inspection within seven (7) calendar days. If all construction provided for and contemplated by the Contract is found completed to his satisfaction that inspection shall constitute the final inspection and the Town will make the final acceptance and issue a Notice of Completion to the Contractor.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Town will give the Contractor the necessary instructions for correction of same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed. In such event, the Town will make the final acceptance and issue a Notice of Completion to the Contractor.

- 7.66 **Payments to Contractor.** In addition to any documents required by the Project Manager, at the time a partial pay estimate is submitted, the Contractor shall, at least ten (10) calendar days before each progress payment falls due (but not more often than once a month), submit to the Project Manager a partial payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the Project Manager may reasonably require. All partial and final pay estimates submitted by the Contractor must be on a form that substantially conforms to the Town's Standard Application & Certificate for Payment template, a copy of which is available from the Town. If payment is requested on the basis of materials and equipment not incorporated in the work, title to such materials and equipment shall vest in the Town, and Contractor shall supply, at the time of submission of payment estimate, supporting documents satisfactory to the Town, to establish and protect Town's interest in the materials and equipment, and Contractor shall maintain appropriate insurance on same until such time as actual possession by the Town of the materials and equipment shall occur. The Project Manager will, within seven (7) calendar days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the Town, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Town will, within fourteen (14) calendar days of presentation to him of an approved partial payment estimate, pay the Contractor a progress payment on the basis of the approved partial payment estimate. All payments by the Town must be mailed to the Contractor via standard United States Parcel Post service and postmarked within fourteen (14) calendar days of presentation to the Town of an approved partial payment estimate. If the Contractor desires an alternative payment method it will be the sole responsibility, and expense, of the Contractor to contact the Town's Finance Department directly and

request an alternative method, provided, however, that the Finance Department is under no obligation to agree to an alternative method unless it determines, at its sole discretion, that the request is reasonable and acceptable to the Finance Department. The Town shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents. When the Contract is fifty percent (50%) completed, one-half of the amount retained shall be paid to the Contractor provided the Contractor makes a written request for the payment and the Contractor is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty percent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments made under the Contract may be retained providing the Contractor is making satisfactory progress on the project, except that if at any time the Town determines satisfactory progress is not being made, ten percent (10%) retention shall be reinstated for all progress payments made under the Contract subsequent to the determination.

In lieu of ten percent (10%) retention provided for in this Section 7.66, the Town shall, at the Contractor's option, accept as a substitute an assignment of any of the following:

- A. Time certificates of deposit of banks licensed by the State of Arizona; or
- B. Securities of or guaranteed by the United States of America; or
- C. Securities of the State of Arizona, or any county, municipality, or school district thereof; or
- D. Shares of savings and loan institutions authorized to transact business in the State of Arizona.

Such assigned instruments shall have a face value in an amount equal to ten percent (10%) of the progress payment for which such instruments are tendered and shall be retained by the Town as a guarantee for complete performance of the Contract.

In the event the Town accepts substitute security as provided herein for the ten percent (10%) retention, the Contractor shall be entitled to all interest or income earned by such security, and all such security in lieu of retention shall be returned to the Contractor within sixty (60) calendar days after final completion and acceptance of all material, equipment and work covered by the Contract if the Contractor has furnished the Town satisfactory receipts for all labor and material billed and unconditional, final waivers of liens from any and all persons holding claims against the work.

In no event shall the Town accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified in this Section 7.66 unless accompanied by a signed and acknowledged waiver of the bank or savings and loan institution of any right or power to set off against either the Town or the Contractor in relationship to the certificates or shares assigned.

The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Town out of the amount paid to the Contractor on account of such subcontractor's work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractors' work. The Contractor shall, by an appropriate Contract with each subcontractor, require each subcontractor to make payments to his sub-subcontractors in similar manner.

Prior to Substantial Completion, the Town, with the approval of the Project Manager and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.

The Town shall have the right to enter the premises for the purpose of doing work not covered by the Contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the Town.

