CITY OF PHOENIX, ARIZONA

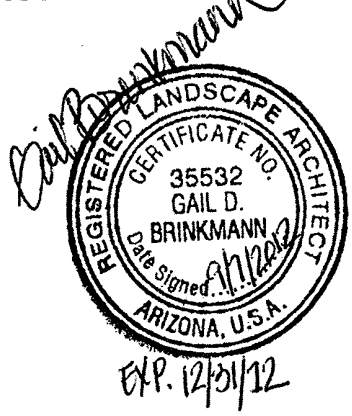
STREET TRANSPORTATION DEPARTMENT

134947--0

PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS

11th STREET PEDESTRIAN & TRANSIT IMPROVEMENT PROJECT

ND30060067 - FTA



MAYOR
GREG STANTON

CITY COUNCIL

DISTRICT NO. 1 – THELDA WILLIAMS
DISTRICT NO. 2 – JIM WARING
DISTRICT NO. 3 – BILL GATES
DISTRICT NO. 4 – TOM SIMPLOT
DISTRICT NO. 5 – DANIEL VALENZUELA
DISTRICT NO. 6 – SAL DICICCIO
DISTRICT NO. 7 – MICHAEL NOWAKOWSKI
DISTRICT NO. 8 – MICHAEL JOHNSON

CITY MANAGEMENT

CITY MANAGER – DAVID CAVAZOS
CITY ENGINEER – WYLIE BEARUP, PE, PhD

TABLE OF CONTENTS

CITY OF PHOENIX PROJECT NO.: ND30060067-FTA

SECTION I - Informative	**Page**
(1) Call for Bids	C.B. - 1 to 2
(2) Information for Bidders	I.B. - 1 to 10
(3) Disadvantaged Business Enterprise Clause	D.B.E.C. – 1 to 7
(4) Supplementary Conditions	S.C. - 1 to 21
(5) Special Provisions	S.P. - 1 to 33
(6) Federal Provisions	FTA – 1 to 19
(7) Title 29, Parts 3 & 5 of The Code of Federal Regulations	C.F.R. – 1 to 35
(8) General Wage Decision	G.W.D. – 1 to 7
(9) Guidelines for Handling Sonoran Desert Tortoises	D.T.G - 1
(10) Storm Water Pollution Prevention Plan	SWPPP - 1 to 13
(11) APS Street Light Pole Sono Tube and J-Box Detail	A.P.S. -1

SECTION II - Submittals

(1) Bid Proposal	P. - 1 to 8
(2) Proposal Submittal	P.S. - 1
(3) Surety Bond	S.B. - 1
(4) DBE Reporting Forms	D.B.E.F. – 1 to 6
(5) List of Major Subcontractors/Suppliers	L.O.S.-1
(6) List of All Subcontractors/Suppliers	L.O.S. -2
(7) Bidder's Disclosure Statement	B.D.S. – 1 to 4
(8) Affidavit of Identity	A.O.I. – 1
(9) Buy America Certificate	B.A.C. – 1
(10) Anti-Lobbying Certification	A.L.C. – 1
(11) No Collusion Affidavit	N.C.A. – 1
(12) Certification Regarding Debarment	C.R.D. - 1

EXP. 12/31/12

City of Phoenix
Street Transportation Department

October 10, 2012

CITY OF PHOENIX PROJECT NO: ND30060067 FTA

11th STREET PEDESTRIAN & TRANSIT IMPROVEMENT PROJECT

ADDENDUM NO. 1

The following revisions to the Project Specifications shall become a part of the above-referenced contract documents:

1. Remove pages G.W.D. – 1 to 7 and replace with the new wage determination "General Decision Number: AZ120023 08/17/2012 AZ23", pages G.W.D. – 1 to 7 REVISED.

2. Remove pages P – 2 to P – 8 and replace with pages P – 2 to P – 8 REVISED.

3. Page S.P. – 4, paragraph 4: Change last sentence in the paragraph from "This sidewalk shall be paid for by the square foot under bit item M3403510, Color Seeded Concrete" to "Payment for this item shall be made under the bid item M10000011 Art Feature" as described in Section 402.3.

4. Page S.P. – 7, MAG Subsection 240.5 MEASUREMENT and 340.6 PAYMENT: add the following paragraph to Section a. "Miscellaneous Removal and Other Work

   This work shall also include, but not be limited to relocation of existing landscape irrigation control systems not specified on the plans, and removal of transit shelters and transit furniture.

5. Page S.P. – 17, delete paragraph 1 and replace with "Items included under the bid item Art Work shall include, but is not limited to, installation of the pervious aggregate pavement at all six (6) bus stop areas and all four (4) seating nodes as called out on the plans, including the fabrication and installation of the polished granite quote and photo image tiles installed in the previous aggregate pavement. Removal, refurbishment, and re-installation of salvaged transit shelters per plans are also included. Payment for this bid item is paid per job. "Job" shall be interpreted as one lump sum for all items listed, furnished complete and in place.

6. Page S.P. – 17, delete last paragraph and replace with "Work included in the Art Feature shall include, but is not limited to, installation of an expansion joint between colored and standard gray sidewalk per COP MAG standard detail and the materials and installation of the pavement monuments as shown and detailed on the plans and these specifications.

7. Page S.P. – 17, add paragraph under 402.2 ART WORK: "The total length of 3" wide granite is 778 feet. Granite shall be be fabricated in segments. Minimum granite segment length shall be 24". Segment seams shall be a maximum of 1/32" wide".

8. On Sheet 4 of plans (RS01) replace M3400430 with M3400406.

9. On Sheet 18 of plans (PL04) remove construction note #29.

10. On Sheet 36 of plans (HDS-01) add the following alternative vendor for trash receptacle, site chair, and bike rack:

    Lacor Streetscape
    22233 N. 23rd Ave.
    Phoenix, AZ 85027
    www.lacorstreetscape.com

11. On plan sheets, replace all instances of "pervious glass pavement" with "pervious aggregate pavement". On Sheet 37 (HDS-02) replace Filterpave detail #3 with Firmapave detail.

12. On plan sheets 63 through 66, contractor is to provide all below ground work as specified in the proposal pages.

13. On Sheet 34 of plans (HS04) remove note "E" from node at station 39+60.

Gail Brinkmann, RLA

REGISTERED LANDSCAPE ARCHITECT
CERTIFICATE NO.
35532
GAIL D.
BRINKMANN
Date Signed 12/31/12
ARIZONA, U.S.A.

EXP. 12/31/12

Attachments: G.W.D. – 1 to 7 REVISED; P – 2 to P -.8 REVISED; and Firmapave Detail

General Decision Number: AZ120023 08/17/2012 AZ23

State: Arizona

Construction Type: Heavy
HEAVY CONSTRUCTION, Includes Water and Sewer Lines, Heavy Construction on Treatment Plant Sites and Pipeline Construction

County: Maricopa County in Arizona.

HEAVY CONSTRUCTION PROJECTS (DOES NOT INCLUDE DAM CONSTRUCTION)

Modification Number	Publication Date
0	06/22/2012
1	06/29/2012
2	08/17/2012

BOIL0627-004 01/01/2012

	Rates	Fringes
BOILERMAKER	$ 31.39	25.46

BRAZ0003-010 07/01/2010

	Rates	Fringes
BRICKLAYER	$ 24.62	4.57

ELEC0640-006 06/21/2011

	Rates	Fringes
ELECTRICIAN	$ 25.01	3%+7.50

ELEC0769-002 05/01/2011

	Rates	Fringes
Line Construction:		
Lineman	$ 38.48	19%+5.04

ENGI0428-008 01/01/2012

	Rates	Fringes
Power Equipment Operator		
Group 1	$ 19.89	9.34
Group 2	$ 23.16	9.34
Group 3	$ 24.24	9.34
Group 4	$ 25.27	9.34

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Small Self-Propelled Compactor (with blade), Bobcat/Skidsteer/Skid Loader, Oiler
GROUP 2: Self-Propelled Compactor (with blade), Grader/Blade (rough), Scraper, Tractor, Crane (less than 15 tons)
GROUP 3: Grade/Blade (Finish),Crawler-Type Tractor, Crane (over 15 tons & less than 100 ton), Tower Crane
GROUP 4: Crane (100 ton)

ENGI0428-015 02/01/2012

	Rates	Fringes
POWER EQUIPMENT OPERATOR: (PIPELINE)		
Group 1	$ 36.20	15.01
Group 3	$ 18.52	15.01

Group 1: Backhoe, Boring Machine, Boom Operator, Bulldozer, Trackhoe
Group 3: Oiler

IRON0075-009 08/01/2011

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	$ 26.52	19.35

Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson
Zone 2: 050 to 100 miles - Add $4.00
Zone 3: 100 to 150 miles - Add $5.00
Zone 4: 150 miles & over - Add $6.50

PAIN0086-002 04/01/2012

	Rates	Fringes
PAINTER (Brush Only).....	$ 19.35	4.75

---

* PLUM0469-004 07/01/2011

	Rates	Fringes
PLUMBER		
Zone A.....	$ 32.50	15.15

---

* PLUM0469-008 07/01/2011

	Rates	Fringes
PLUMBER		
Zone B.....	$ 32.50	15.15

SUAZ2012-006 05/17/2012

	Rates	Fringes
CARPENTER (Form Work Only).....	$ 20.80	4.07
CARPENTER, Excludes Form Work.....	$ 21.98	5.38
CEMENT MASON/CONCRETE FINISHER.....	$ 18.76	2.12
INSTALLER - SIGN.....	$ 25.42	0.00
IRONWORKER, REINFORCING.....	$ 20.66	13.59
LABORER: Asphalt Raker/Shoveler/Spreader.....	$ 15.76	4.42
LABORER: Common or General.....	$ 14.36	3.97
LABORER: Concrete Saw (Hand Held/Walk Behind).....	$ 17.00	4.55

LABORER: Fence Erection.....	$ 10.32	2.24
LABORER: Grade Checker.....	$ 18.14	4.55
LABORER: Landscape & Irrigation.....	$ 11.01	0.37
LABORER: Mason Tender - Brick.....	$ 14.55	4.20
LABORER: Mason Tender - Cement/Concrete...	$ 15.34	4.20
LABORER: Pipelayer.....	$ 14.94	3.51
LABORER: Power Tool Operator.....	$ 16.57	4.20
LABORER: Railroad Construction Laborer.....	$ 16.80	4.20
OPERATOR: Backhoe/Excavator/Trackhoe.....	$ 19.37	3.59
OPERATOR: Bulldozer.....	$ 20.57	6.16
OPERATOR: Drill.....	$ 20.57	4.78
OPERATOR: Forklift.....	$ 20.38	4.75
OPERATOR: Grade Checker.....	$ 21.68	6.31
OPERATOR: Loader (Front End).....	$ 20.31	3.84
OPERATOR: Mechanic.....	$ 22.23	5.78
OPERATOR: Paver.....	$ 17.07	3.20
OPERATOR: Roller.....	$ 21.34	8.36
OPERATOR: Rotomill.....	$ 21.88	6.39
OPERATOR: Screed.....	$ 16.82	2.52
OPERATOR: Trencher.....	$ 14.21	0.94
OPERATOR: Broom/Sweeper.....	$ 15.40	2.45
PAINTER: Pavement Marking/Parking Lot Striping.....	$ 19.94	4.10
PAINTER: Roller and Spray.....	$ 20.65	4.45

PIPEFITTER.....	$ 23.97	6.78
TRUCK DRIVER: Dump Truck.....	$ 14.37	1.16
TRUCK DRIVER: Flatbed Truck.....	$ 12.50	1.48
TRUCK DRIVER: Hydroseeder.....	$ 17.32	0.00
TRUCK DRIVER: Water Truck.....	$ 16.46	3.42
TRUCK DRIVER: 3 Axle Truck.....	$ 27.53	1.16

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
	Project No.: ND30060054-1 11th Street Streetscape Design-1				
1 C3456000	Adjusting Frames, Covers, Valve Boxes On Existing Non-City Utilities, Contingent Item	Each	3.00		
2 E6992000	"Allowance For Stormwater Pollution Prevention Best Management Practices (BMP'S)"	Lump	1.00	$10,000.00	$10,000.00
3 M1000010	Art Work	Job	1.00		
4 M1000011	Art Feature	Each	44.00		
5 M1042005	Allowance for Extra Work	Job	1.00	$50,000.00	$50,000.00
6 M1058000	Construction Surveying And Layout	Job	1.00		
7 M3360240	Asphalt Concrete For Permanent Pavement Replacement, Type C 3/4, 4" Thick	Sq. Yd.	508.00		
* 8 M3400405	Decorative Concrete Sidewalk, Std. Detail P-1230 Modified (6" Thick)	Sq. Ft.	10,098.00		
* 9 M3400406	Concrete Sidewalk, Std. Detail P-1230 Modified (6" Thick), Class A Concrete	Sq. Ft.	42,111.00		

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
* 10 M3400422	Concrete Sidewalk Ramp (SD1 - SD14) (9" Thick)	Sq. Ft.	6,372.00		
11 M3400447	Concrete Driveway Entrance, MAG Standard Detail 251, (9" thick)	Sq. Ft.	312.00		
* 12 M3400551	Concrete Driveway, Return Type	Sq. Ft.	1,132.00		
13 M3400566	Concrete Driveway Entrance, Standard Detail P-1255-2 (6" Thick)	Sq. Ft.	725.00		
14 M3400665	Commercial Driveway Entrance (Detail P-1255-1, P-1255-2, & P-1255-3)	Sq. Ft.	5,759.00		
15 M3402213	Concrete Vertical Curb, MAG Standard Detail 220, Type A, Modified (H = 9")	Lin. Ft.	1,766.00		
16 M3402241	Concrete Valley Gutter, (Std Detail 240 or Modified Per Page V.G. - 1) With And/Or Without Concrete Aprons	Sq. Ft.	1,402.00		
17 M3450020	Adjust Existing Manhole Frame and Cover, MAG Std Detail 422 and COP Detail P1430	Each	1.00		
* 18 M3453001	Adjust Existing Type "A" Water Valve, Standard Detail P-1391 and P-1391-1	Each	16.00		
19 M3500004	Remove and Salvage Historic Concrete Stamp	Each	43.00		

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
20 M3500012	Remove Historic Concrete Curb	Lin. Ft.	1,761.00		
21 M3500020	Remove Portland Cement Concrete Sidewalk, Driveway, Valley Gutter & Slab	Sq. Ft.	58,151.00		
22 M3500055	Remove Reinforced Concrete Slab	Sq. Yd.	347.00		
23 M3500060	Remove Asphalt Concrete Pavement	Sq. Yd.	764.00		
24 M3500150	Remove Tree, 12" Diam. and Larger	Each	78.00		
25 M3500300	Miscellaneous Removal and Other Work	Job	1.00		
* 26 M3513120	2" PVC Electrical Conduit	Lin. Ft.	225.00		
* 27 M3513125	2-1/2" PVC Conduit For Traffic Signal	Lin. Ft.	1,050.00		
* 28 M3513250	No. 5 Junction Box	Each	6.00		
* 29 M3513270	No. 7 Junction Box	Each	2.00		

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
* 30 M3513500	Type A Signal Pole Foundation	Each	4.00		
* 31 M3513508	Type SM Signal Pole Foundation	Each	7.00		
* 32 M3513843	Remove Existing Traffic Pole per Plan	Each	8.00		
* 33 M3513844	Remove Existing Signal Junction Box	Each	11.00		
34 M3515045	Remove Existing Light Poles, Per Plan	Each	16.00		
35 M3515048	Street Lighting Per Plan, Complete and in Place	Job	1.00		
36 M4012000	Traffic Control Devices	Job	1.00		
37 M4013000	Allowance for Uniformed, Off-duty Law Enforcement Officer	Job	1.00	$4,000.00	$4,000.00
38 M4303000	Plant Establishment Guarantee and Maintenance (including water and power)	Month	12.00		
39 M4304001	Decomposed Granite, 1/4" Minus For Path	Cu. Yd.	85.00		

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
40 M4304101	Decomposed Granite, 1" Sized	Cu. Yd.	273.00		
41 M4305005	5 Gallon Shrub	Each	306.00		
42 M4305036	36" Box, Trees	Each	258.00		
* 43 M4353500	Steel Edging, per Plan, Furnished and Installed	Lin. Ft.	910.00		
* 44 M4354201	Bench Per Detail, Furnish and Install	Each	36.00		
45 M4354501	Bicycle Rack, Furnish and Install	Each	6.00		
46 M4354600	Trash Receptacles, Furnish and Install	Each	6.00		
47 M4400260	1" PVC Irrigation Pipe, Schedule 40	Lin. Ft.	15,320.00		
48 M4400315	1- 1/2" PVC Irrigation Pipe, Schedule 80	Lin. Ft.	2,570.00		
49 M4400599	Quick Couplers	Each	7.00		

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
50 M4400600	Flush Cap	Each	19.00		
51 M4403075	3/4" Reduced Pressure Backflow Prevention Unit and Cage	Each	3.00		
* 52 M4404199	1" Electric Remote Control Valve And Emitter Control Assembly Per Detail	Each	14.00		
* 53 M4404310	1" Gate Valve	Each	46.00		
* 54 M4404505	Pressure Regulator	Each	14.00		
* 55 M4404509	Single Port Emitter and Riser Assembly with Bug Cap	Each	306.00		
* 56 M4404510	Multi-Port Emitter and Riser Assembly with Bug Cap	Each	516.00		
* 57 M4405115	1-1/2" Schedule 40 PVC Irrigation Sleeve	Lin. Ft.	3,900.00		
58 M4405120	2" Schedule 40 PVC Irrigation Sleeve	Lin. Ft.	1,083.00		
* 59 M4405300	3" Schedule 40 PVC Irrigation Sleeve	Lin. Ft.	910.00		

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

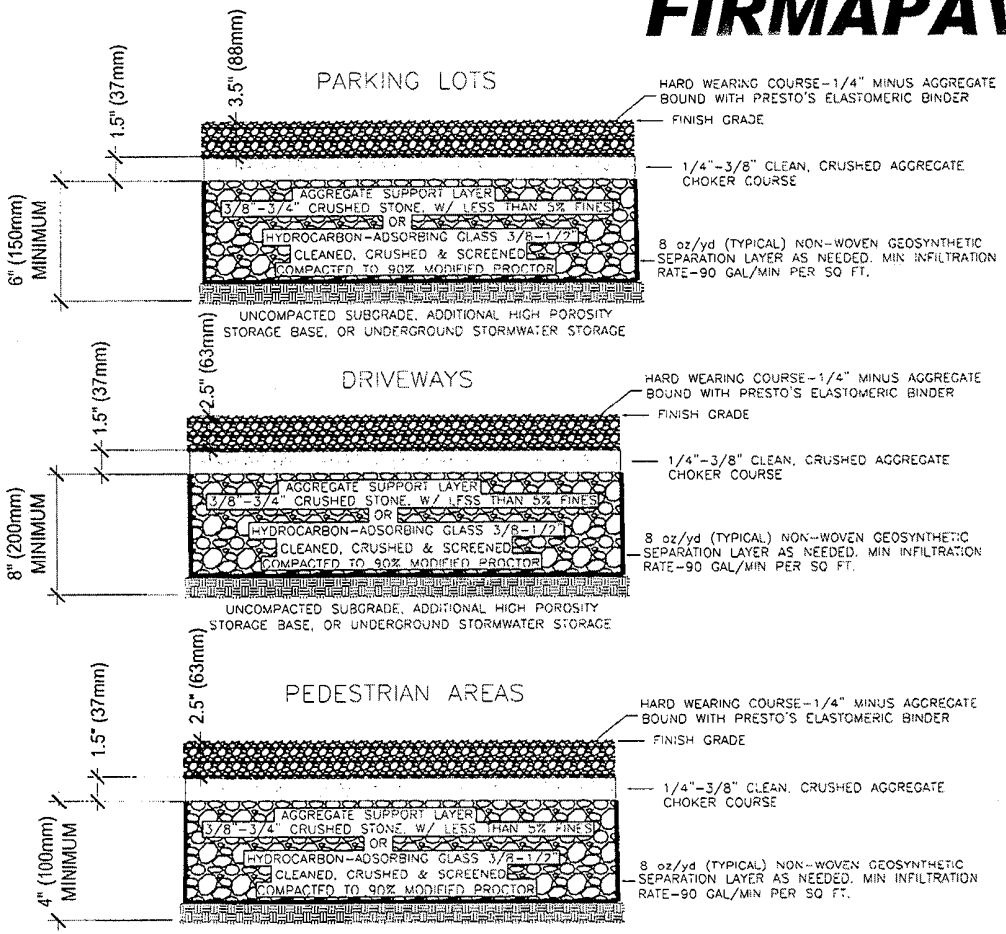
Item No.	Description	Unit	Quantity	Unit Price	Total
60 M4406020	Irrigation Controller, installed per plan	Each	3.00		
61 M4406905	Flow Sensor with Master Valve Assembly and Filter	Each	3.00		
62 M6101801	Relocate Existing Water Meter, Box, and Cover	Each	25.00		
63 M6101802	New Water Meter Box and Cover, Furnish & Install	Each	3.00		
64 M6101805	Water Service Connection (Main to Meter)	Each	3.00		

Subtotal for Project No: ND30060054-1
11th Street Streetscape Design-1 (Items 1 thru 64) $ _____

Total Amount of Construction Bid $ _____
Proj No: ND30060054-1 11th Street Streetscape Design-1 (Items 1 thru 64)

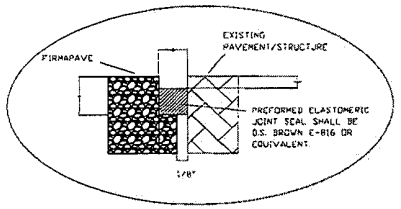
_____ & _____ /100 Dollars
Written Words

FIRMAPAVE™



AGGREGATE PROPERTIES- THE AGGREGATE SHALL BE PROCESSED USING PRESTO PRODUCTS COMPANY'S PATENTED PROCEDURE FOR USE IN THE FILTERPAVE POROUS PAVEMENT SYSTEM. ONLY AGGREGATE PURCHASED THROUGH PRESTO PRODUCTS COMPANY OR AN AUTHORIZED AGENT IS ACCEPTABLE.

BINDER PROPERTIES- THE BINDER SHALL BE A UNIQUE ELASTOMERIC BINDING MATERIAL MANUFACTURED SPECIFICALLY FOR USE IN THE FILTERPAVE POROUS PAVEMENT SYSTEM. ONLY BINDER PURCHASED THROUGH PRESTO PRODUCTS COMPANY OR AN AUTHORIZED AGENT IS ACCEPTABLE.



ABUTTING FIRMAPAVE TO EXISTING PAVEMENT/STRUCTURES (WHEN JOINT IS REQUIRED)

NOTE:

1. BASE DEPTHS SHOWN ARE MINIMUMS FOR STRUCTURAL STRENGTH.
2. SUBGRADE TO BE EVALUATED FOR CBR VALUE AND PERMEABILITY IN ALL CASES.
3. ZINC SCRIPT TO BE QUOTE / FACT 3": TALL TEXT - ARIAL NARROW FONT. COORDINATE WITH PHOENIX HP FOR TEXT.

3 FIRMAPAVE - POROUS AGGREGATE PAVEMENT

SCALE: NTS

City of Phoenix
Street Transportation Department

October 11, 2012

CITY OF PHOENIX PROJECT NO: ND30060067 FTA

11th STREET PEDESTRIAN & TRANSIT IMPROVEMENT PROJECT

ADDENDUM NO. 2

The following revisions to the Project Specifications shall become a part of the above-referenced contract documents:

1. Page S.P. – 17, delete paragraph 1 and replace with "Items included under the bid item Art Work shall include, but is not limited to, installation of the pervious aggregate pavement at all six (6) bus stop areas and all four (4) seating nodes as called out on the plans, including the fabrication and installation of the polished granite quote and photo image tiles installed in the previous aggregate pavement. Refurbishment and re-installation of salvaged transit shelters per plans are also included. Payment for this bid item is paid per job. "Job" shall be interpreted as one lump sum for all items listed, furnished complete and in place.

2. Page S.P. – 4, in paragraph 4, replace "M3403510, Color Seeded Concrete" with "M3400405, Decorative Concrete Sidewalk, Std. Detail P-1230 Modified (6" Thick)".

Gail Brinkmann

Gail Brinkmann, RLA

REGISTERED LANDSCAPE ARCHITECT
CERTIFICATE NO.
35532
GAIL D.
BRINKMANN
Date Signed 10/11/12
ARIZONA, U.S.A.

EXP. 12/31/12

CALL FOR BIDS

11th STREET PEDESTRIAN & TRANSIT IMPROVEMENT PROJECT
DESIGN BID BUILD

CITY OF PHOENIX PROJECT NO.: ND30060067 FTA

BIDS WILL BE DUE TUESDAY, OCTOBER 16, 2012 AT 2:00 P.M. LOCAL TIME
PHOENIX CITY HALL
200 WEST WASHINGTON STREET, 6TH FLOOR
PHOENIX, AZ. 85003-1611

The City of Phoenix is seeking a qualified contracting firm to perform the project listed below.

SCOPE OF WORK

The 11th Street Pedestrian and Transit Improvement Project is located on 11th Street between Washington Street and Moreland Street. The project will include removal of the existing 5-foot wide sidewalk and installation of a new 7.5-foot wide sidewalk; new accessible ramps; installation of benches, trash receptacles and bike racks; landscape and irrigation; street and pedestrian lighting; some traffic signal work; specialty paving; artwork; improvements to bus stops; and various other miscellaneous items.

This is a federal-aid project. The prevailing basic hourly wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act, shall be the minimum wages paid to the described classes of laborers and mechanics employed, or working on the site, to perform the contract.

A Disadvantaged Business Enterprise availability has been established for this project.

PRE-BID CONFERENCE

A pre-bid conference will be held on Wednesday, September 26, 2012 at 9:00 a.m. in the DCM Gecko Conference Room, 1034 East Madison Street, Phoenix, Arizona. At this meeting, staff will discuss the scope of work, general contract issues and respond to questions from the attendees. As City staff will not be available to respond to individual inquiries regarding the project scope outside of this pre-bid conference, it is strongly recommended that interested companies send a representative to the pre-bid conference.

REQUEST FOR BID PACKET

The bid packet will be available for download on the City of Phoenix Street Transportation Department web page as of Thursday, September 13, 2012. The web address is:

http://phoenix.gov/streets/procurement/easopportunities/index.html

Firms receiving a copy of the bid packet through any other means must download the bid packet from the City web page in order to register as a plan holder for the project. The plan holder list is available for viewing within the project's folder on the Street Transportation Department Contract Procurement Section's "Current Opportunities by Due Date" website address listed above.

GENERAL INFORMATION

The City reserves the right to award the contract to the lowest responsible responsive bidder or all bids will be rejected, as soon as practicable after the date of opening bids.

The City of Phoenix will provide reasonable accommodations for alternate formats of the bid packet by calling Kandi Kawolsky at (602) 534-8352 or calling TDD System (602) 534-5500. Requests will only be honored if made within the first week of the advertising period. Please allow a minimum of seven calendar days for production.

Questions pertaining to process or contract issues should be directed to Kandi Kawolsky at (602) 534-8352.

DAVID CAVAZOS
City Manager

By _____
WYLIE BEARUP, PE, PhD
City Engineer

Published: Arizona Business Gazette
Date: September 13, 2012
Date: September 20, 2012

(District 8)

INFORMATION FOR BIDDERS

1. **102 BIDDING REQUIREMENTS AND CONDITIONS** Add the following to **MAG and COP Supplement to MAG Section 102 BIDDING REQUIREMENTS AND CONDITIONS**:

INFORMATION FOR BIDDERS

A. **QUESTIONS ON PLANS AND SPECIFICATIONS**

Neither the Engineer nor the City of Phoenix shall be held responsible for any oral instructions. Any changes to the plans and specifications will be in the form of an addendum. All addenda will be posted online within the project folder at the following website:

http://phoenix.gov/streets/procurement/easopportunities/index.html

A Planholder List is available within the project folder on the Street Transportation website under "Current Opportunities by Due Date". The web address is:

http://phoenix.gov/streets/procurement/easopportunities/index.html

For additional information prior to submitting your bid, contact:

Plans, Technical/Special Provisions, Proposal or Specifications:
NAME: Ms. Kandi Kawolsky, Contract Procurement Section
ADDRESS: 200 West Washington Street, 6th Floor, Phoenix, AZ 85003-1611
PHONE: (602) 534-8352 E-MAIL: kandi.kawolsky@phoenix.gov

Federal Labor Standards/Davis-Bacon and related Acts contact:
Labor Compliance Office: (602) 261-8287

DBE Utilization contact::
Equal Opportunity Department: (602) 262-6790

All questions regarding the plans and specifications must be received (in writing) at a minimum 7 business days prior to bid opening. Questions received after that time may not be given any consideration.

B. **BID BOND**

Bidders must submit a properly completed proposal guarantee, certified check, cashier's check or on the surety bond provided, for an amount not less than ten (10) percent of the total bid amount included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal in accordance with the plans and specifications. Surety bonds submitted for this project shall be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company. ***A bid will be deemed non-responsive if not accompanied by this guarantee.***

The surety bond shall be executed solely by 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. The surety bond shall not be executed by an individual surety or sureties even if the requirements of Section 7 101 are satisfied. The City Clerk will return the certified check, cashiers check, or surety bond to the contractors whose proposals are not accepted, and to the successful

contractor upon the execution of a satisfactory bond and contract.

When providing a Surety Bond, ***failure to provide an "A- or better for the prior four quarters" bond will result in bid rejection.***

C. **LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS**

A bid will be deemed non-responsive if not accompanied by a properly completed and signed "List of Major Subcontractors and Suppliers" form.

To assist in eliminating the practice of bid shopping on City construction projects, the bidder shall list all major subcontractors and suppliers (including DBE) to whom the bidder intends to contract with. The list of Major Subcontractors and Suppliers shall be provided on the "List of Major Subcontractors" form. ***Failure to properly complete and sign this form will result in bid rejection.*** This form is due with the bid.

If substantial evidence exists that bid shopping occurred on this project, the Bidder will be ineligible to bid on City construction projects for a period of one year.

D. **BID SUBMITTAL**

The properly completed bid documents along with the ten (10) percent bid guarantee shall be submitted in a sealed envelope. The outside of the envelope shall be marked as follows:

Bid of (Firm's Name, Address and Phone Number)_____
For: 11th Street Pedestrian & Transit Improvements Project
City of Phoenix Project Number: **ND30060067 FTA**

Sealed bids shall be submitted to the bid box located at the Street Transportation Department's Reception Desk on the Sixth Floor of the Phoenix City Hall Building, 200 West Washington Street, Phoenix, Arizona, 85003 prior to the time and date specified for bid opening.

E. **BID WITHDRAWAL**

MAG Section 102-10, Withdrawal or Revision of Proposal, is hereby deleted and the following paragraph is substituted:

"No bidder may withdraw or revise a proposal after it has been deposited with the City, except as provided in Phoenix City Code Chapter 2, Section 188. Proposals, read or unread, will not be returned to the bidders until after determination of award has been made. A bidder wishing to file a protest for the subject project shall comply with Phoenix City Code Chapter 2, Section 188."

F. **ADDENDA**

Acknowledge all addenda; a bid will be deemed non-responsive if all issued addenda for this project are not acknowledged in writing on Page P. -1.

The City of Phoenix shall not be responsible for any oral responses or instructions made by any employees or officers of the City of Phoenix regarding bidding instructions, plans, drawings, specifications or contract documents. A verbal reply to an inquiry does not constitute a modification of the Invitation for Bids (IFB). Any changes to the plans, drawings and specifications will be in the form of an addendum.

It shall be the responsibility of the prospective bidder to determine, prior to the submittal of its

bid, if any addenda to the project have been issued by the City of Phoenix Street Transportation Department Contract Procurement Section. All addenda issued shall be acknowledged by bidder on Page P.-1. All addenda (if any) will be available online within each project's folder at the following website:

http://phoenix.gov/streets/procurement/easopportunities/index.html

The contractors and/or consultants are responsible for ensuring they have all addenda and/or notifications for all projects they are submitting on. Prospective bidders are strongly encouraged to check the Street Transportation Department Contract Procurement website in order to ascertain if any addenda have been issued for the project.

G. **BID SUBMITTAL CHECKLIST**

BID SUBMITTAL CHECKLIST

This checklist is provided to remind bidders of several of the required elements of the bid packages. It is not intended to be a comprehensive list of all of the contract documents. Bidders are encouraged to review all of the Bid Instructions to determine compliance therein.

- o Acknowledged all addenda? (Page P-1)
- o Completed all of the Bid Proposal forms? (Page P.-1 to P.- 8 and P.S.-1)
- o Included your Bid Bond (rated A- or better for the prior four quarters) or Guarantee Cashier's Check? (Page S.B.-1)
- o Complete Letter of Intent Attachment A-1 (Page D.B.E.F.-1)
- o Complete Proposed DBE Participation Attachment B (Page D.B.E.F.-3)
- o Completed Subcontractor Contact/Bidder List Attachment C (Page D.B.E.F.-4)
- o Completed List of Major Subcontractors and Suppliers form (Page L.O.S.-1)
- o Buy America Certificate (Page B.A.C. – 1)
- o Anti-Lobbying Certification (Page A.L.C. – 1)
- o No Collusion Affidavit (Page N.C.A. – 1)
- o Certification Regarding Debarment (Page C.R.D. – 1)

PLEASE DO NOT SUBMIT THE ENTIRE SPECIFICATION BOOK WHEN SUBMITTING YOUR BID, INCLUDE ONLY THE REQUIRED BIDDING DOCUMENTS.

POST-BID SUBMITTAL CHECKLIST

All bidders wishing to remain in contention for award of the contract must submit completed contracts documents listed below. The documents must be submitted to the Planning, Design & Programming Division's Procurement Section, 6th Floor, or can be sent by email to kandi.kawolsky@phoenix.gov.

- o Completed List of **All** Subcontractors and Suppliers form (Page L.O.S. - 2) (3 days after bid opening by 5:00 p.m.)

- Completed Bidder's Disclosure Statement (Pages B.D.S -1 to 4) (50 days after bid opening by 5:00 p.m.)

- Submit Affidavit of Identity (for sole proprietor only) Page A.O.I.-1 (3 days after bid opening by 5:00 p.m.)

H. WAGE DETERMINATION

In the event that the wage determination decision of the Secretary of Labor is required for a project (attached hereto on pages GWD 1 to 7 and made a part hereof) and has been superseded by any subsequent wage determination decision(s) published up to and including ten (10) days prior to bid opening, the most recent applicable wage decision shall be incorporated by reference, and the successful bidder agrees to be bound by it, regardless of what is contained in the specifications. State or local wage rates will not apply if the state or local wage rate exceeds the corresponding Federal Wage Determination rate.

I. WORKFORCE REPORTING REQUIREMENTS

The contractor shall submit payrolls electronically through the internet to the City of Phoenix web-based certified payroll tracking system. The City of Phoenix uses the "LCP Tracker" web-site to track the certified payroll information. Additional information regarding the use of this system is available at https://lcptracker.net. This requirement shall also apply to every lower-tier subcontractor that is required to provide weekly certified payroll reports.

J. PAYMENT WITHHOLDING

To ensure compliance with the Davis-Bacon and related acts, the prime Contractor is responsible for the timely submittal of all required documentation from all Contractors/companies who employ laborers and mechanics to perform work on this project.

Payrolls, including subcontractor's payrolls, must be submitted weekly no later than seven (7) days after each pay period ending date. Payments may be withheld in part or in full until payrolls are received and reviewed to assure compliance with the Federal Labor Standards.

Failure to clarify, when requested, discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the Federal Wage Decisions contained in the Contract documents may also affect the complete or timely release of payments.

K. DBE PARTICIPATION

This project does not have a declared race and gender conscious goal. There is an outreach requirement for this project and the instructions for compliance are included in the Disadvantaged Business Enterprise Section. Failure to complete the information included on the proposal page regarding the demonstration of outreach to DBE firms may be just cause for declaring your bid non-responsive.

By submitting a bid or proposal in response to this solicitation, the Contractor agrees that the following clause is incorporated into the Contract documents:

> "The Contractor, subcontractor, or subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOTassisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate."

In addition, the Contractor shall incorporate the above assurance, verbatim, in any subcontract executed by the Contractor as a result of this solicitation including materials and procurement of leases of equipment.

Refer to the attached Disadvantaged Business Enterprise Program Clause, pages D.B.E.C. -1 to 7 and Disadvantaged Business Enterprise Program Reporting Forms D.B.E.F. -1 to 6.

L. BUSINESS AND OPERATION LICENSES, PERMITS AND CERTIFICATIONS REQUIRED

Bidder must possess all federal, state, county and City licenses, permits, certifications and any other legal authorizations required by law to transact business and to perform the services set forth in this Agreement (collectively "Business Licenses"). The first, second and third low apparent Bidders shall submit a completed Bidder's Disclosure Statement as set forth in pages B.D.S.-1 to 4, and provide the following Business License information within 50 calendar days of the submission of its bid: (i) proper State of Arizona contractor's license classification and number; (ii) City of Phoenix transaction privilege license number; (iii) federal tax identification number; and (iv) any special use or other zoning permits required for Bidder's operation and performance of the services under this Agreement. Unless provided otherwise in this solicitation, Bidder shall be deemed non-responsible and the bid rejected if Bidder fails to submit a substantially completed Bidder's Disclosure Statement or possess the proper Business Licenses within 50 calendar days of the submission of its bid.

M. TAX LIABILITIES; DISCLOSURE OF CONVICTIONS AND BREACH(S) OF CONTRACT

On or before the award of the contract for this project, the successful bidder shall: (i) file all applicable tax returns and shall make payment for all applicable State of Arizona and Maricopa County Transaction Taxes (ARS Sec. 41-1305) and City of Phoenix Privilege License Taxes (Phoenix City Code Sec.14-415); (ii) disclose any civil fines, penalties or any criminal convictions, other than for traffic related offenses, for violation of federal, state, county or city laws, rules or regulations including, but not limited to, environmental, OSHA, or labor compliance laws (collectively "Laws") by Bidder, Bidder's directors, managing members, responsible corporate officers or party who will be responsible for overseeing and administering this project (collectively "Bidder"); and (iii) disclose any material breach(s) of an agreement with the City of Phoenix, any termination for cause or any litigation involving the City of Phoenix occurring within the past three calendar years. Unless provided otherwise in this solicitation, the successful bidder shall be deemed non-responsible and the bid rejected for any of the following: (i) Bidder's civil or criminal conviction, other than for traffic related offenses, for a violation of Laws within the past three calendar years; (ii) liability or culpability resulting in payment of fines or penalties in the cumulative total amount of $100,000 or greater for a violation of "Laws" within the past three calendar years; (iii) material breach of a City of Phoenix agreement, termination for cause or litigation with the City of Phoenix within the past three calendar years; and (iv) Bidder's failure to disclose the information as required by this provision. Further, after award of contract, in addition to any other remedy, Bidder's failure to remit proper taxes to the City of Phoenix may result in the City withholding payment pursuant to Phoenix City Charter Chapter XVIII, Section 14 until all delinquent taxes, interest, and penalties have been paid.

N. STANDARD SPECIFICATIONS AND DETAILS

Except as otherwise required in these specifications, bid preparation and construction of this project shall be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest revision, and the City of Phoenix Supplements to the MAG Uniform Standard Specifications and Details, latest revision.

O. PRECEDENCE OF CONTRACT DOCUMENTS

In case of a discrepancy or conflict, the precedence of contract documents is as follows:

1. Contract Specifications/Special Provisions/Technical Provisions
2. The Plans
3. COP Supplement to MAG Standard Specifications and Details
4. MAG Standard Specifications and Details

The precedence of any Addenda falls within the category of which it represents.

P. CONFIDENTIALITY OF PLANS & SPECIFICATIONS

Any plans generated for this project must include the following statement in the Title Block on every page: "Per City of Phoenix City Code Chapter 2, Section 2-28, these plans are for official use only and may not be shared with others except as required to fulfill the obligations of Contractor's contract with the City of Phoenix."

Q. AUDIT AND RECORDS

Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and Contractor shall be kept on a generally recognized accounting basis. The City, its authorized representative, and/or the appropriate federal agency, reserves the right to audit the Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any change orders. The City reserves the right to decrease Contract price and/or payments made on this Contract if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data. The Contractor shall include a similar provision in all of its Agreements with subcontractors providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the subcontracting records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract price and/or payments made on this Contract if the above provision is not included in subcontracting contracts, and one or more subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

R. IMMIGRATION REFORM AND CONTROL ACT

Compliance with Federal Laws Required. Contractor understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act to him. Contractor agrees to comply with these Federal Laws in performing under this Agreement and to permit City inspection of his personnel records to verify such compliance.

S. LEGAL WORKER REQUIREMENTS

The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

2. A breach of a warranty under paragraph 1 shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

T. BUSINESS WITH SUDAN AND IRAN WORKER REQUIREMENTS

Pursuant to A.R.S. § 35-391.06 and § 35-393.06, the Contractor certifies that it does not have a scrutinized business operation, as defined in A.R.S. § 35-391 and § 35-393, in either Sudan or Iran.

U. CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

1. Contract Worker Background Screening. Contractor agrees that all contract workers and subcontractors (collectively "Contract Worker(s)") that Contractor furnishes to the City pursuant to this Agreement shall be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense as set forth in this Section. The Background Screening provided by Contractor shall comply with all applicable laws, rules and regulations. Contractor further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor's services under this Agreement or Contractor's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under this Agreement.

2. Background Screening Requirements and Criteria. The City has established levels of risk and associated Background Screening. **For Contractor services in the right-of-way, the risk level and Background Screening required for is Minimum Risk.**

   (A) Minimum Risk and Background Screening ("Minimum Risk").

   A minimum risk Background Screening shall be performed when the Contract Worker: (i) will not have direct access to City facilities or information systems; or (ii) will not work with vulnerable adults or children; or (iii) when access to City facilities is escorted by City workers. The Background Screening for minimum risk shall consist of the screening required by Arizona Revised Statutes §§ 41-4401 and following to verify legal Arizona worker status.

3. Terms of This Section Applicable to all of Contractor's Contracts and Subcontracts. Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.

4. Materiality of Background Screening Requirements; Indemnity. The Background Screening requirements of this Section are material to City's entry into this Agreement and any breach of this Section by Contractor shall be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in this Agreement, Contractor shall defend, indemnify and hold harmless the City for any and all Claims arising out of this Background Screening Section including, but not limited to, the disqualification of a Contract Worker by Contractor or the City for failure to satisfy this Section.

5. Continuing Duty; Audit. Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. Contractor shall notify the City immediately of any change to a Maximum Risk Background Screening of a Contract Worker previously approved by the City. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section pursuant to Section O, Audit and Records in this I.B. Section.

V. LAWFUL PRESENCE REQUIREMENT

Pursuant to A.R.S. § 1-501 and § 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

W. LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)

If practical, the contractor shall provide an easily accessible area to serve the construction site that is dedicated to the separation, collection and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals, and designate an area specifically for construction and demolition waste recycling. The contractor must provide documentation that the materials have been taken to a Maricopa County approved recycling facility.

X. COMPUTER SYSTEMS

Contractor shall warrant fault free performance in the processing of date and date-related data including, but not limited to calculating, comparing, and sequencing by all equipment and software products, individually and in combination, from the commencement of this contract.

Y. REQUIREMENTS OF CONTRACTORS

Any Contractor in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. The Contractor shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract.

The City of Phoenix extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of Disadvantaged and/or Small-owned business to reflect both the industry and community ethnic composition.

Z. PROTEST PROCEDURES (Per Ordinance No. G2804)

Any bidder who has any objections to the awarding of a contractor to any bidder by the City of Phoenix, pursuant to competitive bidding procedures, should lodge that protest, in writing,

with the City Clerk no later than 5:00 P.M. of the third working day following the day on which the bids were opened by the City of Phoenix.

AA. DATA CONFIDENTIALITY

As used in the Contract, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Contract.

The parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Contract is confidential and proprietary information belonging to the City.

Except as specifically provided in this Contract, the Contractor or its subcontractors shall not divulge data to any third party without prior written consent of the City. The Contractor or its subcontractors shall not use the data for any purposes except to perform the services required under this Contract. These prohibitions shall not apply to the following data provided the Contractor or its subcontractors have first given the required notice to the City:

A. Data which was known to the Contractor or its subcontractors prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;

B. Data which was acquired by the Contractor or its subcontractors in its performance under this Contract and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractor's knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or

C. Data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractor's are subject.

In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor shall first notify the City as set forth in this section of the request or demand for the data. The Contractor or its subcontractors shall give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

The Contractor, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, the Contractor or its subcontractors shall promptly deliver, as set forth in this section, a copy of all data to the City. All data shall continue to be subject to the confidentiality agreements of this Contract.

The Contractor or its subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Contract

without notice.

Personal Identifying Information-Data Security. Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times. At a minimum, Contractor must encrypt and/or password protects electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by Contractor or its subcontractors in connection with this Contract is believed to have been compromised, Contractor or its subcontractors shall immediately notify the Project Manager and City Engineer. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

The obligations of Contractor or its subcontractors under this Section shall survive the termination of this Contract.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
RACE- AND GENDER-NEUTRAL DBE CONTRACT CLAUSE
For Non-Negotiated Contracts

APPLICABILITY – For the purposes of this contract clause, a "Non-Negotiated Contract" is a contract that is procured as an Invitation for Bid (low-bid) or a Two-Step Design-Build project. This contract clause shall be included in both the solicitation and contract documents for these projects.

SECTION I. DEFINITIONS

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 CFR Part 26. The official DBE database containing eligible DBE firms certified by the AZUCP can be accessed at: http://www.azdbe.org.

Broker, Packager, Manufacturers' Representative, or Jobber means a firm that is not a manufacturer or regular dealer as defined herein.

Commercially Useful Function means that a DBE firm is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE must perform at least 30 percent of the total cost of its contract with its own work force in order to be determined to be performing a commercially useful function on the contract.

Contract is a written agreement obligating the seller or business enterprise to furnish goods or services as submitted and the Purchaser or Buyer to pay for such goods or services.

DBE Joint Venture is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. One participant in the joint venture arrangement must hold DBE status with the City of Phoenix (City) or AZUCP. The joint venture is limited in scope and duration to this contract. The resources, assets and labor of the partnering participants must be combined in an effort to accrue profit.

Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed the DBE certification process and been granted DBE status by the City's Equal Opportunity Department (EOD) or another member of the Arizona Unified Certification Program (AZUCP) pursuant to the criteria contained in 49 Code of Federal Regulation (CFR) Part 26.

Economically Disadvantaged Individuals means those individuals who have a personal net worth of less than $1,320,000, not including the value of the equity interest in their personal residence or the value of their ownership interest in the firm seeking certification as a DBE.

Joint Venture (JV) is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this contract. The resources, assets and labor of the participants must be combined in an effort to accrue profit.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.

Outreach Efforts means the demonstrated efforts to solicit participation from interested and qualified DBE and small businesses. Each Bidder must document their identification of potential opportunities, the solicitations, negotiations, and communications of their selections relative to Outreach.

Purchaser for purposes of this contract means the City.

Race- and Gender-Neutral (RGN) Measures - Steps that result in DBE participation and utilization absent of a Race- and Gender-Conscious Goal.

Race- and Gender-Neutral (RGN) Participation - DBE utilization that occurs on a project with RGN measures.

Regular Dealer or Supplier means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

Small Business Concern means a small business with gross receipts or number of employees consistent with the U. S. Small Business Administration's definition of a small business, subject to further limitations as defined in 49 CFR Part 26.

Socially Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed a DBE certification process and been granted DBE status by the City or AZUCP shall be considered socially and economically disadvantaged individuals for the purpose of this contract.

Subcontract is a contract at any tier below the prime contract, including purchase orders.

Subcontractor is an individual, partnership, joint venture, corporation or firm that holds a contract at any tier below the prime contract, including purchase orders.

Bidder is an individual, partnership, joint venture, corporation or firm submitting a submittal to the City to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative.

Successful Bidder is a Bidder who has been selected to perform services requested by a solicitation or procurement.

SECTION II. GENERAL REQUIREMENTS

A. **For this business opportunity, the City <u>has not</u> established a race- and gender-conscious Disadvantaged Business Enterprise (DBE) participation goal.** The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. After review of the market, there is a **17.86%** availability of DBE-certified firms. The City supports the use of race- and gender-neutral measures to facilitate participation by DBEs and other small businesses, and encourages Bidders to subcontract portions of their work that they might otherwise perform with their own forces.

B. **<u>Applicable Federal Regulations</u>** – This contract is subject to the DBE Program requirements issued by the U.S. Department of Transportation (USDOT) as set forth in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this contract, the City is required to track and report DBE participation that occurs as a result of any procurement, JV, goods/services or other arrangement involving a DBE, creating an obligation for the Successful Bidder to provide all relevant information to allow such reporting to occur.

C. **<u>DBE Certification</u>** - ONLY firms certified by the City of Phoenix (City) or another member of the AZUCP are eligible for counting toward the DBE utilization on this contract.

D. **<u>Nondiscrimination Clause</u>** - The City, as a recipient of federal U.S. Department of Transportation (USDOT) funding, has agreed to abide by the assurance found in 49 CFR Part 26.13(a). As a condition of this agreement, the City shall require each contract signed by the City with the Successful Bidder, and each subcontract signed by the Successful Bidder with a Subcontractor, to include the following assurance:

> "The contractor, subcontractor, or sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26, in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract and/or any other such remedy as the City deems appropriate."
>
> Note: For the purposes of the required contract and subcontract language above, the Successful Bidder is the "contractor", and the City is the "sub-recipient."

SECTION III. BID REQUIREMENTS

A. **<u>NON-NEGOTIATED CONTRACTS:</u> Responsiveness to Outreach Requirements at Time of Bid** – Any Bidder wishing to remain in competition for contract award shall provide the minimum required information due **at time of bid.** This minimum requirement is the submission of **Attachments A, B and C-1** as detailed in Part B below. Failure to submit the Outreach documentation in a timely manner as herein set forth will result in a determination by the City that the Bidder is <u>non-responsive</u> to the Outreach Requirements.

B. **Submittal of Outreach Efforts Documentation** – *The following documents are due AT THE TIME OF BID. Failure to submit the required documentation in a timely manner will result in a determination by the City that the Bidder is non-responsive to the Outreach Requirements.*

1. ***Documentation of Outreach Efforts*** (**Attachment A**): List all subcontractors and suppliers contacted by the Bidder in the preparation of its Bid. This information serves to document the following factors and shall be illustrative of the matters EOD will consider in determining whether the Bidders demonstrated Outreach Efforts:

a) Identification of business opportunity;
b) Solicitation of participation;
c) Selection process; and
d) Communicating the selection outcomes to all parties

The City may request additional documentation to clarify information reported on Attachment A. This documentation should include the type and/or description of the potential opportunities identified for small business participation. A copy of the solicitation notice that was provided to interested small businesses. This notice may be in the form of a letter, phone calls, and attachment to an email, advertisements in newspapers, trade papers, or communications with chambers of commerce. The final aspect of demonstrated Outreach would provide communicating selection outcomes to potential participants. For all of the above, if a blast email or fax format is used, the documentation provided must reflect a listing of all email addresses or fax numbers to which the solicitation was sent and the date and time of the transmission. Additionally, if contacts are made by telephone, the Bidder must document the name of the person representing the Bidder and of the person representing the small business. Bidder(s) must respond with the supplemental information within 24 hours of the request to remain responsive of the Outreach Requirements.

The Bidder must check the appropriate boxes to indicate all firms that will perform on the contract and whose participation is being proposed. The Bidder must ensure that the dollar amount and scope of work as part of this proposal should be the same as the percentage and scope of work appearing on the *Letter of Intent* (LOI) form (**Attachment C-1**).

2. ***Small Business Utilization Commitment*** (**Attachment B**): Bidders must provide a signed affidavit indicating that the information submitted is true and correct as to the following:

a) The firms indicated as selected in **Attachment A** will participate in the contract; and
b) The Bidder will comply with Outreach Requirements for RGN Contracts for substitution.

3. Letter of Intent (LOI) to Perform as a Subconsultant/Subcontractor/Supplier (Attachment C-1) – Bidders must provide an LOI form(s), which must be completed and signed by each DBE firm that will perform on the contract and whose participation is proposed to be counted for DBE participation resulting from RGN measures on this contract.

Administrative Reconsideration – In the event City determines the Bidder failed to submit required documentation to meet the stated Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for

reconsideration will seek to obtain clarification on documentation submitted.

If the Bidder wishes to request reconsideration of the determination of non-responsive based on insufficient demonstration of Outreach Efforts, written notice must be submitted to the City within three (3) days of the City's non-responsive notification to the Bidder. The request for reconsideration should be made to:

City of Phoenix Equal Opportunity Department
Business Relations Division-Contract Compliance Section
251 West Washington Street, Seventh Floor
Phoenix, AZ 85003

SECTION IV. POST-AWARD COMPLIANCE REQUIREMENTS

A. **Subcontracting Commitment** – Copies of any executed contracts, procurements, purchase orders, subleases, JV, goods/services or other arrangement legalizing the agreement between the Successful Bidder and any DBE or small business will be required.

DBE subcontracts shall not be terminated, nor shall the scope of work be altered, without prior written notice and the approval of EOD. The amount of the subcontract shall also not be revised to a lower amount than was stated in the submitted documents without prior written approval of EOD. Any petition to alter the original committed subcontract with a DBE must be submitted in writing to EOD prior to such change occurring. Failure to do so may result in the Successful Bidder being declared in breach of the contract.

B. **Relief From Proposed DBE Utilization** – After contract award, no relief from the proposed DBE utilization will be granted except in exceptional circumstances. Requests for relief from any or all of the DBE participation must be in writing to EOD. EOD has the final authority to determine if the request will be granted.

The written request must contain the amount of the relief being sought, the evidence that demonstrates why the relief is necessary, and any additional relevant information to be considered by EOD. All records of the Successful Bidder's attempts to subcontract with the DBE firm and any other actions taken to locate and solicit a replacement DBE must be included with the request.

If an approved DBE allows their DBE status to expire or their DBE certification is removed during the course of the subcontract, the City will consider all work performed by the DBE under the original contract to count towards meeting the DBE RGN efforts. No increased scopes of work negotiated after removal/expiration of the DBE firm's certification will be counted nor will any work performed under a contract extension granted by the City be counted towards meeting the DBE RGN efforts.

C. **DBE Substitutions** – In instances where the subcontractor was approved as a bona fide DBE by the City, and the firm subsequently loses its DBE status prior to the execution of a contract, EOD will consider whether or not good faith efforts were made to find and substitute the firm with a certified DBE. The Successful Bidder must notify EOD in writing of the necessity to substitute a DBE and provide specific reason(s) for

the substitution or replacement. Actual substitution or replacement of a DBE must not occur before EOD's written approval is obtained.

D. **Prompt Payment of Subcontractors** – In accordance with the Arizona Revised Statutes, Section 34-221(G), the City's solicitation and/or contract documents, the Successful Bidder is required to promptly pay its subcontractors, subconsultants, or suppliers within seven (7) calendar days of receipt of each progress payment from the City. No contract terms and conditions between the Successful Bidder and its subcontractors, subconsultants, or suppliers may alter the rights of any subcontractor, subconsultant, or supplier to receive prompt and timely payment as provided herein.