The Contractor shall indemnify and save the Town or the Town's agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material men, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the Town's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Town may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Town to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Town shall be considered as a payment made under the Contract Documents by the Town to the Contractor and the Town shall not be liable to the Contractor for any such payments made in good faith.

If any payment to Contractor is delayed after the date due, interest shall be paid at the rate of one percent (1%) per month or fraction of a month on such unpaid balance as may be due. If the Town fails to make payment sixty (60) calendar days after final completion and acceptance, in addition to other remedies available to the Contractor, interest shall be paid at the rate of one percent (1%) per month or fraction of the month on such unpaid balance as may be due, except for that amount necessary to pay the expenses the Town reasonably expects to incur in order to pay or discharge the expense determined by the Project Manager or Town in the finding justifying the retention or delay.

The Town may require the Contractor to furnish partial releases or liens executed by all persons, firms and corporations who have furnished labor services or materials incorporated into the Work during the period of time for which the progress payment is due, releasing such lien rights as these persons, firms or corporations may have for that period. If any of the laborers, subcontractors, or material men shall serve upon the Town a "Notice to the Town" or shall otherwise put the Town on notice that they are owed any unpaid money by the Contractor, the Town shall have the right to pay these persons directly, and the Town shall receive a credit therefore upon the Contract Sum.

- 7.67 **Acceptance of Final Payment and Release.** Upon completion of the project, a Final Inspection shall be requested by the Contractor, in writing. Following the Town's acceptance of the work, the Town will issue a Notice of Completion to the Contractor and Project Manager shall issue a certificate attached to the final payment request certifying that the work has been accepted under the conditions of the Contract documents. Release of retained amounts may not be delayed without a specific written finding by the Project Manager or Town of the reasons justifying the delay in payment. No later than sixty (60) calendar days after the issuing of the Notice of Completion, and subject to the Contractor's evidence of compliance with unconditional, final release of liens or claims, the Town will pay to the Contractor the entire sum so found to be due after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract. All previous prior partial estimates and payments shall be subject to correction in the final estimate and payment.

The acceptance by the Contractor of final payment shall be and shall operate as a release by the Contractor of the Town for any claims and all liabilities which may be asserted by the Contractor against the Town for every alleged act and neglect of the Town, as well as the Town's agents and employees, relating to or arising out of the work. Any payment by Town, however, final, or otherwise, shall not release the Contractor or the Contractor's agents or employees, or the Contractor's sureties, from any obligations it may have under the Contract documents or the performance and payment bonds.

- 7.68 **Insurance.** The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's execution of the work, whether such execution be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

A. Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- D. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person; and
- E. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

Certificates of Insurance acceptable to the Town shall be filed with the Town prior to commencement of the work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled, reduced, discontinued, or otherwise materially altered during the period of performance without thirty (30) calendar days prior Written Notice has been given to the Town.

The Contractor shall procure and maintain, at his own expense, during the Contract time, liability insurance with an Insurance Carrier with an A.M. Best rating of no less than "A" and as hereinafter specified:

- A. Contractor's General Public Liability and Property Damage Insurance including vehicle coverage issued to the Contractor and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by himself or by any subcontractor under him, or anyone directly or indirectly employed by the Contractor or by a subcontractor under him. Insurance shall be written with a limit of liability to include primary and excess coverage in an amount not less than \$2,000,000 for all damages arising out of bodily injury, including death, at any time resulting there from, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$500,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.
- B. The Contractor shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the project to the full insurable value thereof for the benefit of the Town, the Contractor, and subcontractors as their interest may appear. This provision shall in no way release the Contractor or Contractor's Surety from obligations under the Contract Documents to fully complete the project.

The Contractor shall procure and maintain, at his own expense, during the Contract time, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the project and in case any work is sublet, the Contractor shall require such subcontractor similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous WORK under this Contract at the site of the project is not protected under Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

The Contractor shall secure All Risk type Builder's Risk Insurance for work to be performed. Unless specifically authorized by the Town, the amount of such insurance shall not be less than the Contract price totaled in the bid. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the Contract time, and until

the work is accepted by the Town. The policy shall name as the insured the Contractor, the Project Manager, and the Town. The Town of Pinetop-Lakeside and the Project Manager shall be additional insureds.

7.69 **Contract Security.** The Contractor shall within ten (10) calendar days after the receipt of the Notice of Award furnish the Town with a Performance Bond and a Payment Bond in sums equal to the amount of the Contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and Contracts of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the execution of the work provided by the Contract Documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the State of Arizona and said company issuing such bonds shall possess, at a minimum, an "A" rating based upon the most recent issue of the *Bests Insurance Guide*. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared a bankrupt or loses its right to do business in the state in which the work is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, Contractor shall within ten (10) calendar days after notice from the Town to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Town. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Town.

7.70 **Assignments.** Neither the Contractor nor the Town shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of their right, title, or interest therein, or their obligations there under, without written consent of the other party. Nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the Town.

The Town and Contractor each bind themselves, their partners, successors and assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, Contracts and obligations contained in the Contract Documents.

7.71 **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town and the Project Manager and their officials, officers, agents and employees from and against all claims, damages, losses and expenses, including but not limited to: attorney's fees arising out of or resulting from the performance of the work, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from; and (2) is caused in whole or in part by any negligent act or omission of the Contractor, his subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party identified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person described herein.

In any and all claims against the Town or the Project Manager, or any of their agents or employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation of benefits payable by or for the Contractor or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts. The indemnity obligations under 7.71 shall survive termination of this Contract.

The obligation of the Contractor under this paragraph shall not extend to the liability of the Project Manager, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.

7.72 **Separate Contracts.** The Town reserves the right to let other contracts in connection with this project. The Contractor shall afford other contractors' reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs. If

the proper execution or results of any part of the Contractor's work depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Project Manager any defects in such work that render it unsuitable for such proper execution and results.

The Town may perform additional work related to the project by him, or he may let other Contracts containing provisions similar to these. The Contractor shall afford the other contractors who are parties to such contracts (or the Town, if he is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate his work with theirs.

If the performance of additional work by other Contractors or the Town is not noted in the Contract documents prior to the execution of the Contract, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Town or others involves him in additional expense or entitles him to an extension of the Contract time, he may make a claim therefore as provided in Articles 7.60 and 7.61.

7.73 Subcontracting. The Contractor may utilize the services of specialty subcontractors on those parts of the work which come under normal contracting practices or are typically performed by specialty subcontractors, provided the Contractor, as soon as practical after the award of the Contract, shall furnish to the Town and the Project Manager in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the work, together with their Arizona Contractors License Numbers. The Project Manager will promptly reply to the Contractor in writing stating whether or not the Town or the Project Manager, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Town or Project Manager to promptly reply shall constitute notice of no reasonable objection. The Contractor shall not contract with any such proposed person or entity to which the Town or Project Manager has made reasonable objection and the Contractor shall not be required to contract with anyone to whom he has a reasonable objection. If the Town or Project Manager has a reasonable objection to any proposed person or entity, the Contractor shall submit a substitute to whom the Town or the Project Manager has no reasonable objection. The Contractor shall make no substitution for any subcontractor, person, or entity previously selected if the Town or Project Manager makes reasonable objection to such substitution.

The Contractor shall not award work to subcontractors, in excess of forty-nine (49%) percent of the Contract price, without prior written approval of the Town.

The Contractor shall be fully responsible to the Town for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The Contractor shall not employ any subcontractors that are not properly licensed with The Town of Pinetop-Lakeside and the State of Arizona. Changes of subcontractors listed with the proposal shall be made only with the approval of the Town.

Nothing contained in these Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the Town; the Contractor shall be as fully responsible to the Town for the acts and omissions of subcontractors, and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

The Contractor shall, without additional expense to the Town, utilize the services of specialty subcontractors on those parts of the work which are specified or required by Federal, State, or local laws to be performed by specialty subcontractors.

The Contractor shall be responsible for the coordination of all trades, subcontractors, material, and people engaged upon this work. The Town will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Town may exercise over the Contractor under any provision of the Contract Documents.