Any reduction of retention by the City to the Successful Bidder shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. The prompt payment provisions of 49 CFR Part 26 also require the Successful Bidder to ensure the prompt and full payment of retainage monies to subcontractors or subconsultants at such time as the work of the subcontractor or subconsultant is complete and the City has accepted the work and paid the Successful Bidder for the work performed and accepted. Retention shall be paid no later than 30 days after such payment is issued by the City.

Any diversion by the Successful Bidder of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the City. If the Successful Bidder fails to make payments in accordance with these provisions, the City may take any one or more of the following actions, and the Successful Bidder agrees that the City may take such actions:

- Hold the Successful Bidder in default under this contract
- Withhold future payments, including retention, until proper payment has been made to subcontractors or suppliers in accordance with these provisions
- Reject all future bids from the Successful Bidder for a period not to exceed one (1) year from substantial completion date of this contract
- Terminate the contract

Nothing in this section negates the rights of the Successful Bidder to carry out the terms and conditions of its contract with the subcontractor or sub-consultant as it relates to monies owed by the subcontractor or sub-consultant for late performance, claims, and other conditions that may exist.

SECTION V. RECORD & REPORTING REQUIREMENTS

A. During the performance of the contract, the Successful Bidder shall keep such records as are necessary to document its subcontracting participation. The records shall be provided to EOD within 72 hours of notification by the City and at the completion of the contract. Reports shall be in such form, manner, and content as prescribed by the City. These record requests include, but are not limited to:

1. A complete listing of <u>all</u> subcontractors and suppliers on the project
2. The scopes of work being performed by each subcontractor
3. The dollar value of all subcontracting work, services, and procurements
4. Copies of all executed subcontracts or invoices

B. **Monthly Reporting** – During the course of the contract, an up-to-date "Subcontracting/ Subconsulting/Procurement Report" (**Attachment D**) must be submitted to the City with each Request for Payment submitted by the Successful Bidder.

C. **Closeout Reporting** – Nearing completion of the contract, the Successful Bidder shall submit a final "Subcontracting/Subconsultant/Procurement Report" (**Attachment D**) and "Certification of Payment to DBE Firms" (**Attachment E**) to EOD. These forms are to be completed and signed by a duly authorized agent of the Successful Bidder, and all DBE firms must verify they have received payment in full from the Successful Bidder. The Equal Opportunity Department will authorize the processing of the Final Payment once all documents are received and verified.

SUPPLEMENTARY CONDITIONS

1. **103 AWARD AND EXECUTION OF CONTRACT** Add the following to **MAG Subsection 103.3 AWARD OF CONTRACT**:

   Contract award will be made to a responsive and responsible bidder based on the low total base bid or on the low combination of the total base bid and any selected alternate(s), whichever is in the best interest of the City. If unit pricing is required in the proposal, the extensions and additions will be verified to assure correctness. Award will be based on the revised total if any errors are found. Additionally, the Contractor shall comply with the DBE requirements as detailed in the DBE clause. The City expressly reserves the right to cancel this agreement without recourse or prejudice to Contractor until all parties have executed the agreement in full.

2. Add the following to **MAG Subsection 103.5, REQUIREMENT OF CONTRACT BONDS**:

   A. PERFORMANCE BOND AND LABOR AND MATERIAL BOND

   Prior to the execution of a contract, the successful bidder must provide a performance bond and a labor and material bond, each in an amount equal to the full amount of the contract. Each such bond shall be executed by 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. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of the Contract. The bonds shall be made payable and acceptable to the City of Phoenix. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official. If one Power of Attorney is submitted, it shall be for twice the total contract amount. If two Powers of Attorney are submitted, each shall be for the total contract amount. Personal or individual bonds are not acceptable. Failure to comply with these provisions will be cause for rejection of the bidder's proposal.

   B. BONDING COMPANIES

   All bonds submitted for this project shall be provided by a company which has been rated "A- or better for the prior four quarters" by the A. M. Best Company. Failure to provide an "A- or better for the prior four quarters" bond will result in bid rejection.

3. **Delete MAG Subsection 103.6, CONTRACTOR'S INSURANCE** in its entirety and substitute the following:

   103.6.1 General:

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

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

   The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to

purchase such additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE

Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

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

General Aggregate/**for this Project**	$2,000,000/1,000,000
Products – Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000

   a. The policy shall be endorsed to include the following additional insured language: **"The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including completed operations."**

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

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

   a. The policy shall be endorsed to include the following additional insured language: **"The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".**

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$500,000

   a. Policy shall contain a **waiver of** subrogation against the City of Phoenix.
   b. This requirement shall not apply when a Contractor or subcontractor is exempt under A.R.S. 23-901, AND when such Contractor or subcontractor executed the appropriate sole proprietor waiver form.

4. **No Builders' Risk Insurance required.**

B. ADDITIONAL INSURANCE REQUIREMENTS

The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

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

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

4. The Contractor's insurance shall contain broad form contractual liability coverage and shall not exclude liability arising out of explosion, collapse, or underground property damage hazards **(XCU)** coverage.

C. NOTICE OF CANCELATION

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be sent directly to the City of Phoenix Contract Specialist listed on Page I.B.1 of these specifications and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of B+VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. VERIFICATION OF COVERAGE

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

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the City of Phoenix Contract Specialist listed on Page I.B. - 1 of these specifications. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

If the Certificate of Insurance reflecting policy coverage and cancellation notice does not conform to the City's requirements, the contractor must:

- **Submit a current insurance certificated (dated within 15 days of the payment request submittal) with each payment request form. The payment request will be rejected if the insurance certificate is not submitted with the payment request.**

F. SUBCONTRACTORS

Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies **or** subcontractors shall maintain separate insurance as determined by t he Contractor, however, subcontractors limits of liability shall not be less than $1,000,000 per occurrence / $2,000,000 aggregate.

G. APPROVAL

Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

103.6.2 Indemnification of City Against Liability

The Contractor agrees to indemnify and save harmless the City of Phoenix, its officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the project, their officers, agents and employees, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of this contract or on account of any act, claim or amount arising or recovered under Workmen's Compensation Law or arising out of the failure of the Contractor to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

4. **104 SCOPE OF WORK** Add the following to **MAG Subsection 104.1.2 Maintenance of Traffic**:
ADA AND ANSI ACCESS OF PREMISES DURING CONSTRUCTION

Contractor shall maintain existing ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

5. Add the following to **MAG Subsection 104.1.3 CLEANUP AND DUST CONTROL**:

The Contractor shall use a power pick-up broom as part of the dust control effort. No separate measurement or payment will be made for cleanup or dust control, or for providing a power pick-up broom on the job.

6. Add the following to **MAG Section 104 SCOPE OF WORK:**

104.3 STANDARDIZED CHANGED CONDITION CLAUSES:

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) *Differing site conditions.*
(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding

anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

(2) *Suspensions of work ordered by the engineer.*

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) *Significant changes in the character of work..*

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where MAG does not permit one or more of the contract clauses included in paragraph (a) of this section, MAG Uniform Standard Specifications for Public Works Construction shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where MAG has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the MAG may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The MAG's action must be pursuant to a specific MAG specification requiring differing contract conditions clauses. Such MAG developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.

(c) In the case of a design-build project, STDs are strongly encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.

7. **105 CONTROL OF WORK** Add the following to **MAG Subsection 105.1, AUTHORITY OF THE ENGINEER**:

A. CONTRACT ADMINISTRATION

All references to the City Engineer shall be replaced with the words "Street Transportation Director". The definition of "Engineer" shall read as follows:

"Engineer": All references to "Engineer" in these contract bid documents, including the MAG Specifications, shall mean Street Transportation Director.

B. PRECONSTRUCTION CONFERENCE

After completion of the contract documents, to include bonds, insurance and signatures and prior to the commencement of any work on the project, the Street Transportation Department, DCM Division, (telephone 602-495-2050), will schedule a Pre-Construction Conference. This will be held at 1034 East Madison Street, Phoenix, Arizona.

Construction administration will be provided by City of Phoenix, Street Transportation Department, Design & Construction Management Division (DCM).

The purpose of this conference is to establish a working relationship between the Contractor, utility firms and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, emergency telephone numbers for all representatives involved in the course of construction and establishment of the notice to

proceed date. The Contractor shall also provide copies of all purchase orders and/or contracts with DBE subcontractors and suppliers used to meet the subcontract goals programmed for this project.

Minimum attendance by the Contractor shall be a responsible company/corporate official, who is authorized to execute and sign documents on behalf of the firm, the job superintendent and the Contractor's safety officer.

C. AUTHORIZATION OF THE ENGINEER

The City may, at its discretion and without cause, order the Contractor in writing to stop and suspend work. Immediately after receiving such notice, the Contractor shall discontinue advancing the work specified under this Agreement.

Such suspension shall not exceed one hundred and eighty (180) consecutive days during the duration of the project.

The Contractor may seek an adjustment of the contract price and time, if the cost or time to perform the work has been adversely impacted by any suspension or stoppage of work by the City.

D. LABOR COMPLIANCE PRECONSTRUCTION CONFERENCE

On all Federally-assisted projects, a Labor Compliance Conference must be held after project award and prior to the established Notice to Proceed. This meeting is separate from and in addition to the preconstruction conference.

The successful bidder shall schedule the conference by calling the Labor Compliance Office, (602) 261-8287. Minimum attendance shall be a corporate officer, who is authorized to execute and sign documents for the firm and the payroll representatives for the prime, sub, and lower-tier contractors.

8. Add the following to **MAG Subsection 105.2 PLANS AND SHOP DRAWINGS**:

The Contractor shall submit as many of the required shop drawings and product data submittals at the Pre-Construction meeting as practical and possible. All shop drawings and product data submittals shall be submitted sufficiently in advance to allow adequate time for City review(s) and approval. The Contractor shall submit early enough to allow enough time for reviews based on the assumption that a submittal may be marked "Revise and Resubmit" or "Rejected", requiring the Contractor to modify the submittal and resubmit for additional review(s) until acceptance.

A separate transmittal shall be used for each specific item type, class of material or equipment for which a submittal is required. Multiple items under one transmittal will only be allowed when the items taken together constitute a complete manufacturer's package, or are so functionally related that the entire package should be reviewed as a whole. Email or FAX submittals will not be accepted.

The Contractor shall allow up to four (4) weeks for City review for each submittal. Some submittals may be simple and straightforward and may not require the full four (4) weeks, but other more complex submittals may take the full four (4) weeks.

9. Delete MAG Subsection 105.8 CONSTRUCTION STAKES, LINES AND GRADES and substitute the following:

Description:

The work under this section shall consist of furnishing all materials, personnel and equipment necessary to perform all surveying, staking and verification of the accuracy of all points which have been provided by the Engineer.

Included in this work shall be all calculations required for the satisfactory completion of the project in conformance with the plans and specifications. The work shall be done under the direction of a registered professional surveyor employed by the Contractor.

Measurements of all removals and pay quantity items will be the responsibility of the Engineer.

When utility adjustments are a part of the contract, the Contractor shall perform and be responsible for locating, tying and untying all manholes and valves that are discovered during the course of the contract. The Contractor shall set all survey points, stakes and references necessary for carrying out all such adjustments.

The Contractor shall furnish all traffic control, including flagging for survey and staking operations. Traffic control shall be in accordance with the requirements of the City of Phoenix Barricade Manual.

The Contractor will keep field notes in bound field books. These books will be available for inspection by City personnel at all times and shall become the property of the City of Phoenix upon completion of the project.

Construction Staking Requirements:

Staking will be performed in accordance with the City of Phoenix's Survey Section Standard Requirements for Staking, As-Builts and Quantity Calculations, plus any special addenda provided by the Engineer. The Contractor will provide to the Engineer in writing, for the Engineer's approval, any special procedures that will be used for construction survey staking completion.

The Engineer will provide control points for establishing an accurate construction centerline and will establish bench marks adjacent to this line for the proper layout of the work. Control points will be located on monument line and/or construction centerline at the beginning and ending points of the project. Control points will also be located on the appropriate centerline at all point of curve (PC), points of tangent (PT), and angle points. No less than three (3) bench marks will be provided; one (1) at the beginning of the project, one (1) at the midpoint, and one (1) at the end of the project. Additional bench marks may be provided at other convenient locations, but no more than one (1) additional bench mark will be provided for each 1,320 feet of the project length. Control points set by the Engineer will be identified in the field to the Contractor.

After the Contractor has verified the accuracy of the control points established by the City, the Contractor shall set all stakes necessary for construction in accordance with the City of Phoenix Survey Section Standard Requirements.

If errors are discovered during the verification process and control points do not agree with the geometrics shown in the plans, the Contractor shall promptly notify the Engineer in writing, and explain the problem in detail. The Engineer will advise the Contractor of any corrective actions which may be necessary.

The Contractor shall exercise care in the preservation of stakes, references, bench marks and shall reset them when they are damaged, lost, displaced or removed.

Any discrepancies in grade, alignment, locations or dimensions detected by the Contractor shall be brought to the attention of the Engineer by letter. No changes in the project plans will be allowed without the approval of the Engineer.

The Engineer reserves the right to make inspections and random checks of any portion of the staking and layout procedure. If, in the Engineer's opinion, the work is not being performed in the manner that will assure proper control and accuracy, the Engineer will order any or all of the staking and layout work redone at no additional cost.

If any portion of the Contractor's staking and layout work is ordered redone, resulting in additional rechecking by the Engineer, the City shall be reimbursed for all costs for such additional checking. The amount of such costs will be deducted from the Contractor's progress payment.

Inspection of the Contractor's layout by the Engineer and the acceptance of all or any part of it shall not relieve the Contractor of their responsibility to secure the proper dimensions, grades and elevations for the work.

Record Drawings

The Contractor shall maintain a record set of plans at the job site. These shall be kept legible and current and shall show all changes or work added in a contrasting, reproducible color. Two weeks prior to issuance of substantial completion, the Contractor shall submit, prior to final inspection, corrected landscape drawings showing the location of all utility services, controller, pipe, valves and wiring. The Engineer shall be the sole judge as to the acceptability of the record plans and receipt of an acceptable set is a pre-requisite for final payment.

Method and Payment

Construction surveying and layout will be measured as a single complete unit of work.

Basis for Payment:

Payment for construction surveying and layout will be by the lump sum. No payment shall be made for the resetting of stakes, references, bench marks and other survey control.

10. Add the following to **MAG Subsection 105.15 ACCEPTANCE, paragraph (B)**:

A. **SUBSTANTIAL COMPLETION**

The work may be judged substantially complete when all construction has been completed with the possible exception of final inspection punch list work. The purpose of granting or acknowledging substantial completion is to stop contract time. This is particularly important to the Contractor if contract time is exhausted or nearly so and/or punch list work is anticipated to extend beyond the allotted time. Granting of substantial completion will eliminate the possibility of incurring liquidated damages or additional liquidated damages beyond the substantial completion date, whichever case may apply.

In the event that the Engineer grants substantial completion, the Contractor shall have thirty (30) days thereafter to complete punch list work, unless additional time is granted--in writing--by the Engineer. In no case shall a Contractor be granted more than thirty (30) days to complete punch list work, unless there are extenuating circumstances such as delay in shipment of a specialized piece of equipment, labor strike, or other circumstances beyond the Contractor's control which would necessitate a further time extension.

B. **PENALTY FOR FAILURE TO COMPLETE PUNCH LIST WORK WITHIN SPECIFIED TIME**

In the event the Contractor fails to complete the punch list work within thirty (30) days following the contract completion date, or in the case of specialized situations within the additional time allotted by the Engineer, the Contractor may be declared in default, and the

Engineer may order the work completed by others.

In the event of default, as described herein, the Engineer shall withhold from the Contractor's final payment, an amount equal to at least twice the estimated cost of the remaining work. In addition, the Engineer shall withhold the retention deducted from contract progress payments until all punch list work has been satisfactorily completed, whereupon twice the amount of the actual cost of completing the work shall be deducted from the Contractor's final payment and the remaining funds, if any, including the contract retention, shall be released in accordance with the conditions set forth in contract retention.

C. **CONTRACT RETENTION**

This project shall not be considered complete until all work has been completed, including punch list work. Under no circumstances shall a Contractor receive any portion of the legally retained progress payments until the City has granted a final acceptance and/or acknowledged substantial completion. The following conditions shall apply to each case:

1. Substantial Completion: The Engineer may reduce outstanding contract retention to not less than one (1) percent of the total contract amount, upon granting substantial completion, if the value of the punch list work is estimated to be less than one (1) percent of the total contract.

2. Project Acceptance: Project acceptance implies that all punch list work is done and the improvements have been accepted by the City. Under these conditions, the retention will be fully released to the Contractor subject only to the signing of the standard claims affidavit and hold harmless clause required for all contracts.

3. Final Release of Contract Retention and/or Release of More Than Ninety (90) Percent of the Contract Funds: Prior to final payment and release of monies retained and/or in the case of substantial completion where the Contractor has requested a reduction in contract retention, the Contractor will be required to sign a claims affidavit agreeing to hold the City harmless from any and all claims arising out of the contract.

11. **107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC** Add the following to **MAG Subsection 107.1, LAWS TO BE OBSERVED, paragraph (C)**:

While every effort has been made to Blue Stake all known utilities, and to research and show on the plans, all existing underground utilities based on the best available information, it shall be the Contractor's responsibility to locate and pothole all existing utilities sufficiently in advance of anticipated new underground construction to identify any potential conflicts and allow reasonable time for the Engineer to determine solutions. Any claims for additional compensation or work required due to the Contractor's non-compliance with this provision shall not be considered for payment by the City.

12. **107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC** Add the following new paragraphs to **MAG Subsection 107.1, LAWS TO BE OBSERVED**:

(G) FAIR TREATMENT OF WORKERS

The Contractor shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The Contractor shall protect and indemnify the Contracting Agency and its representatives against any

claim or liability arising from or based on the violation of such, whether by himself or his employees.

(H) DESERT TORTOISE MITIGATION

As stated in the Arizona Interagency Desert Tortoise Team (AIDTT) Management Plan (1996), if a desert tortoise is found in a project area, activities should be modified to avoid injuring or harming it. If activities cannot be modified, tortoises in harm's way should be moved in accordance with Arizona Game and Fish Department's "Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects", revised October 23, 2007 (or the latest revision), included in these contract provisions. Taking, possession, or harassment of a desert tortoise is prohibited by State law, unless specifically authorized by Arizona Game and Fish Department.

13. Add the following to **MAG Subsection 107.2, PERMITS**:

A. **HAUL PERMIT**

On any project, when the quantity of fill or excavation to be hauled exceeds 10,000 C.Y. or when the duration of the haul is for more than twenty (20) working days, the Contractor shall:

1. Obtain approval of the proposed haul route, number of trucks, etc., by the Street Transportation Department, and then;

2. Submit the proposed haul route plan to Planning and Development Department and pay the appropriate plan-review fee (contact Planning and Development Department at 602-534-5933 for current plan review fee, the cost of which shall be considered incidental to the project), and after their approval;

3. Obtain the written haul permit from the Planning and Development Department.

NOTE: Obtaining the haul permit and the approval by Street Transportation does not release the Contractor from strict compliance with MAG Subsection 108.5, Limitation of Operations.

B. **STORM WATER POLLUTION PREVENTION PLAN AND AZPDES PERMIT**

This project is subject to Arizona Pollutant Discharge Elimination System (AZPDES) requirements under the Arizona General Permit for Construction Activities and Chapter 32C of the Phoenix City Code, Storm Water Quality Protection Ordinance. The Contractor shall be responsible for the day-to-day operational controls, providing necessary materials; for taking appropriate measures to ensure removal of the additional sediment generated in storm water runoff from the project (relative to pre-project sediment levels); for completing the following documents and shall comply with all requirements of the latest General Permit for construction activities:

- Storm Water Pollution Prevention Plan (S.W.P.P.P.) for the project, shall be specific for that project and include a certification-of-compliance form as well as Best Management Practices (BMPs) that will be utilized on the site.

- Notice of Intent (N.O.I.) to be covered by AZPDES Construction General Permit for Arizona, including certification of signature.

- Notice of Termination (N.O.T.) of coverage under AZPDES Construction General Permit (upon project completion).

Waivers for Small Construction Activities:
On projects one acre or larger, there shall be no scenarios under which the City will exempt a

construction operator from the requirements to obtain coverage under the ADEQ storm water permit. Projects of any size, including those under one acre, are not exempt from the City ordinance under any circumstances and shall comply with all City Storm Water requirements in a timely manner.

Projects Impacting Impaired Waters:
Projects that will have any construction taking place within ¼ mile of the Salt River between 23rd Avenue and the confluence of the Gila River will impact "Impaired Waters". The Contractor's N.O.I. and S.W.P.P.P. will be submitted to the City for approval. Upon approval, the City will attach its N.O.I. and submit the entire package to ADEQ. ADEQ shall have up to 32 business days to review the documents. ADEQ will inform the City and the Contractor if revisions are necessary. Within 32 **business days**, ADEQ will issue a numbered **Authorization to Discharge** form to the Contractor and to the City. **The Contractor shall have a copy of each of these forms posted at the jobsite prior to ground disturbance.** The ADEQ document, "Construction SWPPP Checklist" will be used as a guideline in determining the completeness of the S.W.P.P.P.

All subcontractors shall comply with all AZPDES requirements under the supervision of the General Contractor, and shall submit a completed, signed subcontractor certification form, thereby designating themselves as co-permittees. For the Contractor's benefit, a draft framework for the S.W.P.P.P. is enclosed in this Project Specification book (See SWPPP pages 1 to 14)The Contractor will be expected to review this framework S.W.P.P.P. and update/revise it as necessary for the initial submittal and as necessary throughout the construction of the project, in order to ensure compliance with the Arizona Department of Environmental Quality (ADEQ) permit requirements. Revisions to the S.W.P.P.P. requiring use of the contingency bid items, or any other additional items, shall be subject to approval by the City prior to implementation. **The N.O.I., S.W.P.P.P. and the periodic stormwater Compliance Evaluation Reports shall be kept at the project site at all times**, and the final S.W.P.P.P. and all Compliance Evaluation Reports shall be retained by the Contractor for three years following project completion and final acceptance.

The Contractor shall submit a copy of the ADEQ acceptance letter with assigned AZCON number to the Street Transportation Department, DCM Division, no later than the Preconstruction meeting, **and preferably at least 14 days prior to the Preconstruction meeting**, for review by the Engineer. The Contractor shall coordinate with the Engineer on the estimated construction start date to be shown on the N.O.I. The Contractor shall add the full contract time provided in the project contract to establish the estimated construction completion date on the N.O.I. The Contractor shall deliver two copies of the final approved SWPPP to the DCM Division (one for DCM file, and one for distribution to the Contractor to be placed at the jobsite. ADEQ will issue a numbered **Authorization to Discharge** form to the Contractor and to the City. **The Contractor shall have a copy of each of these forms posted at the jobsite prior to ground disturbance.**

Failure by the Contractor (or any applicable subcontractors) to submit the N.O.I. forms and certifications by the time of the Preconstruction meeting **(or preferably before),** may result in delay of an issuance of a Notice to Proceed to start construction. The Contractor will not be entitled to any additional compensation for costs resulting from such delay of the construction start date. **The Contractor shall keep and post a copy the NOI at the construction site along with the S.W.P.P.P.; City and Contractor Authorization to Discharge forms; and a copy of the Arizona Pollutant Discharge Elimination System General Permit for Construction Activities.**.

No construction activities shall begin until all applicable storm water pollution control devices (B.M.P.'s) are in place. Any additional work caused by the Contractor's (or subcontractor's) failure to properly implement the S.W.P.P.P. will not be compensated.

All S.W.P.P.P. reports required under this contract shall be available to the public in accordance with the requirements of Section 308 (b) of the Clean Water Act. The Contractor shall make plans available to the public upon request through ADEQ.

No conditions of the Arizona General Permit for Construction Activities or the S.W.P.P.P. shall release the Contractor from any responsibilities or requirements under other environmental statutes or regulations.

Upon completion and acceptance of the work performed by a subcontractor, either the Contractor or other subcontractors shall absolve such subcontractor of any involvement in, or responsibility for, any subsequent AZPDES violations on the project. Upon final project acceptance and de-mobilization, the Contractor shall obtain an N.O.T. from ADEQ.

Final stabilization shall comply with the ADEQ General Permit for Construction. If stabilization is in progress after the Contractor is released via the letter of Final Acceptance, the DCM Engineer shall continue submitting a Compliance Evaluation Report on the same frequency specified in the SWPPP until final stabilization is achieved. To achieve final stabilization, the project shall comply with the 2008 General Permit for construction activities and may include, but is not limited to, the following:

Hydroseeding
Specimen plantings
Ground cover plantings
Placement of geotextile material
Placement of granular ground cover
Placement of bank protection rock riprap or gabions

The necessary forms for the N.O.I., N.O.T., and the draft S.W.P.P.P. are contained in this Project Specification book. Blank N.O.I. and N.O.T. forms are also available through ADEQ. Also, a copy of ADEQ's Construction SWPPP Checklist is provided in the Specification Book to assist the Contractor in preparing the SWPPP. In addition, an Operator's Compliance Evaluation Report form (two pages) is included for the required periodic (7 day) and rain-event inspections during the contract.

The Contractor shall inspect the storm water pollution controls on site in compliance with the Arizona General Permit for Construction Activities. Copies of these inspections shall be included in the monthly progress payment request to DCM.

If significant material threatening the public health and safety are released from the construction site, the Contractor shall make a verbal report to the ADEQ hotline (602) 771-2330 within 24 hours. A written report is required to be submitted within five (5) work days of the incident.

D. DUST PERMIT

Any project that disturbs more than 1/10 acre of soil requires an earth-moving permit from Maricopa County. Information and forms can be found at:

www.maricopa.gov/aq/divisions/permit_engineering/applications/Default.aspx

To facilitate and encourage strict compliance with the Maricopa County Air Pollution Control Regulations pertaining to fugitive dust control, the Contractor shall submit the following documentation to the Engineer at the Pre-Construction meeting prior to conducting any earth moving or dust generating activities under the Contract.

a. Copy of a valid Maricopa County Earth Moving (Dust Control) Permit applicable to

the work or services under the Contract.

b. Copy of the Dust Control Plan applicable to the work or services under the Contract.

c. Documentation that all of the Contractor's on-site project managers have received the Comprehensive or Basic dust control training as required by Maricopa County Rule 310 based on project disturbed acres.

For construction sites where 5-acres or more are disturbed, the Contractor shall designate and identify to the City an individual who has completed the dust control training as required for the site Dust Control Coordinator. The Dust Control Coordinator shall be present on-site all times that earth moving or dust generating activities are occurring and until all ground surfaces at the site have been stabilized.

For construction sites less than 1-acre, the Contractor shall designate an individual who has completed Basic Training to be on site at all times that earth moving or dust generating activities are occurring.

The Contractor shall notify the Engineer within twenty-four (24) hours of any inspection, Notice of Violation, or other contact by the Maricopa County Air Quality Department with it or any of its subcontractors regarding the work or services under the Contract. A copy of any written communications, notices or citations issued to Contractor or any of its subcontractors regarding the work or services under the Contract shall likewise be transmitted to the Engineer within twenty-four (24) hours.

The Contractor shall prevent any dust nuisance due to construction operations in accordance with MAG Specifications, Section 104.1.3, Cleanup and Dust Control. The Contractor shall use a power pick-up broom as part of the dust control effort. No separate measurement or payment will be made for cleanup or dust control, or for providing a power pick-up broom on the job.

The Contractor agrees to indemnify and reimburse the City for any fine, penalty, fee or monetary sanction imposed on the City by Maricopa County arising out of, or caused by the performance of work or services under the Contract. The Contractor shall remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for payment from the City.