Nothing contained in this Contract shall create any contractual relation between any subcontractor and the Town.

- 7.74 **Project Manager's Authority.** The Project Manager shall act as the Town's representative during the construction period. He shall decide questions, which may arise as to quality and acceptability of materials furnished and work performed. He shall interpret the intent of the Contract Documents in a fair and unbiased manner. The Project Manager will make periodic visits to the site and determine if the work is proceeding in accordance with the Contract Documents.

The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship, and execution of the work. Inspections may be made at the factory or fabrication plant of the source of material supply.

The Project Manager shall not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety precautions and programs in connection with the work and he will not be responsible for the Contractor's failure to carry out the work in accordance with the Documents. The Project Manager shall not be responsible or have control or charge over the acts or omissions of the subcontractors, or any of their agents or employees, or any other person performing any of the work.

The Project Manager shall promptly make decisions relative to interpretation of the Contract Documents.

The Project Manager will have the authority to reject work, which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work in accordance with the other terms of this Contract whether or not such work is then fabricated, installed, or completed.

- 7.75 **Land and Rights-of-Way.** Prior to issuance of Notice To Proceed, the Town shall obtain all land and rights-of-way necessary for carrying out and for the completion of the work to be performed pursuant to the Contract Documents, unless otherwise mutually agreed.

The Town shall provide to the Contractor information, which delineates and describes the lands owned and rights-of-way acquired.

The Contractor shall provide at his own expense and without liability to the Town any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

- 7.76 **Guarantee.** Except as otherwise specified, all work shall be guaranteed by the Contractor, including the work performed by his subcontractors, against defects resulting from the use of inferior materials, equipment, or workmanship for a period of two (2) years from the date the Notice of Completion is issued by the Town, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents.

If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Town, is rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract, the Contractor shall, promptly upon receipt of notice from the Town, and without expense, (1) place in satisfactory condition in every particular all of such guaranteed work, correcting all defects therein; (2) make good all damage to the building, site or work, or equipment or contents thereof, which in the opinion of the Town, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not

in accordance with the terms of the Contract; and (3) make good any work or material, or the equipment and contents of said building, site or work disturbed in fulfilling any such guarantee. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Town may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred. The performance bond shall remain in full force and effect through the guarantee period.

A. GUARANTEE

The Contractor agrees to execute a written guarantee to the Town, in substantially the following form:

GUARANTEE FOR

We hereby guarantee that the improvement which we have installed, including the work of our subcontractors, for the Town of project, specifically described as:

Porter Mountain Road Safety Improvements Project No. PW 24-002

has been done in accordance with the Contract Drawings and Specifications.

We agree to repair and replace any or all Work included in said improvement, together with any other adjacent work which may be displaced or damaged by so doing, that may prove to be defective in its workmanship or material within a period of two years from date of acceptance of the above mentioned improvement by the Project Manager on behalf of the Town, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above-mentioned conditions within a reasonable period of time (as determined by the Town) after being notified in writing by the Town, we do hereby authorize the Town to proceed to have said defects repaired and made good at our expense, and we will honor and pay the costs and charges therefore upon demand.

Signed _____
(Primary Contractor)

Local Representative to be contacted for service:

Name:

Address:

Phone _____ Fax _____ Email _____

The guarantee form(s) shall be completed and returned with the acknowledgment of the Certificate of Completion.

The failure of the Contractor to execute, such guarantee shall not affect the right of the Town to rely on and enforce the guarantee and the obligations respectively assumed by the Contractor under Subparagraph 7.76 hereof.

7.77 **Arbitration.** PROVIDED both parties mutually agree, all claims, disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Article 7.66, may be decided by arbitration in accordance with the American Arbitration Association or any other similar body. The

foregoing Contract to arbitrate shall be specifically enforceable under the prevailing arbitration law (§12-1501 et. seq.) of the State of Arizona. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other party to the Contract Documents and with the American Arbitration Association and a copy shall be filed with the Project Manager. The party filing for arbitration may select which arbitration service to use. Demand for arbitration shall in no event be made on any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

The Contractor shall carry on the work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

The provisions of the Contract pertaining to arbitration are not binding upon Project Manager, and Project Manager cannot be compelled to participate against his will in an arbitration arising out of a dispute over the Contract or Contract Documents unless Project Manager so consents in writing to be a party to the arbitration.

In the event either Contractor or Town refuse to consent to arbitration of a claim, dispute, or any other matter in question arising out of, or relating to the Contract Documents or the breach thereof, then either party of the Contract may initiate a lawsuit against the other to resolve such claims, disputes and/or other matters in question arising out of or in any way related to the Contract Documents or the alleged breach thereof. The parties agree that any lawsuit filed by either party to the Contract against the other shall be filed in Navajo County Superior Court.

7.78 **Taxes and Charges.** The Contractor shall pay all State and local sales and use taxes on items, and in a manner as required by the laws and statutes of the State of Arizona and its political subdivisions. The Contractor shall withhold and pay any and all withholding taxes, whether State or Federal, and pay all Social Security charges, State Unemployment Compensation charges, industrial insurance, workers compensation charges, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees, or sums whatsoever, which are now or may hereafter, be required to be paid or withheld under any laws.

7.79 **Miscellaneous Conditions.** In the event that either party to the Contract is required to institute arbitration or litigation to enforce its rights under the terms of the Contract, then the prevailing party in the arbitration or litigation shall be entitled to recover all costs and attorney's fees incurred.

In the event that any provision contained in the Contract is found to be contrary to the applicable law, then it shall be severed, and the remaining provisions of the Contract shall remain in full force and effect.

The Contract shall be governed by the law of the State of Arizona.

This Contract is subject to termination pursuant to ARS § 38-511. The Parties agree that they are not currently engaged in and agree that for the duration of the Contract they will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

7.80 **Conflicts within the Plans or Specifications.** In the event that a conflict is discovered between sections of the Specifications or between the Plans and the Specifications, the following list of priority shall be used to resolve the conflict:

1. Contract
2. Special Provisions
3. Improvement Plans
4. Standard Details
5. Standard Specifications

7.81 **Nondiscrimination.** The Contractor, with regard to the work performed pursuant to this Contract, shall not discriminate on the grounds of race, color, sex, religion, creed, age, physical or mental disability, or national origin or ancestry in any contracts with the public and in the selection and retention of employees or subcontractors, nor in the procurement of materials and leases of equipment.

7.82 **Integration.** This Contract represents the entire Contract between the parties hereto and supersedes any and all prior negotiations or representations, either written or oral.

Amendments or modifications to the Contract shall be in writing, signed by both parties, or by Change Orders.

The Contract Documents shall not be construed to create any contractual relationship of any kind between the Project Manager and the Contractor, but the Project Manager shall be entitled to performance of obligations intended for his benefit, and to the enforcement thereof.

Nothing contained in the Contract Documents shall create any contractual relationship between the Town or the Project Manager and any subcontractor or sub-subcontractors.

7.83 **Hazard Communication Program.** All contractors working on Town projects shall submit a copy of their hazard communication plan to the Project Manager prior to commencement of work on any project. This will ensure that other individuals on the job site are not unknowingly exposed to a hazardous substance or chemical.

The Fire Prevention Office shall be provided a list of the hazardous substances and the material safety data sheets that are applicable to the work areas of those Contract employees.

All Contract labor within Town facilities will be treated the same as regular employees with regard to this hazard communication standard.

ARTICLE 8 – SPECIAL PROVISIONS

8.0 **Scope.** These Special Provisions supplement and modify the General Conditions, Special Provisions, Technical Specifications, Supplemental Specifications and Construction Drawings (Plans). All requirements and provisions of the General Conditions, Special Provisions, Technical Specifications, Supplemental Specifications and Plans apply except where modified by these Special Provisions.