E. STREET CLOSURE PERMIT

The Contractor shall obtain a Street Closure permit for any construction that restricts City streets, sidewalks, or alleys in accordance with specifications set forth in Section 401.5 of the Special Provisions. For this City project, the initial cost of the street closure permit is waived. All other costs, fines and fees are the responsibility of the Contractor.

F. DEMINIMUS DISCHARGE PERMIT

As required, the Contractor shall be responsible for obtaining a DeMinimus Permit from the Arizona Department of Environmental Quality (ADEQ) for any discharge that will reach "waters of the U.S.", either directly or indirectly and complying with all requirements of that permit.

G. OTHER PERMITS

The Contractor may be required to obtain other permits from other agencies, such as the Arizona Department of Transportation (ADOT) or the Flood Control District of Maricopa

County (FCDMC) before beginning work or restricting traffic in their right-of-way. The Contractor will be required to obtain these permits and comply with their requirements.

14. Change the title of **MAG Subsection 107.4 ARCHAEOLOGICAL REPORTS to ARCHAEOLOGICAL MONITORING AND DISCOVERIES** and add the following:

If suspected archaeological materials are discovered during construction without an archaeologist present, the Contractor shall stop work immediately within a 10-meter zone of the discovery, secure the area, and immediately notify the City Archaeology Office (602-495-0901). The Contractor shall not recommence work in the area of discovery until directed in writing by the City Archaeology Office.

15. Add the following to **MAG Subsection 107.11, CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES**:

A. **UNDERGROUND FACILITIES**

The Contractor will make whatever investigation it deems necessary to verify the location of underground utility facilities. If such facilities are not in the location shown in the drawings, then (regardless of whether this is discovered prior to or during construction) the contractor's remedies, if any, pursuant to Art. 6.3, Chapter 2, Title 40, A.R.S. (A.R.S. 40-360.21 through 40-360.32, "Underground Facilities"), shall be the contractor's sole remedy for extra work, delays and disruption of the job, or any other claim based on the location of utility facilities. Locations of utility facilities shown on drawings furnished by the City are to be regarded as preliminary information only, subject to further investigation by the contractor. The City does not warrant the accuracy of these locations, and the contractor, by entering into this contract, expressly waives and disclaims any claim or action against the City under any theory for damages resulting from location of utility facilities.

The Contractor shall be responsible for obtaining all Blue Stake utility location information, and for performing all requirements as prescribed in A.R.S. 40-360.21 through .29, for all underground facilities, including those that have been installed on the current project, until the project is accepted by the City.

At least two (2) working days prior to commencing any excavation, the Contractor shall call the BLUE STAKE CENTER, between the hours of 7:00 a.m. and 4:30 p.m., Monday through Friday for information relative to the location of buried utilities. The number to be called is as follows:

Maricopa County (602) 263-1100

B. **UTILITY-RELATED CONSTRUCTION DELAY DAMAGES CLAIM PROCEDURES**

The following procedure is intended to provide a fair and impartial process for the settlement of construction delay claims associated with unknown or improperly located utility facilities.

The Contractor shall immediately notify, in writing, the Project Engineer of any potential utility-related delay claim.

The Contractor shall immediately notify the appropriate liaison of the affected utility verbally, followed by a written notification.

The Contractor shall coordinate an investigation of the situation with the affected utility and the City's Utility Coordinator. After resolution, the Contractor will provide written notification of the settlement of the claim to all affected parties.

If the affected utility makes a decision to handle negotiations for a claim, their personnel will be responsible for monitoring the project and all negotiations with the Contractor regarding the claim.

The Contractor shall determine to document requirements of the affected utility for their acceptance of responsibility for the claims. The Contractor shall provide four (4) copies of the required documentation to the utility involved and two (2) copies of this documentation to the Project Engineer. The Contractor shall obtain written confirmation from the utility company involved of their documentation requirements.

16. **108 COMMENCEMENT, PROSECUTION AND PROGRESS** Add the following to **MAG Subsection 108.2, SUBLETTING OF CONTRACT**:

(F) PROMPT PAYMENT

A. **Contractor Payment to Subcontractor or Supplier.**

Contractor shall pay its subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. The Contractor shall pay for the amount of work performed or materials supplied by each subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the Contractor shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. Contractor shall pay subcontractors or suppliers the reduced retention within fourteen (14) days of the payment of the reduction of the retention to the Contractor. No Contract between Contractor and its subcontractors and suppliers may materially alter the rights of any subcontractor or supplier to receive prompt payment and retention reduction as provided herein. If the Contractor fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Contractor agrees that the City may take such actions: (1) to hold the Contractor in default under this agreement; (2) withhold future payments including retention until proper payment has been made to subcontractors or suppliers in accordance with these provisions; (3) reject all future bids from the Contractor for a period not to exceed one year from substantial completion date of this project; or (4) terminate agreement.

B. **Alternative Dispute Resolution Between Contractor and Subcontractor or Supplier.**

If Contractor's payment to a subcontractor or supplier is in dispute, Contractor and subcontractor or supplier agree to submit the dispute to any one of the following dispute resolution processes within fourteen (14) calendar days from the date that any party involved gives written notice to the other party(ies): (1) binding arbitration; (2) a form of alternative dispute resolution (ADR) agreeable to all parties; or (3) a City of Phoenix facilitated mediation. When disputed claim is resolved through ADR or otherwise, the Contractor and subcontractor or supplier agree to implement the resolution within seven (7) calendar days from the resolution date.

C. **Inspection and Audit.**

Contractor, its subcontractors and suppliers shall comply with A.R.S. 35-214 and the City shall have all rights and remedies to inspect and audit the records and files of Contractor, subcontractor or supplier, as afforded the State of Arizona in accordance with the provisions of A.R.S. Section 35-214.

D. **Non-Waiver.**

Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or

modification of the requirements of this Section or of any of the terms or provisions thereof.

E. **Inclusion of provisions in Subcontracts.**

Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

F. **No Third Party Benefits or Rights.**

Nothing contained in this Agreement is intended to benefit or confer any rights on any person or entity not a party to this Agreement, and no such person or entity, including but not limited to other Contractors, subcontractors or suppliers, may assert any claim, cause of action, or remedy against the City hereunder.

17. Add the following to **MAG Subsection 108.4, CONTRACTOR'S CONSTRUCTION SCHEDULE**:

No later than one (1) week after the Pre-Construction meeting (or one week after the Notice to Proceed date is firmly established), the Contractor shall submit to the Engineer, two (2) copies of a detailed Critical Path Model (CPM) chart outlining the detailed progress of all major and critical elements of the project by weeks, from beginning of project to end. The chart shall begin at the established Notice to Proceed date and progress on a calendar basis, week by week, to the end of the project.

The Contractor shall submit updated CPM charts as required by the Engineer. This shall typically be on a monthly basis. The required submittals of updated CPM charts may be less frequent than monthly, if approved by the Engineer.

Neither the City nor the Engineer shall accept liability or responsibility for the reasonable or workable nature of the CPM schedules prepared and submitted by the Contractor—that responsibility shall remain with the Contractor.

18. Add the following to **MAG Subsection 108.5, LIMITATION OF OPERATIONS**:

A. **WORK HOURS**

Regular working hours shall be defined as one 8-1/2 hour shift per day, Monday through Friday, exclusive of City holidays.

Work in excess of regular working hours shall be defined as overtime. For overtime which becomes necessary, the Contractor shall make a written request to the Engineer at least eight (8) calendar days before the desired overtime. The request shall include the duration, dates, times, reason for overtime, and a statement of the consequences if overtime is not approved.

The Contractor shall not schedule any overtime work which requires inspection, survey, or material testing without written permission from the Engineer two (2) working days before the proposed overtime work. The Engineer reserves the right to deny the requested overtime. If an overtime request is denied, the Engineer may extend the contract time at no additional cost to the City, including extended overhead costs.

Unscheduled Overtime

Overtime that is not requested and approved in accordance with the above procedure shall be defined as unscheduled overtime. All costs (including appropriate overhead) shall be paid by the Contractor by deduction from the contract.

Emergency Overtime

An emergency is defined as work required for a situation that is not within the Contractor's control.

With the Engineer's approval, the Contractor will be permitted to work overtime without being responsible for paying the City's costs.

NIGHT WORK IS NOT ALLOWED.

19. Add the following to **MAG Subsection 108.10, FORFEITURE AND DEFAULT OF CONTRACT**:

City's Right to Perform and Terminate for Cause

If the City provides the Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the Contractor fails to comply in a time frame specified, the City may have work accomplished by other sources at the Contractor's expense.

If Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Sub-consultants and/or Subcontractors, (v) prosecute the Contract Services with promptness and diligence to ensure that the Contract Services are completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth below.

Upon the occurrence of an event set forth above, City may provide written notice to Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) Days of Contractor's receipt of such notice.

If Contractor fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to Contractor of its intent to terminate within an additional seven (7) Day period.

If Contractor, within such second seven (7) Day period, fails to cure, or reasonably commence to cure, such problem, then City may declare the Agreement terminated for default by providing written notice to Contractor of such declaration.

Upon declaring the Agreement terminated pursuant to the above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the Contractor will only be entitled to be paid for Work performed and accepted by the City prior to its default.

If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses,

damages, costs and expense, including attorneys' fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from Contractor's default.

If City improperly terminates the Agreement for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions below.

20. Add the following to **MAG Subsection 108.11, TERMINATION OF CONTRACT**:

TERMINATION FOR CONVENIENCE

The Owner for its own convenience has the right for any reason and at any time to terminate the contract and require the Contractor to cease work hereunder. Such termination shall be effective at the time and in the manner specified in the notification to the Contractor of the termination. Such termination shall be without prejudice to any claims which the Owner may have against the Contractor. In the event of a termination for convenience, the Contractor shall be paid only the direct value of its completed work and materials supplied as of the date of termination, and Contractor shall not be entitled to anticipated profit or anticipated overhead or any other claimed damages from the Owner, the Architect or the Engineer. In the event of a termination of the Contractor for cause is determined to have been without legal right, then the termination shall be deemed to have been a termination for convenience.

CANCELLATION OF CONTRACT FOR CONFLICT OF INTEREST

All parties hereto acknowledge that this agreement is subject to cancellation by the City of Phoenix pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

21. Add the following to **MAG SECTION 108, COMMENCEMENT, PROSECUTION AND PROGRESS:**

108.12 RECORDS RETENTION
Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

22. **109 MEASUREMENTS AND PAYMENTS** Add the following to **MAG Subsection 109.2, SCOPE OF PAYMENT**:

A. **PARTIAL PAYMENTS**

The contracting agency will make a partial payment to the Contractor on the basis of an approved estimate prepared by the Engineer or the Contractor for work completed and accepted through the preceding month. The notice to proceed date, which is designated for the specific project involved, will be used as the closing date of each partial pay period. Payment will be made no later than fourteen (14) days after the work is certified and approved. City shall review payment requests and make recommendation of approval or denial within seven (7) calendar days.

B. **PAYMENT RETENTION**

At the start of construction, ten percent of all pay requests shall be retained by the City to guarantee complete performance of the contract. When the work is fifty percent complete, this amount may be reduced to five percent providing that construction progress and quality of work is acceptable to the City. Any funds which are withheld from the contractor will be paid no later than sixty days after completion of the contract and settlement of all claims.

In lieu of retention, the contractor may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the State of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.

CDs assigned to the City must be maintained at the City's single servicing bank, currently Chase Bank, Arizona, in the form of time deposit receipt accounts. CDs shall be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow agreement. Escrow Agreement forms may be obtained from the Finance Department by calling (602) 262-4919.

Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the City of Phoenix and be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow agreement. Escrow Agreement forms may be obtained from the Finance Department by calling (602) 262-4919.

23. Add the following to **MAG Subsection 109.4.3, DUE TO EXTRA WORK**:

ALLOWANCE FOR EXTRA WORK

Contract allowance items are provided for the purpose of encumbering funds to cover the costs of possible change order work. The amount of the allowance item is determined by the Engineer and is not subject to individual bid pricing. All bidders shall incorporate the amount pre-entered in the bid proposal and shall reflect the same in the total amount bid for this project.

This allowance item provides an estimated funding to cover unforeseen changes that may be encountered and corresponding extra work needed to complete the contract per plan. Unforeseen extra work, if any, shall be as approved by the Engineer; for example, extension of unit bid prices, negotiated price or time and material, in accordance with MAG Specification Section 109.4 and 109.5.

It shall be understood that this allowance item is an estimate only and is based on change order history of similar projects. It shall not be utilized without an approved contract change order. It is further understood that authorized extra work, if any, may be less than the allowance item.

24. Add the following to **MAG Subsection 109.4 COMPENSATION FOR ALTERATION OF WORK**:

109.4.7 CHANGE ORDERS

Owner reserves the right to decrease adjustments made in any change order if, upon audit of Contractor's records, the audit discloses contractor provided false or inaccurate cost and pricing data in negotiating the change order. In enforcing this provision, the parties shall follow the procedure provided in the Federal Acquisition Regulation (FAR) clause 52.214-27, found in 48 CFR Part 52.

25. **Delete Table 109-1** in **MAG Subsection 109.9, DOLLAR VALUE OF MAJOR ITEM**, and substitute the following:

CONTRACT AMOUNT	MAJOR ITEM IS DEFINED AS ANY ITEM EQUAL TO OR GREATER THAN THE FOLLOWING
Up to $1 million	$15,000 or 3%, whichever is greater

CONTRACT AMOUNT	MAJOR ITEM IS DEFINED AS ANY ITEM EQUAL TO OR GREATER THAN THE FOLLOWING
$1 million to $3 million	3% of the original contract amount to a maximum of $75,000.00
$3 million to $5 million	2.5% of the original contract amount to a maximum of $90,000.00
Over $5 million	1.5% of the original contract amount to a maximum of $125,000.00

CONTINGENCY ITEMS

Contingency items which fall under the definition of a major item are subject to negotiation if decreased by more than twenty (20) percent.

Contingency items shall not increase more than twenty (20) percent without being subject to renegotiation, regardless of the percentage of that item relative to the total contract amount.

SPECIAL PROVISIONS

1. Add the following new Section, **232 STORM WATER POLLUTION PREVENTION – BEST MANAGEMENT PRACTICES,** as follows:

Implementation of "Best Management Practices" (B.M.P.'s) to reduce stormwater pollution shall be undertaken by the Contractor on a multi-tiered, most cost-effective approach. The Contractor shall utilize the lowest-cost acceptable B.M.P. available to address each type of potential stormwater pollution situation encountered on the project. Should this prove ineffective in resolving the stormwater pollution problem, additional, higher-cost B.M.P.'s may need to be employed, upon approval by the City. Typical multi-tiered B.M.P. approaches to construction operations may include:

A. ROADWAY SUBGRADE EXCAVATION:

i. Tier I - The excavated area will create, in effect, a temporary retention area. This may provide adequate control of storm runoff to prevent sediment from leaving the site. Pumping or other methods utilized to drain the excavation shall employ filter fabric or other filtering method to remove sediment before leaving the site or entering the storm drain system.

ii. Tier II - Catch basin inlet protection (utilizing filter fabric, gravel, etc.) may be necessary should Tier I controls prove inadequate. Care shall be exercised to ensure that Tier II B.M.P.'s do not result in blockage of drainage and resultant flooding of adjacent properties.

B. OPEN PIPELINE TRENCHES:

i. Tier I - The open trench itself will act as a temporary retention area. The Contractor shall provide a low-cost, readily-installed/removed temporary device on the open end of the pipe to prevent sediment-laden stormwater from entering the pipe. This may consist of a temporary "plug" incorporating filter fabric, a temporary weir, or other device capable of removing sediment before allowing stormwater to enter the pipe. Care must be taken to prevent damming of floodwaters in the excavation that could result in "floating" the pipe.

ii. Tier II - If Tier I protection does not prove satisfactory, the Contractor may need to install straw bales, sandbag berms, or temporary diversion dikes around the perimeter of the open excavation to prevent sediment-laden stormwater from entering the open excavation. Due to installation/removal time, such devices need only be installed during periods of likely precipitation and runoff. Earthen dikes are the preferred alternate, due to ease of installation and removal. Care must be taken to assure that runoff is not blocked to the extent that flooding of adjacent properties will result.

C. BACKFILLED PIPELINE TRENCHES:

i. Tier I - As with roadway subgrade excavations, pipeline trenches which have been backfilled but not yet paved will be several inches lower than adjacent pavement areas, and will therefore act as temporary retention areas.

ii. Tier II - If the "retention" provided by the backfilled area does not prevent sediment-laden runoff from leaving the excavated area, perimeter controls such as silt fence, straw bales, sandbag berms, or gravel filter berms may need to be installed around the downstream edge(s) of the backfilled area. As with open trenches, the selection of the appropriate measure, extent of its application, and time period during which it is needed will be

dependent upon cost, site conditions, ease of installation/removal, and likelihood of precipitation/runoff. Again, care must be taken to ensure that diversion of stormwater onto adjacent properties does not result from these installations.

Another stormwater control method, which the Contractor may need to consider, is limiting the amount of area disrupted and therefore subject to sediment-laden stormwater runoff at any one time. Should such project phasing prove necessary due to the failure of other B.M.P.'s, the Contractor shall revise his construction activities accordingly, at no additional cost to the City.

Standards for installation of the above B.M.P.'s are provided in the Flood Control District of Maricopa County's "Drainage Design Manual for Maricopa County, Arizona, Volume III, Erosion Control". Installation and operation of B.M.P.'s shall be in accordance with that manual.

There shall be no separate measurement or payment for preparing or developing Storm Water Pollution Prevention Plans, or for preparing NOI's or NOT's or obtaining an AZPDES Permit, all these costs being considered incidental to the cost of the project.

232.1 ALLOWANCE FOR STORM WATER POLLUTION PREVENTION PLAN BMP'S:

This project includes a lump sum "ALLOWANCE FOR STORMWATER POLLUTION PREVENTION BEST MANAGEMENT PRACTICE (BMP'S)". The amount of this allowance is determined by the Engineer, and is not subject to individual bid pricing. All bidders shall incorporate the amount pre-entered in the bid proposal and shall reflect the same in the total amount bid for this project.

Use of individual BMP items shall conform to the Contractor's approved Storm Water Pollution Prevention Plan.

Payment for various types of necessary BMP's shall be made from this allowance based on approved invoiced cost of the materials only, plus taxes, and a maximum 15 percent markup for overhead and profit. There will be no separate measurement or payment for the preparation or development of the Storm Water Pollution Prevention Plan; labor or equipment necessary to install, maintain or remove the BMP materials; moving existing BMP materials from one location to another on the same project; or constructing BMP swales or berms, all of these costs being considered incidental to the cost of the project.

2. Add the following new Section, **233 STORM WATER POLLUTION PREVENTION PLAN SUBMITTAL PROCESS**

233.1 DESCRIPTION

The Contractor shall use the Arizona Department of Environmental Quality (ADEQ) Smart NOI program for all submittals located at the web address:

https://az.gov/app/smartnoi

The location of this process may change and it is the responsibility of the Contractor to verify the correct web address. All fees are the responsibility of the Contractor. The Contractor shall apply for a "Stormwater Construction General Permit" with the project type "MUNICIPAL/PUBLIC".

Before any construction on site begins, the Contractor shall submit the Notice of Intent (NOI) and the SWPPP

through the Smart NOI program. The Contractor shall not commence any construction activities until the ADEQ sends a written Notice of Intent assigning an AZCON number.

As required by ADEQ, the Contractor shall submit a Notice of Termination (NOT) through the Smart NOI program. The Contractor shall receive final payment only after receiving a written Notice of Termination Acknowledgement from ADEQ.

233.2 SAMPLE SWPPP STRUCTURE

A sample outline of the City requirement for a SWPPP submittal is located on pages SWPPP - 1 to 14. It shall be the Contractor's responsibility to meet all of the ADEQ requirements for a SWPPP and retain a qualified consultant to complete the SWPPP if necessary at no additional cost to the City.

3. Add the following to **MAG Subsections 336.4 MEASUREMENT and 336.5 PAYMENT**:

Permanent Pavement Replacement (Asphalt Concrete) Measurement and Payment

Measurement and payment for permanent pavement replacement will be by the square yard.

The pavement replacement section(s) shall be 4 inches Type C-3/4 (one lift) on 100% compacted native subgrade. Payment will be made under bid item M3360240, ASPHALT CONCRETE FOR PERMANENT PAVEMENT REPLACEMENT, Type C ¾, 4-INCHES THICK.

4. Add the following to **MAG Subsections 336.4 MEASUREMENT and 336.5 PAYMENT**:

5. **340 CONCRETE CURB, GUTTER, SIDEWALK RAMPS, DRIVEWAY AND ALLEY ENTRANCE**

Add the following to **MAG Subsection 340.2.1 Detectable Warnings**:

The detectable warning material shall be TekWay Dome-Tiles, as manufactured by StrongGo, LLC; SureDome detectable warnings manufactured by Advanced Surface Systems; or CASTinTACT detectable warnings manufactured by MASCO; or approved equal. The color of the tiles to be used shall be Terracotta.

6. Add the following to **MAG Subsection 340.3.1 Detectable Warnings**:

TekWay Dome-Tiles, SureDome, CASTinTACT detectable warnings (or approved equal) shall be installed per manufacturer's recommended specifications. The layout of tiles shall be determined by the Contractor, and if necessary, pre-cut as needed prior to beginning the installation process. Tiles shall not be cut to less than half their size. Tiles shall be cut with a tile wet saw or a circular saw with a diamond blade or as recommended by the manufacturer.

7. Add the following to **MAG Subsection 340. 5 MEASUREMENT and 340.6 PAYMENT**:

A. Sidewalk Ramps Measurement and Payment

Sidewalk ramps shall be constructed in accordance with Phoenix Standard Details or special details called out on the plans.

Payment will be made under the bid items for "SIDEWALK" and "CURB AND GUTTER" and shall include all cost for forming and finishing, including the furnishing and installing of the detectable warning tiles. The cost of the special curb at the back of sidewalk ramps shall also be measured and paid for as "SIDEWALK". There will be no separate measurement or payment for the detectable warning tiles or the additional forming or finishing for placing the detectable warning tiles, the entire cost being considered included in the bid item for "SIDEWALK".

The uncolored sidewalk in historical areas shall have a broom finish in a pattern perpendicular to the curb. Construction shall conform to COP STD DET P-1230. This sidewalk shall be paid for by the square foot under bid item M3400400, Concrete Sidewalk, Std. Detail P-1230.

The specialty sidewalk with integral terracotta coloring shall have a medium salt finish. The color of the concrete is integral to the mix. Color shall be as called out on the architectural plans (or approved equal). Construction shall conform to COP STD DET P-1230. This sidewalk shall be paid for by the square foot under bit item M3403510, Color Seeded Concrete.

Vertical curb in historic areas vary in height from 4 inches in height to 12 inches. Replacement of this curb shall match the existing curb. Curb construction shall connect both curbs in a smooth sloping manner, if necessary. There shall be no jagged edges when replacing curb. All vertical curb shall be paid per linear foot under bid item M3402213. Curb shall be constructed to MAG Standard Detail 220, Type A modified in the field to height dimensions as necessary. The contractor shall verify exact concrete requirements before bidding to determine the volume of concrete required. No additional payment for materials or labor will be made for varying heights of curb.

Concrete ramps in the historic areas shall be 9 inches thick and constructed per plan detail. Ramps shall be broom finished to match the uncolored historic sidewalk. There will be no separate payment for the monolithic curb. There will be no separate measurement or payment for the detectable warning tiles or the additional forming or finishing for placing the detectable warning tiles, the entire cost being considered included in the bid item Concrete ramps shall be measured by the square foot and paid under bid item M3400422, Concrete Sidewalk Ramp ((SD1-SD14) (9" Thick).

The concrete ramp located at the southwest corner of Van Buren and 11th Street shall be constructed per COP Detail P-1233 as shown on the plans. This ramp shall be measured by the square foot and also paid under bid item M3400422, Concrete Sidewalk Ramp ((SD1-SD14) (9" Thick).

Return type concrete driveways shall be constructed per plan detail, measured by the square foot, and paid per bid item M3400551, Concrete Driveway, Return Type.

B. Driveway and Sidewalk Slab Connections Measurement and Payment

This work shall consist of constructing concrete driveway and sidewalk slab connections to match existing at locations shown on the plans or requested by the Engineer. The slab thickness shall conform to the applicable driveway or sidewalk detail.

Measurement and payment for this work shall be made per square foot complete and in place for the appropriate pay item "CONCRETE DRIVEWAY ENTRANCE" or "CONCRETE SIDEWALK".

C. Mountable Curb and Gutter Measurement and Payment

Mountable curb and gutter shall be constructed in accordance with MAG Detail 220-2, Type E, where shown on the plans.

Measurement shall be made per linear foot complete in place, and payment will be made under the bid item for "COMBINED CONCRETE CURB AND GUTTER, STD. DETAIL 220, TYPE 'A', H=6".

8. 345 ADJUSTING FRAMES, COVERS, VALVE BOXES, AND WATER METER BOXES

Delete MAG Subsection 345.1 DESCRIPTION in its entirety, and substitute the following:

Adjustment of manhole frames, covers, clean outs, valve boxes, survey monument boxes (and water meter boxes if located in the pavement) to finish grade shall be done AFTER placement of the final surface course pavement.

Any missing manhole frames or covers and water valve or survey monument box hardware (such as lids, for example) shall be reported in writing to the Engineer during the initial lowering process to allow arrangements to be made to obtain replacement hardware. Missing hardware that is properly reported to the Engineer will be supplied to the Contractor by the City of Phoenix or the appropriate private utility company.

Replacement of any missing hardware that was not reported to the Engineer initially as specified, that comes up missing later when these facilities are brought back up to finish grade, shall be the full responsibility of the Contractor, at no additional cost to the City.

In addition, all manhole frames and covers, water valve and survey monument boxes or other related hardware removed by the Contractor during the lowering process shall be maintained in a secure area, and the Contractor shall bear full responsibility for this hardware material. Any hardware lost by the Contractor shall be replaced in-kind, at no additional cost to the City.

All areas of existing pavement removed for adjustments that will be subjected to traffic prior to placement of final concrete collar rings shall be temporarily filled with hot-mix Type D-1/2 asphalt and roller-compacted flush with the adjacent pavement. There shall be no separate measurement or payment for this temporary hot-mix asphalt or placement or subsequent removal, the cost being considered incidental to the cost of the adjustment.

After removal of asphalt pavement in the area of adjustment, and prior to placement of the final concrete collar ring around the frame or valve box (as shown on City of Phoenix Detail P-1391 and MAG Detail 422), the asphalt pavement in proximity of the adjustment shall be rolled with a self propelled, steel wheel roller.

The concrete collar ring around the frame or valve box shall be circular, and shall be a minimum of eight (8) inches thick, placed flush with the adjacent new pavement surface. At a minimum, concrete shall be MAG Class 'AA' on all paved streets. All concrete shall be obtained from plants approved by the Engineer.

A single No. 4 rebar hoop shall be placed in each adjustment collar. The hoop diameter shall be such that its placement is centered between the edge of the manhole frame or valve box, and the outside edge of the concrete collar. The depth of the hoop shall be such that it is centered in the thickness of the collar. Each concrete ring shall be scored radially at quarter-circle points. Score lines shall be 1/4-inch wide by 1/2-inch deep. The concrete collar surface shall be rough broom-finished. All pavement removed for adjustments shall be replaced with concrete.

Traffic shall not be allowed on the collars until the concrete has reached a minimum compressive strength of 2500 psi on residential streets, and 3000 psi on collector and major streets. On major streets, the Contractor shall use "high-early" cement in the concrete mix, approved by the Engineer, to minimize delay in re-opening the street to traffic.