8.1 **Project Description.** This project will consist of complete improvements to Porter Mountain Road in Pinetop-Lakeside, Arizona as per these Contract specifications. The **Porter Mountain Road Improvements Project No. PW 24-002** is located in Pinetop-Lakeside, Arizona (hereinafter referred to as the “Project”). More particularly, the construction will consist of:

The safety improvement project includes a paved shared use path along the west side of Porter Mountain, new sidewalk on the east side of the roadway from Peterson Road to Amanda Road, two pedestrian refuge islands with Rectangular Rapid Flashing Beacons (RRFB) and street lighting, new roadway connection south of school property to the West Commerce Drive and Andelyn Lane, and miscellaneous improvements near school property and roundabout.

The intent of this Invitation for Bids is to obtain responsive/responsible Contractor(s) to furnish all equipment, labor, materials, supervision, tools, and traffic control necessary for the construction and completion of the Porter Mountain Road Safety Improvements Project.

8.2 **Standard Specifications.** This project has been designed and shall be constructed using the following: the latest version of the “Uniform Standard Specifications and Details for Public Works Construction” as referred to as Maricopa Association of Governments (MAG); Standard Specifications for Road and Bridge Construction by the Arizona Department of Transportation; and the Project Technical Specifications prepared by Kimley-Horn.

8.3 **General Pinetop-Lakeside Construction Standards.** The Contractor shall conduct all work in compliance with each jurisdictional requirement, including the following general local standards for all construction projects within the Town of Pinetop-Lakeside:

All utilities shall be protected in accordance with the standards and policies of the particular utility and Arizona Department of Environmental Quality. Additional construction specifications required by affected utilities shall also be satisfied, and by this notation are made a part of these Contract Documents.

Regional Local Utility Services Include:

| | |
|---|--|
| Arizona Water Company: 928.368.6992 | Frontier Communications: 928.537.6602 |
| Pinetop-Lakeside Sanitary District: 928.368.5370 | Unisource: 928-537-2914 |
| Navopache Electric Cooperative: 928-368-5118 | Sparklight: 928-537-2279 |

Utility Service Providers, Emergency Service Providers, Town of Pinetop-Lakeside Public Works Department, Navajo County Public Works Department, nearby residential neighborhoods, and adjacent business enterprises shall be notified 24-hours prior to any construction.

Any required new right-of-way, easement, special use permit, or special permission encompassing the onsite or offsite construction activity, or required for facilities operation, must be granted and in-place, by separate document, prior to beginning related construction.

The Contractor shall comply with Federal, State, Local and reasonable safety standards. The Contractor is responsible for all site safety requirements during the entire construction period. The Contractor is responsible for monitoring and control of all site safety conditions.

The Contractor shall be responsible for preparing, implementing, and managing a traffic control plan throughout the entire construction and testing duration. The plan shall be approved or waived, in writing, by the Town of Pinetop-Lakeside Public Works Director prior to construction.

The Town of Pinetop-Lakeside Public Works Department shall be notified for scheduling a preconstruction onsite kickoff meeting. This preconstruction meeting shall be held before construction of the project begins. This meeting shall be attended, at minimum, by the Town of Pinetop-Lakeside Project Manager, the Contractor's project geotechnical testing consultant/structural testing consultant/construction staking surveyor, and the construction Contractor. The Contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the town.

The Contractor is responsible for submitting material and workmanship testing/inspection records to Town of Pinetop-Lakeside Public Works Department, assuring these project specifications have been satisfied and cover the entire constructed area, prior to a professional engineer's preparation of as-constructed drawings or certification of proper construction completion.

ARTICLE 9 – TECHNICAL SPECIFICATIONS

- 9.0 **Technical Specifications.** Technical Specifications are attached hereto within and referred to as Exhibit A. Porter Mountain Road Improvements Project Technical Specifications.

ARTICLE 10 –NOTICES

10.0 NOTICE OF AWARD

Date:

To:

PROJECT DESCRIPTION: Porter Mountain Road Improvements Project No. PW 24-002

The Town has considered the bid submitted by you, dated _____, 2024, in response to its Advertisement for Bids and Invitation to Bid for the above-described work.

You are hereby notified that your bid has been accepted for items in the amount of \$_____.