Prior to commencing work on the adjustments, the Contractor shall submit a written adjustment plan and schedule to the Engineer for approval.

Sewer manhole frames and covers shall be matched, kept together, and replaced to their original locations. The Contractor shall remove existing asphalt, chip seal, or other materials from all sewer manhole covers and water valve box lids to be adjusted on this project. The Contractor's method for removal shall be approved by the Engineer prior to actual work. Cover cleaning shall be completed prior to adjustment of frames. Also, all water valve risers shall be thoroughly cleaned to fully expose the valve operating nut.

QUARTER SECTION MAPS FOR WATER AND SEWER LINES

The Contractor may obtain up to three sets of waterline and sewerline quarter section maps for the streets included in this project after the contract is awarded and issued. To order the maps, the Contractor shall bring an official contract specification book and a list of desired quarter section maps to the Technical Support Services counter on the 8th Floor of City Hall, 200 W. Washington Street. Up to three sets of maps will be provided at no cost to the Contractor. If more than three sets are requested, the Contractor shall purchase the additional sets.

WATER VALVE AS-BUILTS

Upon completion of water valve box adjustments, the Contractor shall provide one complete accurate and clearly legible set of as-built waterline Quarter Section maps to the Engineer. The Contractor shall mark and color code all water valves on the maps as follows:

Blue- All valves shown on the Q.S. map found and adjusted.
Yellow- All valves shown on the Q.S. map but not found in the field.
Red- Any valve not shown on the Q.S. maps but discovered and adjusted. (Draw valve symbol on map at appropriate location and provide offset and location dimensions for valves in this category.)

9. Delete **MAG Subsections 345.5 MEASUREMENT and 345.6 PAYMENT** and substitute the following:

Measurement for adjustments shall be per each respective item. Payment for the appropriate item will be made at the unit price bid for 'ADJUST EXISTING MANHOLE FRAME AND COVER, STANDARD DETAIL 422'; 'ADJUST EXISTING TYPE 'A' WATER VALVE, STANDARD DETAIL P-1391 AND P-1391-1'; 'ADJUST EXISTING SEWER CLEAN-OUT FRAME & COVER, STANDARD DETAIL P-1270'; 'ADJUST SURVEY MONUMENT HANDHOLE FRAME AND COVER, STD DET P-1270; or ADJUST EXISTING WATER METER BOX & COVER. Payment will include all labor, materials, and equipment necessary to satisfactorily clean and make complete adjustments.

There will be no separate measurement or payment for adjusting NEW manhole frame & covers, valve boxes, sewer clean-out frame & covers or water meter boxes constructed with the project. Payment for adjusting these new facilities is considered included in the price bid for the appropriate new item.

10. Add the following new **Section 346 ADJUSTING NON-CITY UTILITIES** as follows:

346 ADJUSTING NON-CITY UTILITIES

The utility companies may utilize the Contractor to adjust their frames, covers, and valve boxes for this project.

The Contractor shall coordinate with the Engineer and the representatives of the various utilities regarding the adjustment and the inspection requirements of their facilities. The Contractor shall be responsible for obtaining and adhering to the specifications and any other special requirements from the utility companies.

Payment for this work will be made at the unit price bid per each, under the proposal item "ADJUSTING FRAMES, COVERS, VALVE BOXES ON EXISTING NON-CITY UTILITIES, CONTINGENT ITEM" and shall be compensation in full, including any utility inspector costs associated with these adjustments, regardless of the type of manhole or valve. The individual utility companies have the right to accept or reject the Contractor's bid price for their portion of adjustments. If the utility company rejects the Contractor's price, the utility company will adjust their own facilities and the item quantity will be adjusted accordingly.

11. **350 REMOVAL OF EXISTING IMPROVEMENTS**

Add the following to **MAG and COP Supplement to MAG, Section 350**:

a. Miscellaneous Removal and Other Work

This item includes furnishing all labor, material, tools and equipment to complete the removal and disposal of the items specified on the plans, listed in MAG Section 350 and City of Phoenix Supplement thereto and other work of a minor nature which may develop during course of construction, including any encroaching items not removed by property owners.

Payment will be made at the lump sum price quoted in the bid proposal for bid item "MISCELLANEOUS REMOVAL AND OTHER WORK".

b. Asphalt Removal Outside Roadway Prism

Roadway prism shall be defined as lip of gutter to lip of gutter of roadway. Asphalt removal in areas covered by new sidewalk, curbs, driveways, and other new improvements such as these which normally include subgrade preparation, is considered part of the subgrade preparation for those items. There will be no separate measurement or payment for asphalt removal associated with these items. Any additional asphalt removal outside the roadway prism, and not included with subgrade preparation for other items, will be paid for at the lump sum price bid under the item, "MISCELLANEOUS REMOVAL AND OTHER WORK", and shall be full compensation for all work including proper disposal of the material.

c. Materials Containing Asbestos

Materials containing asbestos and/or lead in any form are unacceptable to incorporate into the project unless formally accepted in writing by the City of Phoenix. This written approval shall take place prior to

the material being incorporated into the project and/or brought to the site.

Repair kits or touch-up materials, materials that include asbestos and/or lead introduced into the product at the factory or applied at the assembly plant are all unacceptable. Any an all field-applied products that are comprised of asbestos and/or lead containing materials are also unacceptable.

If asbestos and/or lead are installed without written approval by City of Phoenix, the Contractor will remove these materials at his expense and dispose of these materials in accordance with all state and federal laws and pay for the supervision and reporting costs in addition to the cost to properly remove them.

d. Disposal of Surplus Material Which Does Not Contain Asbestos

All surplus and/or waste material may be disposed of at the Contractor's discretion subject to the following conditions:

i. If the City landfills are used, the Contractor shall pay the normal dumping fee.

ii. If private property within the City limits is used, the Contractor shall obtain written permission from the property Owner and deliver a copy of this agreement to the Engineer prior to any hauling or dumping. All disposal and grading shall be in strict conformance with the City of Phoenix Grading and Drainage Ordinance. The Contractor shall obtain and pay for the necessary permit(s).

iii. If the surplus material is disposed of outside the City limits, the Contractor shall comply with all applicable laws/ordinances of the agency concerned and be responsible for all cost incurred.

No measurement or direct payment will be made for the hauling and disposal of surplus and/or waste material. The cost shall be considered incidental to the cost of the project.

Add the following new **Section 363 STREET LIGHTING INSTALLATION** as follows:

363 STREET LIGHTING INSTALLATION

This item consists of new pedestrian lighting. The contractor shall be responsible for installing the new pedestrian lighting with underground electrical feed. The existing street lights shall continue to use the overhead electrical feed and will be replaced by APS crews. The Contractor will work in an APS served area. The Contractor shall complete all work as detailed in the electrical plans including: furnishing all materials and appurtenances and installation of all materials and appurtenances complete and in place. No separate payment will be made for trenching required to underground the pedestrian lighting. Measurement for the street lighting installation shall be per job and paid per bid item M3515048, Street Lighting Per Plan, Complete and in Place.

12. Add the following new **Section 362 UNDERGROUND POWER INSTALLATION** as follows:

362 UNDERGROUND POWER INSTALLATION

362.1 TRENCHING FOR UNDERGROUND STREET LIGHT CIRCUITS

Materials and construction shall be in accordance with the Arizona Public Service Company (APS) "Underground Distribution Construction Standards", MAG, City of Phoenix Standard Specifications and these Special Provisions. The work shall consist of the following items:

1. Providing all trenching, bedding, backfilling and compacting for street light circuits.
2. Installing junction boxes and ground rods provided by Arizona Public Service Company (APS).
3. Furnishing and installing 2 1/2-inch conduit, sweeps and conduit caps, including mandrelling the system.
4. Installing APS furnished flat strap in all conduit runs.
5. Furnishing and installing Sono Tubes, Sono Tube lids, 1-inch flex conduit, locator marker with self-locking ties, electronic marker ball attached to sono tube lid, and other related items per APS Detail 1911. Sono Tubes shall be obtained from Magma. The Contractor shall contact Mr. Bob Clausen at Magma (480-987-9704) and request Part Number 64672 per APS Material Spec MS-1911.
6. Installing bases for street lights where required, as shown on plans.

The Contractor shall be responsible for obtaining the APS Standards from the APS Standards Department (602-371-6383, Barbara McMinn). A copy of these standards is available for perusal at the City of Phoenix Street Transportation Department Utility Coordination Office.
Arizona Public Service will perform all survey staking necessary for the Contractor to perform the work required to install the street light circuits. To coordinate survey needs, the Contractor shall notify Mr. Mike Braden of APS (602-371-6956) at least five (5) working days prior to starting work.

All work will be subject to inspection by Arizona Public Service and City of Phoenix forces. The Contractor shall call APS Contracts Section at 602-371-6512 at least five (5) working days prior to starting trench work to meet with the APS Inspector and review inspection requirements.

The APS Liaison Agent is Mr. Henry Miranda {602-371-7537 or 602-571-1743 (mobile)}.

Trenching shall be completed prior to sidewalk construction and ahead of pole installation. The Contractor shall backfill and compact the trench in accordance with Section 601. The trench shall be per APS plans.

Measurement shall be per linear foot, and payment shall be at the unit price bid per linear foot for "TRENCHING FOR STREET LIGHT CIRCUIT" and shall be compensation, in full, for all labor, equipment and materials necessary for the satisfactory completion of trenching and bedding; furnishing and installing conduit and sweeps; installing APS-provided junction boxes and ground rods; installing APS-provided flat strap in all conduit runs; furnishing and installing sono tubes and related items; and backfilling and compacting in accordance with the Standard Specifications and these Special Provisions.

The Contractor shall notify the APS inspector assigned to this project at least two weeks prior to needing the APS crew for setting streetlight poles and pulling conductor wire and energizing the system. The Contractor shall anticipate that APS crews will typically take approximately four hours for each complete streetlight installation.

13. 401 TRAFFIC CONTROL

Add the following to **COP Supplement to MAG, Subsection 401.4 TRAFFIC CONTROL MEASURES**:

SEQUENCE OF CONSTRUCTION

The sequence of construction shall conform to the requirements of the Special Traffic Regulations.

The project shall follow a phasing plan approved by the Engineer. All lanes shall be maintained on a paved surface at all times during construction. This may be accomplished by using existing, new, or temporary asphalt pavement. Trenches shall be completely backfilled and either paved with temporary asphalt pavement, or covered with metal plating as necessary to comply with this requirement and the "Special Traffic Regulations".

Night work will **not** be allowed on this project.

The right to direct the sequence of construction is a function vested solely with the Engineer. Prior to commencement of the work, the Contractor shall prepare and submit to the Engineer, a written phasing plan and work schedule for the project. This plan and work schedule shall be submitted to the Engineer at the Preconstruction Conference for review.

When approved, the phasing plan and work schedule shall not be changed without the written consent of the Engineer. Orderly procedure of all work to be performed under this contract shall be the full responsibility of the Contractor. The work schedule shall include the hours per day and the days per week that the Contractor plans to work on the project site.

14. Add the following to **COP Supplement to MAG Subsection 401.5 GENERAL TRAFFIC REGULATION**:

TRAFFIC REGULATIONS

a. The following shall be considered major streets:

11th Street
Van Buren Street

b. All traffic and/or traffic control devices on this project shall be provided, maintained and/or controlled as specified in the City of Phoenix Traffic Barricade Manual, 2007 edition and addendums thereof.

c. Permission to restrict City streets, sidewalks and alleys (street closure permits) shall be requested as specified in Chapter 3 of the City of Phoenix Traffic Barricade Manual, 2007 edition and addendums thereof.

d. Unless otherwise provided for in the following "Special Traffic Regulations", all traffic on this project shall be regulated as specified in Chapter 4 of the City of Phoenix Traffic Barricade Manual, 2007 edition and addendums thereof.

e. No deviation from the "Special Traffic Regulations" will be allowed or implemented unless submitted to the Engineer for review and approval at least 14 days prior to proposed work.

f. Only City of Phoenix certified contractors can set, move or remove temporary traffic control devices (signs, barricades, etc.). This annual certification can be scheduled by calling 602-262-6235.

g. Civil sanctions for temporary traffic control violations apply as follows:

Civil Sanction Per Day	Violation Description

$1,500	Creating an eminent risk of death or injury to the public within the public right-of-way
$1,000	Restricting the right-of-way without proper certification or a right-of-way temporary use permit
$1,000	Restricting traffic during peak traffic hours as described in the Traffic Barricade Manual without authorization
$1,000	Failing to correct or cure a violation, as listed in this table, within the time period stated on the warning notice
$1,000	Restricting traffic at signalized intersections without any work occurring
$500	Closing a sidewalk improperly or closing a sidewalk without proper certification or closing a sidewalk without a right-of-way temporary use permit
$500	Violating the restriction limits, times and locations, of the right-of-way temporary use permit
$500	Missing or improper use of advance warning signs.
$500	Missing or improper use of barricades and channelizing devices.
$250	Leaving advanced warning signs facing traffic after restriction has been removed – per one traffic direction
$250	Leaving traffic control devices in the right-of-way twenty-four hours after right-of-way temporary use permit expires, unless a request for a permit extension is received by the City prior to the expiration of such permit.
$250	Use of "unacceptable" quality traffic control devices as described in the Traffic Barricade Manual.
$250	Rendering a bus stop inaccessible without relocating it or making other accommodations.

h. Parking Meter Fees: To take a parking meter out of service requires a $35 application fee and $10 per meter per day.

i. The City has the authority to remove and store temporary traffic control devices in emergency situations or as a last resort if the barricade owner will not pick them up. The City will assess removal and storage fees accordingly.

15. Add the following to **COP Supplement to MAG Subsection 401.5 GENERAL TRAFFIC REGULATION**:

SPECIAL TRAFFIC REGULATIONS

11th Street: Washinton Street to Moreland Street: 11th Street can be reduced, when construction requires, during the times indicated below:

All lanes shall remain open from 6:00 a.m. to 8:30 a.m., and 4:00 p.m. to 7:00 p.m. weekdays, and from 9:30 p.m. Friday to 9:30 p.m. Satruday.

Van Buren Street: All lanes shall remain open from 6:00 a.m. to 8:30 a.m., and 4:00 p.m. to 7:00 p.m. weekdays, and from 9:30 p.m. Friday to 9:30 p.m. Satruday.

Van Buren Street shall remain open at all times during construction.

Police Officer Requirements

The Contractor shall provide one off-duty police officer, as defined in the City of Phoenix Traffic Barricade Manual, 2007 edition, at signalized intersections affected from 6:00 a.m. to 7:00 p.m. weekdays, and during working hours nights and weekends when traffic is restricted (as described in the City of Phoenix Traffic Barricade Manual, 2007 edition) .

When construction activities do not restrict traffic through the intersections, police officer hours may be reduced or suspended at the direction of the Engineer.

Signalized Intersection Requirements

The Contractor shall notify the Engineer and the City Traffic Signal Shop (262-6021) at least 72 hours prior to the start of any construction in the vicinity of a signalized intersection where traffic signals may be affected.

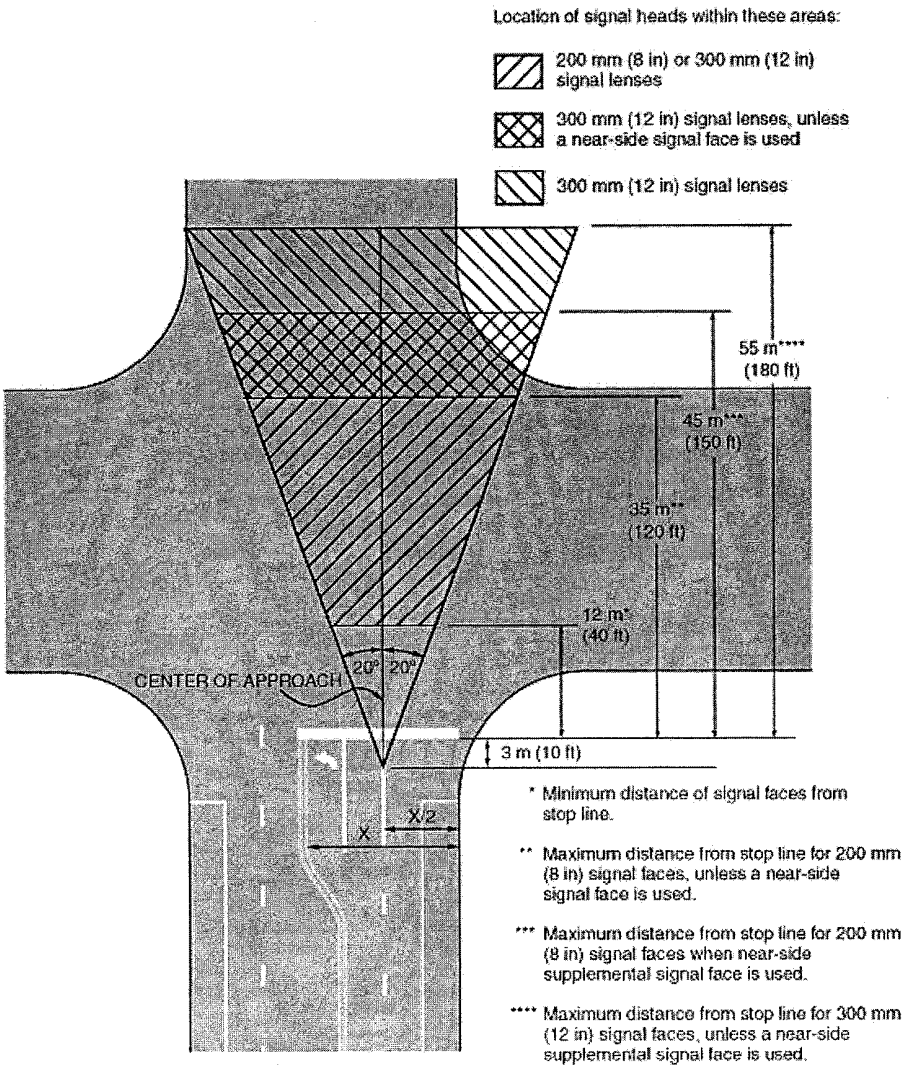
The Contractor shall provide the Engineer and the Traffic Signal Shop a written schedule indicating days, times and specific locations where traffic signals will be interrupted or modified. **When work has been completed, the Contractor shall immediately notify the Traffic Signal Shop.**

The Contractor shall maintain a 40-degree "cone of vision" at all signalized intersections for full view of intended traffic and signal indication. Motorists driving through signalized intersections in a construction zone must always be able to see at least two (2) traffic signal heads within an angle no greater than 20-degrees either side of the straight-ahead position (40-degree cone of vision). If the traffic control setup cannot provide the required 20-degree cone of vision, the Contractor shall contact the City Traffic Signal Engineer at (602) 262-4693 for instructions.

Traffic Signal Head Visibility Requirements

The contractor shall maintain a "40-degree Cone-of-Vision" at all intersections, for full view of the intended traffic. If during construction, traffic will be positioned in such a manner that the driver cannot see a minimum of two (2) traffic signal head indications within 20-degrees either side of straight ahead (40-degree Cone-of-Vision), immediately contact the Signal Engineer at 602-262-4693 prior to the start of any work.

Figure 4D-2. Horizontal Location of Signal Faces



Local Access Requirements

The Contractor shall maintain local access to all side streets, access roads driveways, alleys, and parking lots at all times and shall notify residents 72 hours in advance of any restrictions which will affect their access. The Contractor shall restore the access as soon as possible. If the primary access cannot be restored in a timely manner, the Contractor shall provide an alternative which shall be pre-determined with the residents prior to imposing any restrictions. Any local street restrictions imposed shall be such that local area traffic circulation is maintained.

Business Access Requirements

Access shall be maintained to adjacent businesses at all times during their hours of operation. Access may be maintained by such measures as constructing driveways in half sections, or by providing bridging over new

concrete. Properties with multiple driveway access shall not have more than one driveway access restricted at any given time. While the one driveway is restricted, access to the other adjacent driveways shall be maintained and unrestricted. Each individual driveway access restriction shall be no more than fourteen (14) calendar days. Any business restrictions shall be coordinated with the affected business in writing at least fourteen (14) days prior to imposing restrictions.

Pedestrian Access Requirements

The Contractor shall ensure that all sidewalks on this project remain in compliance with the Americans with Disabilities Act (ADA) Standards. All pedestrian walkway areas, paved or unpaved, shall be maintained open and safely usable at all times. Such measures as backfilling or ramping to existing sidewalks, or providing alternate sidewalk areas adjacent to existing sidewalks may be used. In high pedestrian use areas, the Engineer may request temporary hard-surface walkways such as plywood sheets to be installed, and/or covered pedestrian walkways at no additional cost to the City.

School Access Requirements

The Contractor shall provide clean and safe school zones, crosswalks, and walkways for students attending nearby schools during all hours of school use.

This may require backfilling trenches, temporary pavement, shoring, plating, or pedestrian bridges with handrails across open trenches.

In addition to school zones and crosswalks, the Contractor shall maintain accessibility to all school bus routes during all hours of school use. The Contractor shall notify the school principal(s) and the school Transportation Director at least fourteen (14) days prior to any restrictions, and shall restore access as soon as possible.

Church Access Requirements

The Contractor shall maintain a high level of access to churches during all hours of church use. The Contractor shall coordinate any access restrictions with the clergy at least fourteen (14) days prior to any restrictions, and shall restore access as soon as possible.

Fire Station and Police Station Access Requirements

The Contractor shall maintain paved emergency vehicle access to and from all fire stations and police stations at all times. The Contractor shall coordinate with the Fire Station and/or Police Station Commander at least fourteen (14) calendar days prior to any restrictions, and again at least 72 hours prior to any restrictions, and shall restore full access as soon as possible.

Coordination With Other Agency Projects

The Contractor shall coordinate and schedule work to minimize disruption or conflicts with the following city project:

- Garfield ABB-388 project
  City of Phoenix Water Services Department; Water main replacement along Van Buren Street.
  Contact: Mario Brown, Civil Engineer III, Water Services Department, Phone - (602) 262-7947

Any work that may affect this project shall be coordinated with the Water Department contact at least fourteen

(14) days in advance.

Sanitation Pick-up

The Contractor shall provide sanitation pick-up for affected residents by relocating trash containers, or by providing alternative measures acceptable to the Public Works Department, Sanitation Division (602) 256-3310

Bus Stops

The Contractor shall maintain all existing bus stop locations on this project in a safe manner, or provide alternate bus stop locations and related directional signage as required by the Engineer. Not fulfilling this requirement can lead to civil sanctions.

Flagging of Traffic

No flagging of traffic will be permitted during the peak traffic hours of 6:00 a.m. to 8:30 a.m. and 4:00 p.m. to 7:00 p.m. weekdays. If construction requires, intermittent flagging will be allowed from 8:30 a.m. to 4:00 p.m. if approved by the Engineer, to facilitate access for heavy construction equipment.

Traffic Control Plan

The Contractor shall submit a traffic control plan for approval, showing placement of all traffic control devices, including all conflicting signs to be covered/removed or relocated, or other features that may conflict with the placement of temporary signage. This plan shall be professionally drawn on a 24" x 36" reproducible medium, and shall be submitted to the Engineer at the Pre-Construction meeting or before. The Contractor shall allow the Engineer fourteen (14) calendar days for review and approval of an acceptable plan.

Temporary Traffic Control Zone and Safety

At the Pre-Construction conference, the Contractor shall designate an employee, other than the Project Superintendent, who is knowledgeable in the principles and methods of proper traffic control and safety. This employee shall be available on the project site during all periods of construction to coordinate and maintain safe, acceptable and effective temporary barricading whenever construction affects traffic. This person shall be authorized to receive and fulfill instructions from the Engineer and shall supervise and direct traffic control. Instructions and information given by the Engineer to this person shall be considered as having been given to the Contractor.

Failure to maintain temporary traffic control devices in accordance with the City of Phoenix Traffic Barricade Manual, 2007 edition, the approved Traffic Control Plan, and directives by the Engineer shall result in suspension of work and/or civil sanctions until deficiencies are corrected to the satisfaction of the Engineer.

Safety Fencing Requirement for Trenches and Excavations

The Contractor shall provide safety construction fencing around all open trenches and excavations during all non-working hours.

The Contractor shall provide for the safety and welfare of the general public by adequately fencing all excavations and trenches that are permitted by the Engineer to remain open when construction is not in progress.

Fencing shall be securely anchored to approved steel posts located six (6) feet on centers, having a minimum height of six (6) feet, and shall consist of wire mesh fabric of sufficient weight and rigidity to adequately span a maximum supporting post separation of six (6) feet.

The fencing, when installed about the periphery of excavations and trenches, shall form an effective barrier against intrusion by the general public into areas of construction. Fencing shall not create sight distance restrictions or visual obstructions. At all times when construction is not in progress, the Contractor shall be responsible for maintaining the fencing in good repair, and upon notification by the Engineer, shall take immediate action to rectify any deficiency. Prior to the start of any excavating or trenching required for the execution of the proposed work, the Contractor shall submit to the Engineer for approval, detailed plans showing types of materials and methods of fabrication for the protective fencing.

There will be no separate measurement or payment for furnishing, installing, or maintaining protective fencing. The cost shall be considered incidental to the cost of the pipe and/or structures.

Final Signing and Striping of Roadway

The Contractor, through the City project inspector, shall notify the Street Transportation Department, Traffic Operations Division, (602) 262-4684, at least thirty (30) days prior to desired completion of final roadway signing and lane striping. This will allow adequate time for City crews to schedule and complete the task on-time.

16. Add the following to **COP Supplement to MAG, Subsection 401.10 PAYMENT**:

a. **ALLOWANCE FOR UNIFORMED, OFF-DUTY LAW ENFORCEMENT OFFICER**

This project includes a lump sum "ALLOWANCE FOR UNIFORMED, OFF-DUTY LAW ENFORCEMENT OFFICER. The amount of this allowance is determined by the Engineer, and is not subject to individual bid pricing. All bidders shall incorporate the amount pre-entered in the bid proposal and shall reflect the same in the total amount bid for this project.

Payment for uniformed, off-duty law enforcement officers shall be made from this allowance based on approved invoiced cost plus taxes, and a maximum 10 percent markup for overhead and profit.

b. **TRAFFIC CONTROL**

Payment for traffic control will be on a lump sum basis for Traffic Control Devices.

17. Add the following new **Section 402 ADDITIONAL CONSTRUCTION REQUIREMENTS** as follows:

402.1 FIELD DOCUMENTATION

The Contractor shall document existing conditions within the project area prior to construction. Documentation shall be video tape. The video tape shall not be made from a moving vehicle. One copy of the video tape shall be furnished to the City prior to the start of construction. The cost of the video taping shall be considered incidental to the cost of the project. No separate measurement or payment shall be made for this item.

402.2 ART WORK

Items included under the bid item Art Work shall include installation of the pervious aggregate pavement at the bus stop areas and nodes as called out on the plans, including the fabrication and installation of the polished granite quote and photo image tiles installed in the previous aggregate pavement. Payment for this bid item is paid per job.

Information Provided by the City

The granite tiles installed in the pervious aggregate pavement shall be etched with quotes and photo images provided to the Contractor before installation.

Pre-installation Meeting

Prior to installation of any materials, the Contractor shall conduct a pre-installation meeting with the installer and the City to review installation methods. The pre-installation meeting shall be attended by all parties involved in the installation of the laser etched polished granite and the decorative pervious pavement.

Submittals

The Contractor shall submittal one etched mock up of a quote tile and one etched mock up of a photo image tile for approval by the Engineer. Mock ups may be used as final installed products if accepted by Engineer.

Mockup

A mockup of a node area shall be constructed by the contractor for approval by the Engineer. The mockup shall utilize all materials necessary to construct the area. The contractor may use any test submittals for this task as long as the specifications for the node area are met.