You are required by the Invitation to Bid to execute the Contract and furnish the required Contractor's Performance Bond, Payment Bond, and Certificates of General Liability & Property Insurance, Automobile, and Workers' Compensation Insurance within ten (10) calendar days from the date of this notice. You are also required to furnish proof of a current Town of Pinetop-Lakeside Business License.

If you fail to execute said Contract and to furnish said bonds, insurance certificates and executed Contract within ten (10) calendar days from the date of this Notice, said Town will be entitled to consider all your rights arising out of the Town's acceptance of your bid as abandoned and as a forfeiture of your bid bond. The Town will be entitled to such other rights as may be granted by law, including (without limitation) rights against the bid security provided pursuant to Section 1.8 of this Contract.

You are required to return all documents and an acknowledged copy of this NOTICE OF AWARD to the Town at:

Town of Pinetop-Lakeside
Attention: Town Clerk
325 W. White Mountain Boulevard
Lakeside, AZ 85929

By: _____ Date this _____ day of _____, 2024.
Kenneth M. Patterson, Public Works Director

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged this ____ day of _____, 2024.

Contractor: _____

Signature: _____

Printed Name: _____

Title: _____

10.1 **NOTICE TO PROCEED**

Date: _____

To: _____

RE: TOWN OF PINETOP-LAKESIDE BID for the **Porter Mountain Road Improvements Project No. PW 24-002**

You are hereby notified to commence work on the project in accordance with the Contract dated _____, 2024, within ten (10) calendar days of the date of this Notice to Proceed, which is the effective date of the notice for the project, and you are to complete the work within 120 calendar days or less after Notice to Proceed. The date for completion of the work is therefore _____, 2024.

TOWN: Town of Pinetop-Lakeside

By: _____
Kennth M. Patterson, Public Works Director

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged this ____ day of _____, 2024.

Contractor: _____

Signature: _____

Printed Name: _____

Title: _____

Note: The contractor shall return a signed copy of this NOTICE TO PROCEED to the Town at:

Town of Pinetop-Lakeside
Attn: Town Clerk
325 W. White Mountain Boulevard
Lakeside, AZ 85929

10.2 **CHANGE ORDER**

Change Order Request

Porter Mountain Road Safety Improvements Project No. PW 24-002

| | | |
|-------------------------|------------------|-------|
| Company Name: | Phone # | Date: |
| Address: | City/State/Zip: | |
| Owner/Contractor: | Project Name: | |
| Original Contract Date: | Change Order No. | |

Change the work to be performed under the original contract as follows:

Total Price:

To be adjusted as follows:

Original Price: _____

Net Amount Previous Change Orders: _____

Current Contract Price: _____

Adjustment this Change Order: _____

Revised Contract Price: _____

Schedule:

Provide schedule adjustments requested by this change order, if any.

Additional Days adding to completion date: _____

| | | |
|---------------|------------------------|-------|
| Submitted By: | Co. | Date: |
| Approved By: | Public Works Director. | Date: |

10.3 **CERTIFICATE OF COMPLETION**

I hereby state that all goods and/or services required by the **TOWN OF PINETOP-LAKESIDE for the Porter Mountain Road Improvements Project No. PW 24-002** have been delivered in substantial conformance with the Contract, and all activities required by the Contractor under the Contract have been completed as of _____ (date).

TOWN OF PINETOP-LAKESIDE

By: _____

Kenneth M. Patterson, Public Works Director

Name: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above CERTIFICATE OF COMPLETION is hereby acknowledged this ____ day of _____, 2024.

Contractor: _____

Signature: _____

Printed Name: _____

Title: _____

NOTE: The Contractor shall return a signed copy of this Notice to the Town.

Town of Pinetop-Lakeside
Attention: Town Clerk
325 W. White Mountain Boulevard
Lakeside, AZ 85929

ARTICLE 11: PROJECT CONSTRUCTION PLANS

- 11.0 **Construction Plans.** Construction Plans prepared by Kimley-Horn and Associates dated 02/21/2024 are attached hereto within and referred to as Exhibit B. PINETOP-LAKESIDE PORTER MOUNTAIN ROAD IMPROVEMENTS.