402.3 ART FEATURES

Each Art Feature consists of all material necessary to construct the colored sidewalk and pavement monument, complete and in place in accordance to the specifications and details as called out on the plans. Not every Art Feature is pointed to in a plan note, but each Art Feature shown on the plans shall be constructed.

Work included in the Art Feature shall include, but is not limited to, saw-cutting, removal, and disposal of all existing sidewalk from behind the existing concrete curb to the dimensions of each Art Feature, any necessary subgrade preparation beneath the colored concrete, the installation of an expansion joint between the old and new colored concrete per COP MAG standard detail, the installation of colored sidewalks as described in COP MAG detail P-1250, and the materials and installation of the pavement monument as shown and detailed on

the plans and these specifications.

The pavement monument includes the furnishing and installation of the granite street name tiles, etching of the street name granite tiles, installation of zinc edging, installation of the harvested concrete stamp (or new gray concrete – this varies per monument and is detailed in the plans), and applying a ¾-inch contraction joint cut in a cross manner as shown on the monument details in the plans. Any gaps between the harvested concrete stamp or any other gaps acceptable on the pavement monument shall be filled with a high strength, non-shrink grout (8,000 psi at 25 days minimum).

Size and font of the polished granite street name tiles are shown in the plans.

Submittals

The Contractor shall turn in submittals for all materials used in constructing the Art Features for approval by the Engineer. An approval of submittals in no way absolves the Contractor from performing the proper installation of the product.

The Contractor shall submit a drawing showing the dimensions of each art feature, clearly dimensioning the location of the monument within the colored concrete for each monument area location, for approval by the Engineer. The Contractor shall use his own survey forces to accomplish this task.

The Contractor shall submit a drawing showing the dimensions of the required mockup to the Engineer for approval.

The Contractor shall submit all submittals as required by MAG, COP MAG, this contract, and per manufacturer recommendations for each product as it pertains to each item used in the monument area.

Mockup

A mockup of the pavement monument area shall be constructed by the contractor for approval by the Engineer. The mockup shall utilize all materials necessary to construct the monument area. The pavement monument area shall be the same per plan, but he colored sidewalk area shall extend a minimum of 1 foot beyond the monument area. The contractor may use any test submittals for this task as long as the specifications for the monument area are met.

Street Name Tiles

The City will provide a list of street names required for the pavement monument areas. This list will be provided after the Contractor submits the drawing showing the dimensions of each monument area. For the Contractors information only, the two street names adjacent to the monument area will be etched in the polished granite tiles. Owner shall not be responsible for any misspellings or installation mistakes after the

City has provided the contractor with a list of street names associated with each monument area.

Size and font of the polished granite street name tiles are shown on the plans.

Measurement and Payment

The number of monument areas to be constructed is 44. Payment shall be made per each monument area constructed and in place. No separate payment shall be made for the require mockup.

402.4 POLISHED GRANITE AND LASER ETCHING

This Section includes providing all material, labor, tools and equipment for installation of laser etched polished granite as shown in the Contract Documents and as specified in this Section. Polished granite and laser etching defined in this section is paid under Artwork and Art Features.

Granite Material

Granite shall be a natural forming granite that has been polished with a material thickness of 3/4 inches thick (2cm), color, texture, reflection, albedo, and slip coefficient of the same properties as the Absolute Black product identified in the contract documents.

Submittals

The Contractor shall submit physical sample of 3/4" (2 cm) thick polished granite material for review including supplier's product data, shop drawings of mock ups of all text and image panels, and material cut-sheets of epoxy bonding agent for affixing granite to concrete sub-base.

The Contractor shall furnish the Engineer a statement of qualifications of the laser etcher describing years of experience, and a project listing of successfully installed laser etched polished granite projects, including site addresses and references for a minimum of 5 installations.

Quality Assurance

The Polished Granite material shall be provided from a single Manufacturer for the entire project. The Granite Etching shall also be provided from a single tradesman.

Delivery Storage and Handling

Deliver finished materials to site in protective packaging, with labels clearly identifying panel name and location, and intersection street name visible.

The materials shall be stored in a secure and controlled location until final installation. The materials shall be protected from damage and vandalism.

The materials shall be delivered, unloaded and installed in a manner to prevent damage. Scratched, cracked, blemished, or otherwise damaged materials will be rejected.

Example Acceptable Suppliers

Aracruz Granite, 2310 W. Sherman St, Phoenix, Arizona 85009. Phone (602) 252-1171. Fax (602)252-5801. E-Mail Kevin@aracruzgranite.com. Website www.aracruzgranite.com.

Approved equal performance and warranty suppliers are acceptable

Laser Etching

Etching of the polished granite tiles shall be done using a CO2 Laser process.

Placement of Granite Tiles

Set finished polished granite panels onto epoxy bed. The top surface of granite shall be flush with adjacent surfaces. No relief edges are acceptable and no grinding of surface for mitigation is allowed. Seam between granite and adjacent material shall be less than 1/16" gap. Wash and clean surface to remove dust and debris. Remove any exposed epoxy or sealants at all edges of granite visible.

402.4 PERVIOUS AGGREGATE PAVEMENT

This Section includes providing all material, labor, tools and equipment for installation of FirmaPave® Porous Pavement System (FPPS) as shown in the Contract Documents and as specified in this Section. The scope of this section includes subgrade preparation and installation of FPPS paths, driveways, parking lots and other areas requiring a firm and porous surface.

THE CONTRACTOR MAY USE ANY POROUS PAVEMENT SYSTEM THAT MEETS THE SAME SPECIFICATIONS AS THE FIRMAPAVE SYSTEM (INCLUDING COLOR AND INSTALLATION METHOD); HOWEVER THE SUBSTITUTION MUST BE REQUESTED IN WRITING 5 DAYS BEFORE BID OPENING. THE APROVAL OF ALTERNATE SYSTEMS IS AT THE DISCRESSION OF THE ENGINEER.

Submittals

The Contractor shall submit physical sample of the material for review including supplier's product data, shop drawings, and section layout.

The Contractor shall furnish the Engineer a statement of qualifications showing experience in the installation of FPPS. Describe years of experience, and provide a project listing of successfully installed FPPS projects, including site addresses and references.

Quality Assurance

The FPPS shall be provided from a single Manufacturer for the entire project.

Prior to the awarding of the contract, the contractor shall furnish owner or owners agent a statement of qualifications, experience, and a project listing of successfully installed FPPS projects, including site addresses and references.

If the FPPS placing Contractor has no previous experience with the product, Contractor shall retain a Manufacturer approved site engineer to supervise base preparation, material production, placement, finishing

and curing. Expense for the approved site professional will be the Contractor's responsibility.

If so required by the contract, the FPPS Contractor may be required to prepare test panels. No measurement or direct payment will be made for the test panels. The cost shall be considered incidental to the cost of the project. Test panels will be of the same depth and shall be placed upon the same sub-base as the project slab.

The FirmaPave system shall contribute to USGBC LEED® green building credits in the following categories:

a. Reduced Site Disturbance through creation of permeable surfaces and reduction of stormwater detention facilities, resulting in less construction impact on an area basis and resulting in less potential particulate runoff and impact to the surrounding land and watercourses.

b. Stormwater management through use of permeable surfaces that provide stormwater infiltration and reduce stormwater runoff.

c. Reduced Heat Island Effect through creation of a cooler surface.

d. Recycled Material Content through use of materials with recycled. content to reduce impacts from extraction and processing of new virgin materials.

e. Regional Materials by using material within 500-mile radius of source, if applicable.

f. Pre-Installation Meeting: Prior to installation of any materials, conduct a pre-installation meeting to discuss the scope of work and review installation requirements. The pre-installation meeting shall be attended by all parties involved in the installation of the FPPS.

Delivery, Storage, and Handling

Deliver materials to site in Manufacturer's original, unopened containers and packaging, with labels clearly identifying product name and Manufacturer. Deliver, Unload and install in a manner to prevent damage.

The materials shall be stored in accordance with Manufacturer's instructions. The materials shall be protected from damage and out of direct sunlight and precipitation.

Products

Acceptable Manufacturer

The Pervious Aggregate Pavement shall be manufactured by Presto Geosystems, PO Box 2399, Appleton, Wisconsin 54912-2399. Toll Free (800) 548-3424. Phone (920) 738-1328. Fax (920) 738-1222. E-Mail info@prestogeo.com. Website www.prestogeo.com or approved equal.

Approved equal performance and warranty suppliers:

1. Base aggregate shall consist of crushed aggregate, crusher run limestone or equivalent material of good structural quality with a particle range from 3/8 to 3/4 inches.
2. A choker course of 1 ½ inches of 1/4-3/8 inch clean, crushed aggregate shall be placed above the base aggregate.
3. All base aggregate materials shall have less than 5% fines.

Binder

The high strength elastomeric binder shall be specifically formulated for FPPS applications and provided by Presto's (or equal) approved Manufacturer. The elastomeric binder components shall be shipped in sealed and water-tight containers as specified by the Manufacturer. Once unsealed, the elastomeric

binder packaging shall use Manufacturer-approved desiccant caps to assure that moisture is not introduced to either of the two-part components of the binder.

Granite

Granite shall be crushed to meet the prescribed gradation with a maximum 5% fines. Granite shall only be supplied by a Presto certified, FirmaPave supplier (or approved equal) and tested to meet the specification. Improperly processed, granite will not perform properly.

All granite shall be shipped in commercial-grade, moisture-proof super sack bags with lifting straps, and shall be shipped upon wooden pallets to allow for safe loading, unloading and repositioning at the site.

Mix Design

Granite mix designs complete with sample test results shall be submitted to the Engineer for approval prior to placing the FPPS. All granite shall be ¼ inch or less and shall generally conform to the percentages of particle diameter size indicated by Aggregate Gradation chart illustration shown below.

Aggregate Gradation

Sieve Size (in) Sieve Opening (in) % of ¼ Inch minus granite

3/8 .	375	0
4 .	187	9
5 .	157	13
8 .	0937	46
10 .	0787	11
12 .	0661	12
20 .	0331	11
Pan	0	2

Proportion

Contractor shall be required to meet Manufacturer's specification for proposed binder ratio (typically expressed as a percentage by weight of granite) and shall maintain this ratio within a plus or minus 5 percent tolerance.

Admixture ratios to be dictated by site-specific weather conditions and approved by binder supplier. Contractor to take specific precautions to accurately and thoroughly combine admixtures to avoid early cure FPPS mix.

Surface Overcoat

The overcoat material shall be supplied the Manufacturer. Surface over-coating shall be applied with rollers.

Geotextiles

The geotextile shall be non-woven, 8 ounce per yard density minimum average value with a minimum

infiltration rate of 90 gal/min per sq ft, or as specified in the Contract Documents. Other geotextiles may be allowed as approved by the Engineer.

Execution

Examination

Verify site conditions are as indicated on the drawings. Notify the Engineer if site conditions are not acceptable. Do not begin preparation or installation until unacceptable conditions have been corrected.

Verify layout of FPPS is as indicated on the drawings. Notify the Engineer if layout is not acceptable. Do not begin preparation or installation until unacceptable conditions have been corrected.

Installation

A. Sub Grade Preparation

Prior to FPPS placement, the sub-grade permeability shall be tested by double ring infiltrometer, or other suitable test for sub-grade permeability. Sub-grade permeability shall meet a minimum infiltration rate of 1 in per hour unless otherwise approved by Engineer.

Sub-grade shall have adequate support to carry the weight of low ground pressure equipment. If borrow material is required, it shall be clean and free of deleterious materials. It shall be placed in 8 in lifts and compacted to a 92 percent Standard Proctor in accordance with ASTM D1557 or AASHTO T180.

Depth to groundwater is recommended to be a minimum of three feet from bottom of base at time of high groundwater interval to be confirmed at time of excavation.

Base depth shall be site specific and as described in the Contract Documents. Place 3/8 to 3/4 inch clear stone with a maximum of 5 percent fines passing the #200 mesh using LGP equipment. An alternate base foundation layer of 3/8 to ½ inch cleaned, crushed, screened rough glass may be used. A 1 ½ inch choker course of 1/4 -3/8 inch clean, crushed aggregate shall be placed above any base aggregate. The choker course shall be leveled to within ½ inch of specified elevation as shown in the Contract Documents. Finish Grade should be rolled or tamped to within ¼" of specified elevation.
When forms are required, forms shall me made of wood, steel, or plastic. Forms shall be the full depth of the pavement. Forms shall be sufficient strength and stability to support mechanical screeding equipment without deformation following spreading and strike-off operations. A non-petroleum based, 100% biodegradable vegetable oil shall be applied to forms, tools and any equipment that will come into contact with the elastomeric binder. Under no circumstances should a petroleum based form release agent be used. Forms shall not have stakes or spikes protruding above the top of the forms to assure even screeding of the poured material.

B. Mixing

Mixing shall be with volumetric mixers specifically designed for producing FPPS. All mixing shall be on-site to reduce waste and impact to adjacent roadways. The volumetric mixer shall operate at 300 RPM minimum and shall be instantaneously produced and discharged into the conveyance equipment and/or directly to the forms to maintain maximum working time. The volumetric mixer and mixer components shall be kept dry until the binder can be introduced. Calibration of the binding agent content shall be completed upon the mixer and the percentage will be in conformance with the manufacturer's design

formulation.

C. Placement

Discharge shall be a continuous operation and shall be completed as quickly and efficiently as possible. Material shall be discharged into conveyance equipment as close to its final position as practical to ensure that fresh mix enters the mass of previously placed material. In the event of material shortage or mechanical delays in mixing, a construction joint equivalent to project forms will be utilized.

D. Finishing

Strike off shall be performed using vibratory power-screed or vibrastrike type device as dictated by project parameters. Extreme care should be taken to strike off the material as flat and uniformly as possible. Filling and cutting imperfections can be completed with fresno or other hand trowels immediately after strike off. Any apparent low spots must be filled only immediately (<5 minutes) after strike off and floated in using hand or mechanical trowels. Finishing shall be accomplished with Fresno and hand trowels within 10 minutes of screeding. Edging shall commence immediately after final finish with conventional concrete edging tools. Immediately (<5 minutes) fill low spots along the edge created by strike off operations. If required, spacing of and determination between tooled edge construction joints or mechanically cut in compression joints to be determined by project specifications.

E. Surface Overcoat

An overcoating of no less than 5 mil of Manufacturer approved surface binder material shall be applied to the FirmaPave installation 24 hours after installation is completed. If traffic is allowed to access the FirmaPave installation, the area shall be cleaned and allowed to dry one day before application. The contractor shall follow Manufacturer's recommendations for preparation, placement and curing. Surface overcoat shall not be subject to rain, sleet or snow for a minimum of four hours after installation.

F. Curing

Unless otherwise approved by project Engineer, a minimum of three days shall be allowed for curing prior to vehicular traffic, if ambient temperature does not fall below 60° F (15.5° C) for 72 hours following the pour, five days (120 hours) if ambient temperatures do fall below 60° F. During the curing period, protect the FPPS installation from damaging mechanical disturbances, water flow, loading, shock and vibration.

Paving Restrictions

Do not place FPPS when the following conditions exist:

1. Unstable or frozen base.
2. During rain or snow.
3. When air temperature is less than 45°F or more than 95°F.
4. If any form of precipitation is expected within 4 hours of installation.

Measurement and Payment

Measurement for FPPS and aggregate base shall be installed complete and in place in accordance to the plans and specifications. Payment will be made under the lump sum bid item "ARTWORK".

402.6 Site and Street Furnishings

Bike Racks

Bike racks (horseshoe style) shall be color Tyger Drylac Turquoise Blue Ral 6034 as manufactured by the Outdoor Fun Store, model number KPH52PC, or approved equal. Contractor shall submit vendor shop drawings for the bike racks to the Engineer for approval.

Bike racks shall be paid per each and installed per manufacturer's specifications including all footings and appurtenances per plans and manufacture's specifications.

Site Chairs

Site chairs shall be color Tyger Drylac Turquoise Blue Ral 6034. Three manufacturer's and model numbers are provided on the plans. Approved equal manufacturers products will be accepted. Contractor shall submit vendor shop drawings for the site chairs to the Engineer for approval.

Site chairs shall be paid per each and installed per manufacturer's specifications including all footings and appurtenances per plans and manufacture's specifications.

Trash Receptacles

Trash receptacles shall be color Tyger Drylac Turquoise Blue Ral 6034. Three manufacturer's and model numbers are provided on the plans. Approved equal manufacturers products will be accepted. Contractor shall submit vendor shop drawings for the trash receptacles to the Engineer for approval.

Trash receptacles shall be paid per each and installed per manufacturer's specifications including all footings and appurtenances per plans and manufacture's specifications.

General Installation

Post Setting: Set cast-in support posts in concrete footing with smooth top, shaped to shed water. Protect portion of posts above footing from concrete splatter. Verify that posts are set plumb or at correct angle and are aligned and at correct height and spacing. Hold posts in position during placement and finishing operations until concrete is sufficiently cured.

Posts Set into Voids in Concrete: Form or core-drill holes for installing posts in concrete to depth recommended in writing by manufacturer of site and street furnishings and 3/4 inch (20 mm) larger than OD of post. Clean holes of loose material, insert posts, and fill annular space between post and concrete with nonshrink, nonmetallic grout or anchoring cement, mixed and placed to comply with anchoring material manufacturer's written instructions, with top smoothed and shaped to shed water.

Pipe Sleeves: Use steel pipe sleeves preset and anchored into concrete for installing posts. After posts have been inserted into sleeves, fill annular space between post and sleeve with nonshrink, nonmetallic grout or anchoring cement, mixed and placed to comply with anchoring material manufacturer's written instructions, with top smoothed and shaped to shed water.

402.7 STEEL EDGING

Steel edging shall be powder coated black, "L" channel design, ½-inches wide, and supplied in 8-foot strips.

Edging shall be installed with a minimum 8-inch overlap between pieces. Steel edging shall be secured with 16-inch stakes at 30-inch intervals. Steel edging shall be installed per manufactures recommendations. Contractor shall submit a manufacturer's shop drawing showing material specifications and installation requirements for approval by the Engineer.

Steel edging shall be paid for in the bid item to which it pertains.

402.8 TRENCHING IN RIGHT OF WAY

The Contractor shall not be allowed to stockpile trench material or store any equipment other than the mainline track hoe within the right-of-way of 11th Street from Washington Street to Moreland Street. The Contractor shall secure temporary 6' chain link fence around the track hoe during non-working hours.

402.9 MAXIMUM OPEN TRENCH

No more than 330 linear feet of open trench shall be allowed. Trenches across driveways shall be plated to maintain access. The cost of these plates shall be considered incidental to the project.

402.10 PUBLIC INFORMATION SERVICES

The City of Phoenix shall provide a public information specialist for the community relations program on this project.

The Contractor shall cooperate with the City's public information specialist firm in the preparation of newsletters, advanced notification for service disruptions, answering questions from the public, etc. He shall also provide schedule update information to the specialist.

The Contractor shall provide representatives as needed for all meetings with the public through out the contract period.

The City will pay public information service costs associated with approved contract time extensions; however, if the Engineer determines that delays were caused by the Contractor, the additional costs for public information services shall be deducted from the Contractor's final pay request.

402.11 CONSTRUCTION REQUIREMENTS FOR BUS STOP FURNITURE AND SHELTERS

The Contractor shall be responsible for removing, temporarily storing during construction, and re-installing all existing bus shelters, bus benches, trash receptacles, etc at bus stops and bus bays affected by construction activities within the project area. The Contractor shall take care in removing these items, loading and unloading them, and protecting them in a safe and secure storage area during construction; and for carefully bringing the items back and re-installing these items after the new project bus stop facilities are completed. Any pre-existing damages on the existing equipment shall be carefully documented and recorded by the Contractor and brought to the attention of the Engineer, in writing, to avoid liability for any pre-existing damages. Any damages caused by the Contractor shall be repaired or replaced at the Contractor's expense prior to project acceptance.

Replace note 4 on COP STD details P1260, P1261, and P1262 with, "Electrical conduits and junction boxes shall be required".

There shall be no separate measurement or payment for this work, the cost being considered incidental to the

project.

18. Add the following new **Section 403 TRAFFIC SIGNALS AND STREET LIGHTING** as follows:

403 TRAFFIC SIGNALS AND STREET LIGHTING

403.4 STREET LIGHTING

It is the intent of the City of Phoenix to maintain a minimum of one (1) side lighting at all times during construction. The Contractor shall coordinate with Arizona Public Service Co. (power company) and the Engineer to accomplish this task.

403.5 TRAFFIC SIGNAL INSPECTION

The City of Phoenix Traffic Signal Foreman, or his designee shall inspect all work performed for traffic signals, including all trenches and conduit runs and splices before being covered; wiring; junction box installations; detector loop layouts; sawcuts; detector loop installations; and traffic signal pole foundations before concrete is poured. The Contractor shall contact the appropriate Traffic Signal Foreman at 602-262-6733 at least 48 hours in advance to request inspections.

19. **430 LANDSCAPING AND PLANTING** Add the following to **COP Supplement to MAG Subsection 430.3 PLANT ESTABLISHMENT GUARANTEE AND MAINTENANCE:**

Prior to final acceptance of the landscaping, the Contractor shall provide the City of Phoenix Street Transportation Department with all water and electrical account numbers and billing information. Final acceptance will not be granted until this information is given to Steve Priebe at 200 West Washington Street in Phoenix, (602) 534-9898.

20. Add the following to **COP Supplement to MAG Subsection 430.15 MEASUREMENT AND PAYMENT**:

Measurement and payment for plant establishment guarantee and maintenance shall be on a monthly basis for acceptable landscape maintenance under the bid item M4303000, "PLANT ESTABLISHMENT GUARANTEE AND MAINTENANCE". No payment shall be made for unacceptable maintenance. When acceptable corrections have been made for the monthly inspection, the monthly payment will be released. Upon final acceptance, the final monthly payment will be made.

21. Add the following new **Section 434 ADDITIONAL LANDSCAPING REQUIREMENTS** as follows:

434 ADDITIONAL LANDSCAPING REQUIREMENTS

434.1 PLANT SWALES AND TREE STAKING

Prior to preparing plant swales and staking trees, the Contractor shall have a representative sample of tree and shrub swales, and tree staking inspected and approved by the Engineer and Landscape Architect for conformance with project plans and specifications.

The Contractor shall correct any swales or staking that do not conform to the approved representative samples.

There will be no separate measurement or payment for swales or staking. The cost shall be considered incidental to the cost of the plant materials.

434.2 TRIMMING NEWLY PLANTED TREES

The Contractor shall trim all newly planted trees as necessary prior to staking so that low branches are removed where standard trees are required. Trees shall be trimmed so that the tree is balanced and a central leader is maintained. When necessary, excess branching shall be thinned so that a strong branching structure will develop. The Contractor shall trim with a hand-held pruner. Trimming shall be done to the satisfaction of the Engineer and the Landscape Architect.

There will be no separate measurement or payment for trimming new trees. The cost of the work shall be considered incidental to the cost of furnishing and/or installing new trees.

434.3 TRIMMING EXISTING TREES AND/OR SHRUBS IN PLACE

Where there are existing trees to remain in place, the Contractor is to perform any trimming operation required to maintain pedestrian clearance to a height of 7' and to maintain sight visibility. Trimming which involves removal of branches over 3" in diameter or removal of branches which will alter the structure of the trees shall be done by a person trained and Certified in the Practice of Arboriculture. The arborist shall present certification papers to the Engineer and Landscape Architect for approval upon request. If the tree(s) become damaged or disfigured as a result of the trimming, the Engineer and Landscape Architect may require that the tree(s) be removed and replaced in size and kind by the Contractor. Removal and replacement shall be done at the Contractor's expense.

Trimming existing trees and shrubs in place includes trimming of branches or foliage which overhang existing walls or fences where the branches create a problem for pedestrian clearance or for visibility. Trimming of existing trees shall be done according to plans as noted and as directed by the Engineer and Landscape Architect.

There will be no separate measurement or payment for trimming existing trees in place. The cost of the work shall be considered incidental to the cost of the project.

434.4 PRUNING ROOTS OF EXISTING TREES

If construction impacts the roots, trunk or branches of existing trees that are designated to remain in place, the Contractor shall take all necessary precautions to ensure the survival and protection of the tree. The Contractor shall hire a Certified Arborist to investigate the areas surrounding existing trees to be saved in place, and locate existing roots. Existing roots shall be excavated by hand, and hand-pruned as necessary to where the root is healthy. The Arborist shall also make necessary recommendations for care of the tree(s) with respect to root feeding, fertilizing, or any other items required to ensure survival.

The Arborist shall present certification papers for approval by the Engineer and Landscape Architect upon request.

There will be no separate measurement or payment for root pruning. The cost shall be considered incidental to the cost of the project.

434.5 PROVIDE PROTECTION FOR EXISTING TREES

The Contractor shall be responsible for protecting existing trees to remain in place as tagged in the field and/or as noted on the plans. The Contractor shall provide fencing around all trees and plants which are to remain in place that could be damaged by construction activity or equipment. A minimum area shall be established around each plant based on its trunk caliper size. The minimum area shall be one (1) foot of radius for each

inch of caliper. For example, if a tree has a 6" caliper, there shall be a minimum 6' radius area around the tree that shall be considered a protected zone, and a fence shall be placed at that location. The fencing shall provide protection to the trunks and limbs from damage that could be caused by construction activity or equipment.

Any trimming that is necessary to prevent construction damage to existing trees shall be pre-approved by the Landscape Architect. If the roots of existing trees could be affected in any way by construction they shall be hand excavated and trimmed as described in the Special Provision, "PRUNING ROOTS OF EXISTING TREES". Root pruning shall also be pre-approved by the Landscape Architect.

The Contractor shall be responsible for all costs associated with protection of existing trees in place. If any damage occurs to trees or other plants to remain that, in the opinion of the Engineer and Landscape Architect, destroys, aesthetically disfigures, or threatens the plant's future survival, the Contractor shall be responsible for replacing the tree in kind. Replacement trees shall be the same size as the damaged tree. Prior to selection of any replacement tree, the Contractor shall obtain approval of the size, type and purchase source from the Engineer and Landscape Architect.

There will be no separate measurement or payment for providing protection for existing trees and plants in place. The cost shall be considered incidental to the cost of the project.

434.7 TRIMMING EXISTING PALM TREES

Existing palm trees in the right-of-way shall be trimmed so that all dead fronds are removed completely. Washingtonia filifera and robusta shall have trunk bark removed so a smooth trunk remains. Phoenix dactylifera shall be trimmed with a 'diamond cut' on the entire trunk and all dead fronds removed.

Measurement and payment for trimming existing palm trees shall be per each under the bid item, "TRIM EXISTING PALM TREES", and shall be full compensation for all tools, labor and equipment necessary to complete the work as described.

22. Add the following new **COP Supplement to MAG Subsection 601.3 PROTECTION OF EXISTING UTILITIES**, and re-number the existing Section 601.3 FOUNDATION, BEDDING, BACKFILLING AND COMPACTION in the COP Supplement to Section 601.4.

601.3 PROTECTION OF EXISTING UTILITIES

601.3.1 Utilities: Unless otherwise shown on the plans or stated in the specifications, all utilities, underground or overhead, shall be maintained in continuous service throughout the entire contract period. The Contractor shall be responsible and liable for any damages to or interruption of service caused by the construction.

If the Contractor desires to simplify his operation by temporarily or permanently relocating or shutting down any utility or appurtenance, he shall make the necessary arrangements and agreements with the owner and shall be completely responsible for all costs concerned with the relocation or shutdown and reconstruction. All property shall be reconstructed in its original or new location as soon as possible and to a condition at least as good as its previous condition. This cycle of relocation or shutdown and reconstruction shall be subject to inspection and approval by both the Engineer and the owner of the utility.

The Contractor shall be entirely responsible for safeguarding and maintaining all conflicting utilities that are shown on the plans (Sections 107 and 105 apply). This includes overhead wires and cables and their supporting poles whether they are inside or outside of the open trench. If, in the course of work, a conflicting

utility line that was not shown on the plans is discovered, the Contracting Agency will either negotiate with the owner for relocation, relocate the utility, change the alignment and grade of the trench or as a last resort, declare the conflict as "extra work" to be accomplished by the Contractor in accordance with Section 104.

601.3.3 Building, Foundations and Structures: Where trenches are located adjacent to building, foundations and structures, the Contractor shall take all necessary precaution against damage to them. The Contractor shall be liable for any damage caused by the construction.

Except where authorized in the special provisions or in writing by the Engineer, water settling of backfill material in trenches adjacent to structures will not be permitted.

There will be no separate measurement or payment for this work. The Contractor will include all associated costs in the unit bid price for the pipe installation.

23. Add the following to **MAG Subsection 610.7 VALVES**:

LOCATING, CLEANING AND INSTALLING WATER VALVE BOX DEBRIS CAP WITH LOCATOR COIL

The Contractor shall furnish and install a debris cap with a locator coil in all new water valve boxes installed; in all existing water valve boxes adjusted to grade; and in all other existing water valve boxes within the project limit right-of-way, even if not called out for adjustment to grade. The debris cap shall be in accordance with City of Phoenix Supplement to MAG Detail P-1165 and shall include a locator coil.

Prior to installation of the debris cap, valve risers shall be thoroughly cleaned, fully exposing the operating nut. In addition, the Contractor shall attempt to locate all unexposed water valves within the project limits, as indicated by City of Phoenix Water Services Department water valve Quarter-Section maps. In attempting to locate unexposed valve boxes, the Contractor shall excavate a minimum depth of eighteen (18) inches from the surface. Unexposed valve boxes found shall be brought up to finish grade; cleaned to fully expose the operating nut; and a debris cap with locator coil shall be installed.

Payment for installing debris caps and shall be included in bid time M3500300, Miscellaneous Removals and Other Work. The Contractor shall obtain the appropriate Water Services Department water valve Quarter-Section maps at Phoenix City Hall, 200 W. Washington Street, 8th Floor, at no additional cost to the City, and shall make a diligent effort to locate all existing unexposed water valves shown on these maps. The Contractor shall clearly mark all unexposed water valve boxes actually located on record plans and copies of the water valve Quarter-Section maps showing specific found location information, and these plans shall be provided to the Engineer. The cost for the Contractor to extend any risers on found unexposed valve boxes to bring them up to finish grade shall also be considered incidental.

There will be no separate measurement or payment for any labor, materials or equipment used in attempting to locate valves shown on the Quarter-Section maps that are not actually found. Valve locating attempts that do not produce any resulting "finds" shall be considered incidental.

24. Add the following to **MAG Subsection 610.10 CONNECTION TO EXISTING MAINS**:

WATER MAIN SHUTDOWN

For shutdowns that are necessary to accomplish the work, the Contractor shall make written request to Water Distribution at least three (3) calendar weeks before the shutdown. Requests shall specify location, size of line, duration, date, and time for each shutdown. Within one (1) week, Water Distribution will schedule shutdown and give written notification to the Contractor. Any schedule revisions requested by the Contractor

must be in writing. Water Distribution's revised schedule will be available within one (1) week. The City does not guarantee a totally dry line. The Contractor shall be prepared to de-water as necessary to accomplish the work.

The Contractor shall be responsible for maintaining accessibility to the valve operating nuts for all valves within the project boundaries. Failure to maintain accessibility to valves shall be cause for canceling shutdown, and the Contractor will be required to request a revised schedule.

The Water Services Department is indemnified for any and all resultant costs incurred by the Contractor such as, but not limited to traffic control, delays, loss of incentives, standby and penalties if the Contractor did not properly request a shutdown; failure to maintain accessibility to valves; or if the Contractor's scheduled work did not progress to the anticipated shutdown schedule.

25. **631 WATER TAPS AND METER SERVICE CONNECTIONS** Add the following new **MAG Subsection 631.9** as follows:

631.9 REPLACEMENT, EXTENSION AND RELOCATION OF EXISTING WATER SERVICES AND METERS

a. The Contractor shall replace or/and extend existing water service lines at the stations listed in these specifications or on the plans in accordance with Detail P-1342. The Engineer will determine when the existing lines are unsatisfactory and must be replaced. Generally, existing copper in good condition with sufficient cover will be extended. Water service lines other than copper shall be replaced.

The water service shall include, but is not limited to, locating the present tap, trenching, bedding, backfilling, disconnecting the existing service pipe from the corporation stop, furnishing and installing new service pipe, new appurtenant fittings, new curb stop and new meter coupling, and re-connection to the meter. The existing tapping saddle and corporation stop shall remain, but the Contractor shall not use any other salvaged service connection components. If the saddle is a single strap, the saddle shall be replaced with a double strap saddle. In the event there is no tapping saddle, The Contractor shall install one. The cost of the saddle and reinstallation of the corporation stop shall be considered incidental to the water service replacement.

Inserts or adapters required to connect to the corporation stop are available at the Water Services Department yard at no cost to the Contractor. The Contractor must obtain a written order (AVO) from the Engineer before picking up said items.

Bedding and backfill shall be full depth aggregate base course. Payment for furnishing and compacting the aggregate base course shall be included in the bid item for replacing or extending existing water services.

The Contractor shall schedule his work so that no open trenches are left overnight.

Materials for water service connections shall conform to MAG Section 754 and City of Phoenix Supplement 610.4.4 and 610.4.5. Joints in the copper tubing shall be made by the use of approved fittings, properly soldered or by means of approved compression fittings such as flared joints or pack joints.

b. Water meter relocation consists of disconnecting the meter, moving the meter, meter box and cover from the existing location to the new location and reconnecting in accordance with Details P-1342

and P-1363. The meter box and cover shall be set to match the grade at the new location.

Any water meter boxes and/or covers damaged by the Contractor during course of construction shall be replaced in kind at his expense.

It is anticipated that some water meter boxes and/or covers may require replacement due to prior damages not due to the fault of the Contractor. The Water Services Department will furnish replacement water meter boxes and covers at no cost; however, the Contractor must first obtain a written order (Field Directive) from the Engineer. Then, at no additional cost to the City, the Contractor shall pick up the specified number of units from the Water Distribution Warehouse located at 2500 S. 22nd Avenue.

Water meter boxes and covers shall be Type 1, 2 or 3 in accordance with MAG Details 310, 311, 312, and 320 and P-1315.

All materials and fittings shall conform to the requirements of Section 754 and Phoenix Supplement 610.4.4 and 610.4.5. No salvaged service connection components shall be used.

c. All valve shutdown fees will be waived for work on water services and meters under these specifications. When it becomes necessary to shut down existing water mains and services to conduct replacements, no main shall be left out of service for more than one (1) hour and no individual service will be disrupted for more than five (5) continuous hours. Main valves shall be operated by representatives of the City's Water Services Department. Shutdowns will not begin before 8:00 a.m. and will not extend past 4:00 p.m.

When it becomes necessary to shut down an existing water service in order to construct a replacement, it shall be the Contractor's responsibility to notify all customers in advance that the water service will be turned off. The customers shall be notified in writing at least 24-hours in advance and also verbally the day the shutdown will occur. Initial notification shall include the reason for the shutdown, the date, the time and duration the water service will be shut off. A copy of the notification shall be given to the Engineer.

When any construction encroaches into an improved yard area, in or outside the right of way, the Contractor shall leave these areas in as good a condition or better after work is completed.

For grass areas, the Contractor shall remove the sod in the construction area, store it, keep it moist and replace it immediately after construction is completed. At his option, the Contractor may elect to resod the area in kind instead of storing and maintaining the original sod.

For desert landscaped areas, the Contractor shall restore the decomposed granite and rock covered areas using material to match the existing in type and quality.

All sprinkler systems disturbed during construction, shall be restored to an operational system covering the same area as before.

d. Measurement for extending and/or replacing water services will be made to the nearest linear foot from the point of connection to the existing line or corporation stop, whichever is applicable, to the curb stop.

Payment for extending and/or replacing water services will be made at the unit price bid per linear foot under the proposal items "3/4-INCH AND 1-INCH WATER SERVICE REPLACEMENT PER

SPECIAL PROVISIONS"; and "1 1/2" AND 2" WATER SERVICE REPLACEMENT PER SPECIAL PROVISIONS".

e. Measurement for water meter relocation will be made per each water meter regardless of size up to and including 2-inch. Payment for water meter relocation will be made at the unit price bid per each under the proposal item "RELOCATE WATER METER" which shall include all sizes encountered on the project up to and including 2-inch.

632.2 RELOCATE WATER METER, BOX AND COVER

Water meter relocation consists of disconnecting the meter, moving the meter, meter box and cover from the existing location to the new location and reconnecting in accordance with Details P-1342 and P-1363. The meter box and cover shall be set to match the grade at the new location.

Wherever possible, existing water meters and serviceable water meter boxes and covers shall be re-used.

Any water meter boxes and/or covers damaged by the Contractor during course of construction shall be replaced in kind at the Contractor's expense.

It is anticipated that some water meter boxes and/or covers may require replacement due to prior damages not due to the fault of the Contractor. The Water Services Department will furnish replacement water meter boxes and covers at no cost; however, the Contractor must first obtain a written order (Field Directive) from the Engineer. Then, at no additional cost to the City, the Contractor shall pick up the specified number of units from the Water Distribution Warehouse located at 2500 S. 22nd Avenue.

Water meter boxes and covers shall be Type 1, 2 or 3 in accordance with MAG Details 310, 311, 312, and 320 and P-1315.

All materials and fittings shall conform to the requirements of Section 754 and Phoenix Supplement 610.4.4 and 610.4.5. No salvaged service connection components shall be used.

Measurement for water meter relocation will be made per each water meter regardless of size up to and including 2-inch. Payment for water meter relocation will be made at the unit price bid per each under the proposal item M3450000, "RELOCATE EXISTING WATER METER, BOX AND COVER" which shall include all sizes encountered on the project up to and including 2-inch.

FEDERAL TRANSIT ADMINISTRATION CLAUSES
FEDERAL PROVISIONS FOR CONSTRUCTION CONTRACTS

1. No Obligation by the Federal Government
2. Program Fraud and False or Fraudulent Statements of Related Acts
3. Access to Records
4. Federal Changes
5. Civil Rights
6. Termination
7. Incorporation of FTA Terms
8. Debarment and Suspension
9. Buy America
10. Disputes
11. Compliance with Federal Lobbying Policy
12. Clean Air
13. Clean Water
14. Cargo Preference
15. Fly America
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. Bonding Requirements
19. Seismic Safety
20. Energy Conservation
21. Recycled Products
22. Notification of Federal Participation
23. Access Requirements for Persons with Disabilities (ADA)
24. Privacy Act
25. Disadvantaged Business Enterprise (DBE)
26. State and Local Law Disclaimer
27. Debarment and Suspension Certification for Prospective Contractors
28. Lobbying Certification
29. Buy America Certification

Federal Transit Administration (FTA) Required Clauses
(Construction)

This procurement is being funded, in whole or in part, with federal funds through Federal Transit Administration (FTA). As consequence of that funding, the following FTA mandated provisions are included in this proposal.

1. **No Obligation by the Federal Government**

The City and the Contractor acknowledge and agree that:

(1) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.

(2) The Contractor shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-Contractor who will be subject to its provisions.

2. **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges and agrees that:

(1) The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations," Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which work under this Contract is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) If the Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor shall include the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA and each such clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records

(1) In accordance with 49 C.F.R. 18.36(i), the Contractor shall provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Pursuant to 49 C.F.R. 633.17, the Contractor shall provide the FTA Administrator or his authorized representatives including any PMO contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy such excerpts and transcriptions as are reasonably needed.

(3) Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39(i)(11).

(4) FTA does not require the inclusion of these requirements in subcontracts.

4. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

5. Civil Rights

The following requirements apply to this Contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

In addition, the Contractor shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

(3) The Contractor shall include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(4) For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at www.ftahelpline.com.

6. Termination

(1) Termination for Convenience. City may terminate this contract in whole or in

part, at any time by written notice to Contractor when, in City's sole and unfettered opinion, it is in City's best interest to do so. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the date of termination. Contractor shall promptly submit its termination claim to City for payment together with such supporting documentation as City may require. If Contractor has any property in its possession belonging to City, Contractor shall account for same, and dispose of it in such manner as City may direct.

When the Notice of Termination is received, Contractor shall immediately consult with City as to the goods and materials then on order or that are in place and as to its plan to further the work had the contract not been terminated. After such consultation, Contractor shall take whatever action City may direct with regard to goods and materials, e.g., cancel orders; retain, sell or otherwise dispose of the goods and materials; begin winding up work or continue to prosecute it.

(2) Termination for Default, Breach, or Cause. Subject to Contractor's right to cure pursuant to the provisions of paragraph (4) below, if Contractor: (a) fails to provide any of the deliverables as specified herein within the time specified in this contract or any extension thereof; or, (b) fails to perform any of the other material provisions of this contract, City may terminate this contract for cause. Failure to perform includes, but is not limited to: in the opinion of City, Contractor attempts to impose on City personnel or materials, products or workmanship that is of an unacceptable quality; and, Contractor fails to furnish the required service and/or product within the time set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been one for convenience. Provided, however, that if it is determined that Contractor was not in default, or that the delay was excusable, then, and in that event, City may, at its sole and unfettered discretion, require Contractor to continue its performance to completion and shall, if appropriate under the circumstances, allow additional time for such performance to be completed and shall pay Contractor its costs of delay, demobilization and remobilization if appropriate.

(3) Notice of Termination. Termination, whether for Convenience in accordance with paragraph (1) above, or for Default, Breach, or Cause in accordance with paragraph (2) above, shall be upon no less than thirty (30) calendar days prior written notice. Such termination shall be effected by City delivering a Notice of Termination to Contractor specifying: (a) the nature of the default, if any; (b) the extent of the termination, i.e., whether in whole or in part and, if in part, the part being terminated; and, (c) the date upon which the termination is to take effect.

(4) Opportunity to Cure. Prior to termination for Default, Breach, or Cause and City's right to terminate, the City, after consultation with Contractor, will deliver to Contractor a Notice to Cure and allow Contractor thirty (30) calendar days (or such other period agreed upon between Contractor and City) within which Contractor shall proceed to correct and cure the defect; thereafter, Contractor shall diligently pursue such cure to completion. The Notice to Cure will state the

time period within which cure is permitted together with other appropriate reasonable conditions.

If Contractor fails to proceed to correct and cure the breach or default of any of the terms, covenants, or conditions of this contract within thirty (30) calendar days (or such other period agreed upon between Contractor and City) after receipt by Contractor of written Notice to Cure from City setting forth the nature of said breach or default, then, and in that event, City shall have the right to terminate this contract by delivering a Notice of Termination for Default, Breach or Cause in accordance with paragraph (2) above.

Any such termination for cause shall not operate in any way to preclude City from also pursuing all of its other available remedies against Contractor and its sureties for said breach or default.

7. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the City that would cause the City to be in violation of the FTA terms and conditions.

8. Debarment and Suspension

In accordance with the U.S. Office of Management and Budget (OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)" 2 C.F.R. Part 180 and U.S. DOT regulations,"Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, Contractor must provide certification that neither it nor its "principals" are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency. Contractor, as a condition of responsiveness, shall submit with their bid submittal a completed "Debarment and Suspension" form, which is located in xx of this IFB. Contractor shall also include these requirements in each subcontract exceeding $25,000 financed in whole or part with federal assistance provided by FTA.

9. Buy America

The Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchase (currently less than $100,000) made with capital, operating, or planning funds.

The Contractor, as a condition of responsiveness, shall submit with the proposal a

completed Buy America certification form.

10. Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the Contract Specialist (Lead) or his designee. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Public Transit Director or the Director's designee. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Public Transit Director or the Director's designee shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute: Unless otherwise directed by the City, the Contractor shall continue performance under the Contract while matters in dispute are being resolved unless such performance is refused by City or is enjoined or prohibited by an Arizona court of competent jurisdiction.

Claims for Damages: Should either party to this Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose act it is legally liable, a claim for damages therefore shall be made in writing to such other party within five (5) calendar days after the first observance of such injury of damage.

Remedies: Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration.

Rights and Remedies: The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or the Contractor shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

11. Compliance with Federal Lobbying Policy

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

12. Clean Air

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor shall also include these requirements in each subcontract exceeding $100,000 financed in whole or part with federal assistance provided by FTA.

13. Clean Water

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor shall also include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

14. Cargo Preference

Contractor shall: (a) use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the Contract, to the extent such vessels are available at fair and reasonable rates for United States - Flag commercial vessels; (b) furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, and to the City, the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and, (c) include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

15. Fly America

Contractor shall comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve

16. Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [***insert name of grantee***] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [***insert name of grantee***] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of

Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [***insert name of grantee***] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the

job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be

paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. Contract Work Hours and Safety Standards Act

(1) **Overtime Requirements** – No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the base rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The City of Phoenix shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** – The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. Bonding Requirements

For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the Agency, provided that they meet the minimum requirements for construction contracts. See FTA website

for sample clauses and federal bonding requirements.

19. Seismic Safety

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

20. Energy Conservation

Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Arizona Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

21. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

22. Notification of Federal Participation

To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of $500,000 or more, the City shall specify the amount of federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

23. Access Requirements for Persons with Disabilities (ADA)

Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and all other federal regulations.

24. Privacy Act

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the

Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

25. State and Local Law Disclaimer

The Contractor shall indemnify, keep, and hold harmless the City of Phoenix, its agents, officials, and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may accrue against the City of Phoenix arising out of this contract, except to the extent that said injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses arise out of, or result from the City of Phoenix's acts or omissions, including acts or omissions of the City of Phoenix's agents, officials and employees.

26. Debarment and Suspension Certification for Prospective Contractors

.

Choose one alternative:

☐ The Contractor certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and

4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

OR

☐ The Contractor is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Contractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

Executed in [insert city and state].
Name:

_____

Authorized signature Date

27. Lobbying Certification

The Contractor certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

THE CONTRACTOR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE CONTRACTOR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of the Contractor's authorized official: _____

Title: _____

_____

Signature Date

Federal Regulations: Part 3

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

Title 29, Part 3 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH – 1244
(Revised December 2008)

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Section Contents

§ 3.1 Purpose and scope.
§ 3.2 Definitions.
§ 3.3 Weekly statement with respect to payment of wages.
§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.
§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.
§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.
§ 3.7 Applications for the approval of the Secretary of Labor.
§ 3.8 Action by the Secretary of Labor upon applications.
§ 3.9 Prohibited payroll deductions.
§ 3.10 Methods of payment of wages.
§ 3.11 Regulations part of contract.

Authority: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 3145; Secretary's Order 01–2008; and Employment Standards Order No. 2001–01.

Source: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

§ 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

§ 3.2 Definitions.

As used in the regulations in this part:

(a) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping

stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building* or *work* within the meaning of the regulations in this part.

(b) The terms *construction, prosecution, completion,* or *repair* mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms *public building* or *public work* include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term *building or work financed in whole or in part by loans or grants from the United States* includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is *employed* and receiving *wages,* regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term *any affiliated person* includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term *Federal agency* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

§ 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term *employee* shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the

wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982; 73 FR 77511, Dec. 19, 2008]

§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under §3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215–0017)

[29 FR 97, Jan. 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A *bona fide prepayment of wages* is

considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended,

and part 531 of this title. When such a deduction is made the additional records required under §516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

§ 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under §3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of §3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of §3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

§ 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of §3.6; and shall notify the applicant in writing of his decision.

§ 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under §3.6 are prohibited.

§ 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

§ 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.

Federal Regulations: Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

Title 29, Part 5 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH – 1244
(Revised May 2011)

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Section Contents

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

§ 5.1 Purpose and scope.
§ 5.2 Definitions.
§§ 5.3-5.4 [Reserved]
§ 5.5 Contract provisions and related matters.
§ 5.6 Enforcement.
§ 5.7 Reports to the Secretary of Labor.
§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.
§ 5.9 Suspension of funds.
§ 5.10 Restitution, criminal action.
§ 5.11 Disputes concerning payment of wages.
§ 5.12 Debarment proceedings.
§ 5.13 Rulings and interpretations.
§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.
§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.
§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.
§ 5.17 Withdrawal of approval of a training program.

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

§ 5.20 Scope and significance of this subpart.
§ 5.21 [Reserved]
§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.
§ 5.23 The statutory provisions.
§ 5.24 The basic hourly rate of pay.
§ 5.25 Rate of contribution or cost for fringe benefits.
§ 5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".

§ 5.27 "* * * fund, plan, or program".
§ 5.28 Unfunded plans.
§ 5.29 Specific fringe benefits.
§ 5.30 Types of wage determinations.
§ 5.31 Meeting wage determination obligations.
§ 5.32 Overtime payments.

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.* ; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 *et seq.* ; and the laws listed in 5.1(a) of this part; Secretary's Order 01–2008; and Employment Standards Order No. 2001–01.

Source: 48 FR I9541, Apr. 29, 1983, unless otherwise noted.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart A appear at 61 FR 19984, May 3, 1996.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1–7, 46 Stat. 1949, as amended; Pub. L. 74–403, 40 U.S.C. 276a–276a–7).

2. Copeland Act (40 U.S.C. 276c).

3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).

4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86–372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91–230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92–318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97–424).

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c–3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89–73, as amended by sec. 501, Pub. L. 93–29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).
49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).
51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4).Note.Repealed December 9, 1969, and labor standards incorporated in sec. 1–1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89–694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87–328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96–294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term *Secretary* includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term *Federal agency* means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in §5.1.

(d) The term *Agency Head* means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term *Contracting Officer* means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term *labor standards* as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in §5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term *United States or the District of Columbia* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term *contract* means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in §5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants,

or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building* or *work* within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms *construction, prosecution, completion,* or *repair* mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not "construction, prosecution, completion, or repair" (see *Building and Construction Trades Department, AFL-CIO* v. *United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.)*, 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term *public building* or *public work* includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term *site of the work* is defined as follows:

(1) *The site of the work* is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, *provided* that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the *site of the work, provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, *and provided* they are adjacent or virtually adjacent to the *site of the work* as defined in paragraph (l)(1) of this section;

(3) Not included in the *site of the work* are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (l)(1) of this section, are not included in the *site of the work.* Such permanent, previously established facilities are not part of the *site of the work,* even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms *apprentice, trainee,* and *helper* are defined as follows:

(1) *Apprentice* means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) *Trainee* means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to *apprentices* and *trainees* employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of "helper" will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A "helper" classification will be added to wage determinations pursuant to §5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term *wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term *wage determination* includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of §1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20, 2000; 65 FR 80278, Dec. 20, 2000]

§ 5.3-5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided,* That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification

may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers,

employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(*1*) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees* — (i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage

rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the conract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in

such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215–0140
(a)(1)(ii)(C)	1215–0140
(a)(1)(iv)	1215–0140
(a)(3)(i)	1215–0140,
	1215–0017
(a)(3)(ii)(A)	1215–0149
(c)	1215–0140,

	1215–0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by §5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in §5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of §5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by §5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of §5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to §5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by §5.5 and the applicable statutes listed in §5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in §5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in §5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation,

including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under §5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101–11.11 and assigned interagency report control number 1482–DOL-SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in §5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor of subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the

territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986]

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to §5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or §5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under §5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with §5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in §5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in §5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in §5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to §5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in §5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in §5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under §5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of

Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in §5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in §5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in §5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in §5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(5) *Referral to the Administrative Review Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in §5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in §5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and §778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See §5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in §5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion

thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 11/2times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1215–0140 and 1215–0017. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1215–0017)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996]

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of §5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the

program. In every other respect, the provisions of §5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to §5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

Source: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88–349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in §5.12.

§ 5.21 [Reserved]

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in §1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of §1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages", as used in the Davis-Bacon Act.

§ 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

§ 5.24 The basic hourly rate of pay.

"The basic hourly rate of pay" is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See §5.5(a)(1)(i) and (iii).

§ 5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The "third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although

contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.27 "* * * fund, plan, or program".

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase "fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words "reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan.

The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by §5.5(a)(1)(iv).

§ 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under §5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under §5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§ 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is

only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Fringe benefits payments				
		Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	$3.25					
Carpenters	4.00	$0.15				
Painters	3.90	.15	$0.10	$0.20		
Electricians	4.85	.10	.15			
Plumbers	4.95	.15	.20		$0.05	
Ironworkers	4.60			.10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of §5.30, the obligations for "painters" will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for "painters" in the illustration in paragraph (c) of §5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for "bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for "painters" in the illustration in paragraph (c) of §5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for "painters" may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not

less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

General Decision Number: AZ120023 06/29/2012 AZ23

State: Arizona

Construction Type: Heavy
HEAVY CONSTRUCTION, Includes Water and Sewer Lines, Heavy Construction on Treatment Plant Sites and Pipeline Construction

County: Maricopa County in Arizona.

HEAVY CONSTRUCTION PROJECTS (DOES NOT INCLUDE DAM CONSTRUCTION)

Modification Number	Publication Date
0	06/22/2012
1	06/29/2012

BOIL0627-004 01/01/2012

	Rates	Fringes
BOILERMAKER	$ 31.39	25.46

BRAZ0003-010 07/01/2010

	Rates	Fringes
BRICKLAYER	$ 24.62	4.57

ELEC0640-006 06/21/2011

	Rates	Fringes
ELECTRICIAN	$ 25.01	3%+7.50

ELEC0769-002 05/01/2011

	Rates	Fringes
Line Construction:		
Lineman	$ 38.48	19%+5.04

ENGI0428-008 01/01/2012

	Rates	Fringes
Power Equipment Operator		
Group 1	$ 19.89	9.34
Group 2	$ 23.16	9.34
Group 3	$ 24.24	9.34
Group 4	$ 25.27	9.34

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Small Self-Propelled Compactor (with blade), Bobcat/Skidsteer/Skid Loader, Oiler
GROUP 2: Self-Propelled Compactor (with blade), Grader/Blade (rough), Scraper, Tractor, Crane (less than 15 tons)
GROUP 3: Grade/Blade (Finish),Crawler-Type Tractor, Crane (over 15 tons & less than 100 ton), Tower Crane
GROUP 4: Crane (100 ton)

ENGI0428-015 02/01/2012

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		

(PIPELINE)

Group 1.....	$ 36.20	15.01
Group 3.....	$ 18.52	15.01

Group 1: Backhoe, Boring Machine, Boom Operator, Bulldozer, Trackhoe
Group 3: Oiler

IRON0075-009 08/01/2011

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	$ 26.52	19.35

Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson
Zone 2: 050 to 100 miles - Add $4.00
Zone 3: 100 to 150 miles - Add $5.00
Zone 4: 150 miles & over - Add $6.50

PAIN0086-002 04/01/2012

	Rates	Fringes
PAINTER (Brush Only).....	$ 19.35	4.75

PLUM0469-004 07/01/2011

	Rates	Fringes
PLUMBER		
Zone A.....	$ 32.50	15.15

INDUSTRIAL WORK: Add $6.00 to basic hourly rate

PLUM0469-008 07/01/2011

	Rates	Fringes
PLUMBER		
Zone B.....	$ 32.50	15.15

INDUSTRIAL WORK: Add $6.00 to basic hourly rate

SUAZ2012-006 05/17/2012

	Rates	Fringes
CARPENTER (Form Work Only).....	$ 20.80	4.07
CARPENTER, Excludes Form Work.....	$ 21.98	5.38

CEMENT MASON/CONCRETE FINISHER.....	$ 18.76	2.12
INSTALLER - SIGN.....	$ 25.42	0.00
IRONWORKER, REINFORCING.....	$ 20.66	13.59
LABORER: Asphalt Raker/Shoveler/Spreader.....	$ 15.76	4.42
LABORER: Common or General.....	$ 14.36	3.97
LABORER: Concrete Saw (Hand Held/Walk Behind).....	$ 17.00	4.55
LABORER: Fence Erection.....	$ 10.32	2.24
LABORER: Grade Checker.....	$ 18.14	4.55
LABORER: Landscape & Irrigation.....	$ 11.01	0.37
LABORER: Mason Tender - Brick.....	$ 14.55	4.20
LABORER: Mason Tender - Cement/Concrete.....	$ 15.34	4.20
LABORER: Pipelayer.....	$ 14.94	3.51
LABORER: Power Tool Operator.....	$ 16.57	4.20
LABORER: Railroad Construction Laborer.....	$ 16.80	4.20
OPERATOR: Backhoe/Excavator/Trackhoe.....	$ 19.37	3.59
OPERATOR: Bulldozer.....	$ 20.57	6.16
OPERATOR: Drill.....	$ 20.57	4.78
OPERATOR: Forklift.....	$ 20.38	4.75
OPERATOR: Grade Checker.....	$ 21.68	6.31
OPERATOR: Loader (Front End).....	$ 20.31	3.84

OPERATOR: Mechanic.....	$ 22.23	5.78
OPERATOR: Paver.....	$ 17.07	3.20
OPERATOR: Roller.....	$ 21.34	8.36
OPERATOR: Rotomill.....	$ 21.88	6.39
OPERATOR: Screed.....	$ 16.82	2.52
OPERATOR: Trencher.....	$ 14.21	0.94
OPERATOR: Broom/Sweeper.....	$ 15.40	2.45
PAINTER: Pavement Marking/Parking Lot Striping.....	$ 19.94	4.10
PAINTER: Roller and Spray.....	$ 20.65	4.45
PIPEFITTER.....	$ 23.97	6.78
TRUCK DRIVER: Dump Truck.....	$ 14.37	1.16
TRUCK DRIVER: Flatbed Truck.....	$ 12.50	1.48
TRUCK DRIVER: Hydroseeder.....	$ 17.32	0.00
TRUCK DRIVER: Water Truck.....	$ 16.46	3.42
TRUCK DRIVER: 3 Axle Truck.....	$ 27.53	1.16

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers
Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination

* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

GUIDELINES FOR HANDLING SONORAN DESERT TORTOISES
ENCOUNTERED ON DEVELOPMENT PROJECTS
Arizona Game and Fish Department
Revised October 23, 2007

The Arizona Game and Fish Department (Department) has developed the following guidelines to reduce potential impacts to desert tortoises, and to promote the continued existence of tortoises throughout the state. These guidelines apply to short-term and/or small-scale projects, depending on the number of affected tortoises and specific type of project.

The Sonoran population of desert tortoises occurs south and east of the Colorado River. Tortoises encountered in the open should be moved out of harm's way to adjacent appropriate habitat. If an occupied burrow is determined to be in jeopardy of destruction, the tortoise should be relocated to the nearest appropriate alternate burrow or other appropriate shelter, as determined by a qualified biologist. Tortoises should be moved less than 48 hours in advance of the habitat disturbance so they do not return to the area in the interim. Tortoises should be moved quickly, kept in an upright position parallel to the ground at all times, and placed in the shade. Separate disposable gloves should be worn for each tortoise handled to avoid potential transfer of disease between tortoises. Tortoises must not be moved if the ambient air temperature exceeds 40 degrees Celsius (105 degrees Fahrenheit) unless an alternate burrow is available or the tortoise is in imminent danger.

A tortoise may be moved up to one-half mile, but no further than necessary from its original location. If a release site, or alternate burrow, is unavailable within this distance, and ambient air temperature exceeds 40 degrees Celsius (105 degrees Fahrenheit), the Department should be contacted to place the tortoise into a Department- regulated desert tortoise adoption program. Tortoises salvaged from projects which result in substantial permanent habitat loss (e.g. housing and highway projects), or those requiring removal during long-term (longer than one week) construction projects, will also be placed in desert tortoise adoption programs. *Managers of projects likely to affect desert tortoises should obtain a scientific collecting permit from the Department to facilitate temporary possession of tortoises.* Likewise, if large numbers of tortoises (>5) are expected to be displaced by a project, the project manager should contact the Department for guidance and/or assistance.

Please keep in mind the following points:

- These guidelines do not apply to the Mohave population of desert tortoises (north and west of the Colorado River). Mohave desert tortoises are specifically protected under the Endangered Species Act, as administered by the U.S. Fish and Wildlife Service.
- These guidelines are subject to revision at the discretion of the Department. We recommend that the Department be contacted during the planning stages of any project that may affect desert tortoises.
- Take, possession, or harassment of wild desert tortoises is prohibited by state law. Unless specifically authorized by the Department, or as noted above, project personnel should avoid disturbing any tortoise.

CONSTRUCTION STORM WATER POLLUTION PREVENTION PLAN

1 SITE DESCRIPTION

1.1 Project Name: **CONTRACTOR SHALL FILL IN PROJECT NAME**

Project No(s): **ND30060067-FTA**

1.2 Project Location:

CONTRACTOR SHALL FILL IN PROJECT SITE LOCATION

1.3 Owner's Name:

City of Phoenix, Street Transportation Department

1.4 Owner's Address:

200 West Washington Street, Phoenix, Arizona 85003

1.5 Project Description:

CONTRACTOR SHALL FILL IN PROJECT DESCRIPTION

1.6 Runoff Coefficient and Soils Information:

A. Overall runoff coefficient of upstream drainage area unchanged by project.

B. Surface Soils Information: **(EXAMPLE ONLY, CONTRACTOR SHALL FILL IN FOR PROJECT SITE LOCATION)**

SOIL UNIT	SOIL TYPE (USDA TEXTURE)	PERMEABILITY (IN./HR.)
Laveen	Loam	0.6-2.0
Mohall	Clay Loam	0.2-0.6
Tucson	Clay Loam	0.2-0.6

SOIL UNIT	SOIL TYPE (USDA TEXTURE)	PERMEABILITY (IN./HR.)
Vecont	Clay	0.06-0.2

1.7 Name of Receiving Water:

EXAMPLE: SALT RIVER, CONTRACTOR SHALL FILL IN FOR PROJECT SITE LOCATION

2 CONTROLS

2.1 Erosion and Sediment Controls

2.1.a Stabilization Practices:

Stabilization practices on this site include:

- Permanent planting.
- Save selected existing trees.
- Decomposed granite.
- **CONTRACTOR SHALL ADD OR REMOVE STABILIZATION PRACTICES AS NECESSARY**

2.1.b Structural Practices:

May include:

- Temporary retention areas (subgrade excavation areas).
- Temporary catch basin inlet protection.
- Silt fence.
- Gravel filter berm.
- Temporary diversion dike.
- Straw bale barriers.
- Sandbag berm.
- **CONTRACTOR SHALL ADD OR REMOVE STABILIZATION PRACTICES AS NECESSARY**

2.1.c Narrative: Sequence of major activities.

CONTRACTOR SHALL COMPLETE NARRATIVE

2.1.d Storm Water Management: **(CONTRACTOR SHALL EDIT AS NECESSARY)**

Storm water drainage on (Major Road) will be provided by curb and gutter, catch basin inlets, and

storm drains. No appreciable changes in runoff coefficients or in finished roadway grades will take place as a result of this project; therefore, no significant alterations of storm water drainage patterns or runoff quantities are expected.

During construction, storm water runoff will be managed by the following means, as conditions require:

- Temporary retention will be provided during roadway construction in areas excavated for subgrade.
- Silt fence, straw bales, sandbag berms, temporary diversion dikes, gravel filter berms or other BMP's as necessary to eliminate erosion may be used to prevent storm runoff from entering open storm drain pipes in excavated trenches. Temporary catch basin inlet protection may also be provided to remove sediment from drainage water before it enters the drainage system. Straw bale protection at outfall pipe locations may be employed during construction.

3 OTHER CONTROLS

3.1 Waste Disposal:

Waste Materials:

All waste materials including trash and construction debris from the site will be either disposed to a designated area immediately or collected and stored in securely-lidded metal dumpsters. The dumpsters will meet all local and State solid waste management regulations. The dumpsters will be emptied a minimum of once per week, or more often if necessary, and the trash will be hauled to an acceptable dump site. Lids will be closed at all times after work hours and during rain events. No construction waste materials will be buried on site. All personnel will be instructed regarding the correct procedures for waste disposal. Notices stating these practices will be posted on site, and _____ the site superintendent who manages the day-to-day site operations, will be responsible for seeing that these procedures are followed.

ENTER PHONE NAME AND PHONE NUMBER OF SITE SUPERINTENDENT

Concrete washout will only be allowed in designated areas. The hardened waste will be disposed of weekly and before final inspection of the project.

Hazardous Waste:

All hazardous waste materials will be disposed of in the manner specified by local or State regulations or by the manufacturer. Site personnel will be instructed in these practices, and _____ the site superintendent who manages day-to-day site operations, will be

responsible for seeing that these practices are followed.

Sanitary Waste:

All sanitary sewage generated on-site will be collected from the portable units a minimum of twice per week or as required by local regulations. Units will have a berm placed around them to ensure no spillage can occur.

3.2 Off-Site Vehicle Tracking:

Traffic will be maintained on paved roadway surfaces throughout construction in order to reduce vehicle tracking of sediments. The paved street beyond the start and end of the project will be swept as often as necessary to remove any excess mud, dirt, or rock that may be tracked from the site by construction vehicles, but not less than once per week. Dump trucks hauling material to or from the construction site will be covered with tarpaulin before leaving the site.

4 DEMONSTRATION OF COMPLIANCE WITH FEDERAL, STATE, AND LOCAL REGULATIONS

The following Federal, State, and City regulations are followed in the preparation of this storm water pollution prevention plan:

- Section 402(p) of the Clean Water Act.
- Amended Section 405 of the Water Quality Act.
- "ADEQ Arizona Pollutant Discharge Elimination System General Permit for Discharge from Construction Activities to Waters of the United States, Permit AZG-2008-001."
- Flood Control District of Maricopa County "Drainage Design Manual for Maricopa County, Arizona, Volume III, Erosion Control."
- City of Phoenix Code 32C, "Storm Water Quality Protection."
- City of Phoenix "Grading and Drainage Ordinance for Purpose of Fulfilling NPDES Requirements."

5 MAINTENANCE/INSPECTION PROCEDURES

5.1 Erosion and Sediment Control Practices:

The following is a list of erosion and sediment controls to be used during the construction period:

5.1.a Stabilization practices for this site include:

- Permanent planting.
- Save selected existing trees.

- Decomposed granite.
- **CONTRACTOR TO ADD/DELETE AS NECESSARY.**

5.1.b Structural practices for this site will include: (Actual specific list to be provided by Contractor)

- Silt fence/straw bale barriers.
- Temporary diversion dike/gravel filter berm.
- Sandbag berm.
- Storm drain, curb and gutter, catch basins.
- Temporary catch basin inlet protection.
- Temporary retention in subgrade excavation areas.
- **CONTRACTOR TO ADD/DELETE AS NECESSARY**

5.2 Erosion and Sediment Control Maintenance and Inspection Practice:

Following is a list of the inspection and maintenance practices that will be used to maintain erosion and sediment control:

- All control measures will be inspected at least once every 7 days and within 24 hours after each rain event of 0.1 inch or greater.
- All measures will be maintained in good working order; if repair is necessary, it will be initiated within 24 hours of report. All changes will be completed within 14 days after an observation.
- Built-up sediment will be removed from silt fence when it has reduced the design capacity by 50%.
- Erosion control fabric and erosion control dikes will be inspected and any breaches promptly repaired.
- Permanent planting will be inspected for washout and healthy growth per specification requirements.
- A Compliance Evaluation Report will be made at each inspection to ensure all BMP's are functioning correctly.
- _____, site superintendent, will be responsible for inspection, maintenance, and repair activities, and filling out the Compliance Evaluation Report.
- Personnel selected for inspection and maintenance responsibility will receive training from _____, site superintendent. They will be trained in all the inspection and maintenance practices necessary for keeping the erosion and sediment controls used on-site in good working order.
- Only one side of roadways will be excavated for subgrade preparation at a time. This area will serve as temporary retention while traffic is maintained on the paved other half of the road. This will serve to control storm water and minimize tracking of sediments.

6 INVENTORY FOR POLLUTION PREVENTION PLAN **(CONTRACTOR TO EDIT AS NECESSARY)**

The materials or substances listed below are expected to be present on-site during construction:

- Concrete
- Asphaltic Concrete
- Fertilizers
- Petroleum-Based Products
- Cleaning Solvents/Agents
- Sealants
- Wood
- Paints
- Herbicide/Pesticide
- Soil Treatment Products
- Other Building Materials
- Water Used in Dust Control

6.1 Spill Prevention

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances to storm water runoff:

6.1.a Good Housekeeping:

The following good housekeeping practices will be followed on-site during the construction period:

- An effort will be made to store only enough product required to do the immediate job.
- All materials stored on-site will be stored in a neat, orderly manner in their appropriate containers and, if possible, under proper cover and palletized.
- Liquid products will be placed on secondary containment pallets.
- Fuel tanks will be double walled.
- Drip pans will be used under all spigots unless on secondary containment.
- Products will be kept in their original containers with the original manufacturers' label.
- Substances will not be mixed with one another unless recommended by the manufacturer.
- Whenever possible, all of a product will be used up before disposing of the container.
- Manufacturers' recommendations for proper use and disposal will be followed.
- The site superintendent will inspect daily to ensure proper use and disposal of materials.
- Concrete washout will only be allowed in designated areas. The hardened waste will be disposed of weekly and before final inspection of the project.

6.1.b Hazardous Products:

These practices are used to reduce the risks associated with hazardous materials:

- Products will be kept in original containers unless they are not resealable.
- Original labels and material safety data sheets will be retained.

- If surplus product must be disposed of, manufacturers', or local and State recommended methods for proper disposal will be followed.
- Products will be monitored, an inventory shall be conducted regularly, and documentation of all use and disposal shall be maintained.

6.2 Product Specific Practices:

The following product specific practices will be followed on-site:

6.2.a Petroleum Products:

All on-site vehicles will be monitored for leaks and receive regular preventative maintenance to reduce any chance of leakage. Petroleum products will be stored in tightly-sealed containers which are clearly labeled. Any petroleum substances used on-site will be applied according to the manufacturer's recommendations. Spills and leaks from vehicles will be stopped immediately. Any leaking vehicle will have a drip pan placed under the leak until the unit is repaired. Secondary containment will be provided for all petroleum products stored onsite.

6.2.b Fertilizers, Herbicide, Pesticide, Soil Treatment:

All materials used will be applied only in the minimum amounts recommended by the manufacturer or as per specification. Once applied, materials will be worked into the soil to limit exposure to storm water.

On-site storage will be covered and palletized to limit contact with storm water. The contents of any partially-used bags or containers will be transferred to a sealable plastic bin to avoid spills.

6.2.c Paints:

All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm drain system or on the ground, but will be properly disposed of according to manufacturers' instructions or State and local regulations.

6.2.d Concrete Trucks:

Concrete trucks will not be allowed to wash out or discharge surplus concrete or dump wash water other than in a designated wash-out area. The hardened waste will be disposed of weekly and before final inspection of the project.

6.3 Spill Prevention Practices:

In addition to the good housekeeping and material management practices discussed in the

previous sections of this plan, the following practices will be followed for spill prevention and cleanup:

- Manufacturers' recommended methods for spill cleanup will be clearly posted and site personnel will be made aware of the procedures and the location of the information and cleanup supplies.
- Materials and equipment necessary for spill cleanup will be kept in the material storage area on-site. Equipment and materials will include, but not be limited to, brooms, dust pans, mops, rags, gloves, goggles, kitty litter, sand, sawdust, and plastic and metal trash containers specifically designed for this purpose.
- All spills will be cleaned up immediately after discovery using dry cleanup methods.
- The spill area will be kept well-ventilated and personnel will wear appropriate protective clothing to prevent injury from contact with a hazardous substance.
- Spills of toxic or hazardous material will be reported to the appropriate State or local government agency, regardless of the size—ADEQ Hotline: (602) 771-4505; City of Phoenix Hazardous Spills Emergency: 911; City of Phoenix Hazardous Spills Safety Section: (602) 262-7555.
- The spill prevention plan will be adjusted to include measures to prevent this type of spill from recurring and procedures to clean up the spill if there is another one. A description of the spill, what caused it, and the cleanup measures will also be included.
- _____, the site superintendent responsible for the day-to-day site operations, will be the spill prevention and cleanup coordinator. He will designate other site personnel who will receive spill prevention and cleanup training.

6.4 Documentation:

Documentation of all inspections, failed BMP's, corrective action and training shall be maintained onsite with the SWPPP at all times during the project, and shall be maintained for not less than three (3) years after the project is complete.

233.3 OTHER REQUIRED CERTIFICATIONS

The Contracor shall complete and submit the following certification forms to the City before construction begins:

- Permitee Certification
- Contractor Certification
- Subcontractor Certification (for all Subcontractors as necessary)
- Operator's Compliance Evaluation Report

PERMITTEE'S CERTIFICATION

As Contractor of the **11th Street Pedestrian and Transit Improvement** project, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

_____

Company

Name: _____

Title: _____

Signature: _____

Date: _____

CONTRACTOR CERTIFICATION

I certify under penalty of law that I understand the terms and condition of the General Arizona Pollutant Discharge Elimination System (AZPDES) Permit that authorizes the storm water discharges associated with industrial activities from the construction site identified as part of this certification. Further, by my signature, I understand that I am becoming a co-permittee, along with the subcontractors signing such certifications, to the general (AZPDES) Permit for the storm water discharges associated with construction activities of the **11th Street Pedestrian and Transit Improvement** project. As a co-permittee, I understand that I, and my company, are legally required under the Clean Water Act, to ensure compliance with the terms and conditions of the storm water pollution prevention plan developed under the AZPDES Permit and the terms of the AZPDES Permit.

General Contractor and Responsibility

Name: _____

Title: _____

Signature: _____

SUBCONTRACTOR'S CERTIFICATION

I certify under penalty of law that I understand the terms and conditions of the General Arizona Pollutant Discharge Elimination System (AZPDES) Permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification. Further, by my signature, I understand that I am becoming a co-permittee, along with the owner(s) and other contractors and subcontractors signing such certifications, to the general AZPDES permit for the storm water discharges associated with construction activities of the **11th Street Pedestrian and Transit Improvement** project. As a co-permittee, I understand that I, and my company, are legally required under the Clean Water Act, to ensure compliance with the terms and conditions of the storm water pollution prevention plan developed under the AZPDES permit and the terms of the AZPDES permit.

Authorized Representative of Subcontractor: _____

Signature: _____ Date: _____

For (Subcontractor Name): _____

Construction Activities: _____

_____

_____

_____

Verification of Completion and Acceptance of Subcontractor's Work

All work to be performed by _____ (Subcontractor) as part of the _____ (Project) has been completed and accepted. Execution of this form absolves said subcontractor from liability for AZPDES violations which may occur subsequent to this date as a result of activities of the general contractor or other subcontractors.

Authorized Representative of Subcontractor: _____

Signature: _____ Date: _____

For (Subcontractor Name): _____

Verified by (General Contractor): _____

Authorized Representative of General Contractor: _____

Signature: _____ Date: _____

AZG-2008-001 General Permit for Construction Activities
Operator's Compliance Evaluation Report

This project requires inspection of storm water pollution controls (BMPs) on a choice of frequency described in the General Permit, Part IV. H. Attach sheets if more space is needed.

Project: _____ Date: _____

Name & Title of Inspector: _____

Qualifications of Inspector: ☐ Attached; or ☐ Shown in Sec. _____ of the SWPPP.

☐ Periodic Inspection; or ☐ Rain Event inspection
Relevant weather information: _____

1. Location(s) of discharge from the site: ☐ None; or ☐ Description: _____

2. Location(s) of and identification of BMPs that need to be maintained; failed to operate or proved to be inadequate: ☐ None; or ☐ Description: _____

3. Location(s) where additional BMPs are needed: ☐ None; or ☐ Description: _____

4. Corrective actions required, including changes and target dates: ☐ None; or ☐ Description: _____

5. Identify all sources of non-storm water and the associated pollution control measures: ☐ None; or ☐ Description: _____

6. Identify material storage areas and evidence of, or potential for pollutant discharge from these areas: ☐ None; or ☐ Description: _____

7. Identify any other apparent incidents of non-compliance: ☐ None; or ☐ Description: _____

_____

_____

8. If no incidents of non-compliance are identified in items 1 through 7 above, the inspector certifies that the construction project is being operated in compliance with the SWPPP and the General Permit.

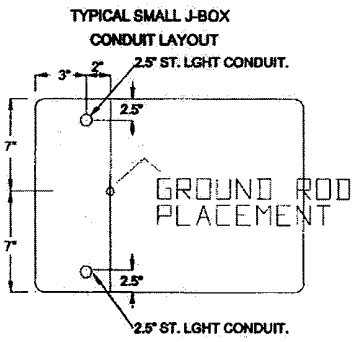
I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

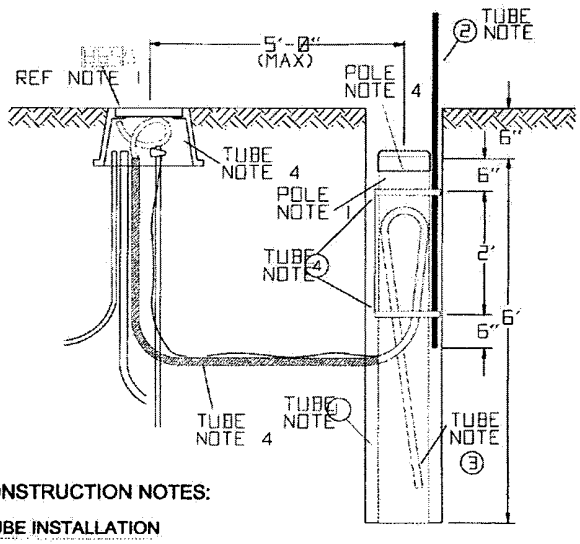
Certifying Signature: _____ Date: _____

Printed Name: _____

APS STREET LIGHT SONOTUBE, J-BOX, CONDUIT ETC (DWG)

1911





CONSTRUCTION NOTES:

TUBE INSTALLATION

1. DIG HOLE FOR TUBE 6'- 6"DEEP BY EITHER OF THE FOLLOWING:
   A. AUGERRED HOLE (16"MAX.)
   B. SLOTTED STUB-OUT TRENCH
2. PLACE RED PLASTIC LOCATOR MARKER OUTSIDE OF TUBE AND STRAP IN TWO LOCATIONS.
3. PLACE STREET LIGHT FLEXIBLE CONDUIT IN TUBE WITH 10' COILED INSIDE. DO NOT MAKE SHARP BENDS. BEND END OF CONDUIT OVER AND INSERT DOWN INTO TUBE AS SHOWN. INSPECTOR TO INSURE FLEX IS NOT KINKED.
4. INSTALL OTHER END OF FLEX IN J-BOX. LEAVE SMALL COIL TO ALLOW LEVELING FOR FINAL GRADE. BACKFILL AFTER INSPECTION IS COMPLETE.
5. COMPACT SOIL TO AT LEAST 85% AROUND TUBE.

POLE INSTALLATION

1. ELECTRONIC MARKER WILL INDICATE LID LOCATION PER BLUE STAKE MARKINGS. WORK FORCES WILL DIG DOWN TO LID,REMOVE LID AND PULL FLEX FROM TUBE.
2. INSERT END OF FLEX THROUGH ACCESS HOLE AND PUSH IT UP THROUGH HAND HOLE AS STREET LIGHT POLE IS LOWERED INTO THE TUBE.
3. HOLD POLE SECURELY WHILE BACKFILLING TO AT LEAST 85% COMPACTION. TO COMPACT POLE IN PLACE, PEA GRAVEL (<3/4") MAY BE USED NEAR THE TUBE.
4. THE MARKER BALL ATTACHED TO THE BOTTOM OF THE "SONO" TUBE LID SHOULD BE RETURNED TO STOCK.

REFERENCES:

1. FOR J-BOX SEE SPEC 8655 THRU 8663.

CODE	1911	MATERIAL LIST	
ITEM	QTY	DESCRIPTION	APN
1	20	CONDUIT 1" PVC FLEX CORR	32900891
2	1	LOCATOR U. G. SERVICE	33101586
3	1	"SONO" TUBE 6FT X12IN	64672
4	2	TIE 30" SELF LOCKING	33107350
5	2	FOAM BACKFILL	00072046

APS	Street Light Sonotube, J-Box, Conduit & Pole Installation	
WO#:		DATE: 5/14/03
BY:		SCALE:
FILENAME:		SHEET OF

CITY OF PHOENIX PROJECT NO.: ND30060067-FTA
BOND ISSUE OR BUDGET PROJECT
CITY OF PHOENIX, ARIZONA
STREET TRANSPORTATION DEPARTMENT

PROPOSAL to the City Engineer of the City of Phoenix.

In compliance with the Advertisement for Bids, by the City Engineer, the undersigned bidder:

TALIS Construction Corporation
(Print or Type Contractor Name)

Having examined the contract documents, site of work and being familiar with the conditions to be met, hereby submits the following proposal for furnishing the material, equipment, labor and everything necessary for the completion of the work listed and agrees to execute the contract documents and furnish the required bonds and certificates of insurance for the completion of said work, at the locations and for the prices set forth on the inside pages of this form.

Understands that construction of this project shall be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest revision and the City of Phoenix Supplements, latest revision to the MAG Uniform Standard Specifications and Details, except as otherwise required by the project plans and specifications.

No proposal may be withdrawn for a period of 50 days after opening without consent of the Contracting Agency through the body or agent duly authorized to accept or reject the proposal except in the case of federally-assisted projects.

Understands that his proposal shall be submitted with a proposal guarantee of cash, certified check, cashier's check or surety bond for an amount not less than ten (10) percent of the amount bid, as referenced in the Call for Bids.

Agrees that upon receipt of Notice of Award, from the City of Phoenix, he will execute the contract documents within 10 calendar days.

Work shall be completed within 150 calendar days, beginning with the day following the starting date specified in the Notice to Proceed. The time allowed for completion of the work includes lead time for obtaining the necessary materials and/or equipment and approvals.

The bidder shall acknowledge all addenda in writing. By writing the addendum number(s) below, the bidder agrees that this proposal is computed with consideration of the specification book(s) plus any and all addenda.

ADDENDUM NO.	DATE	ADDENDUM NO.	DATE
1	10/10/12		
2	10/11/12		

This will certify that, of the total amount of the base bid, $ 1,630,865.75 will be accomplished by duly certified Disadvantaged Business Enterprises, which amount is 13% percent of the total amount of the bid submitted.

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: **ND30060067-1 (00)**

Project No: **ND30060067-1**

Item No.	Description	Unit	Quantity	Unit Price	Total
	Project No.: ND30060054-1 11th Street Streetscape Design-1				
1 C3456000	Adjusting Frames, Covers, Valve Boxes On Existing Non-City Utilities, Contingent Item	Each	3.00	340.00	1020.00
2 E6992000	"Allowance For Stormwater Pollution Prevention Best Management Practices (BMP'S)"	Lump	1.00	$10,000.00	$10,000.00
3 M1000010	Art Work	Job	1.00	160000.00	160000.00
4 M1000011	Art Feature	Each	44.00	1800.00	79,200.00
5 M1042005	Allowance for Extra Work	Job	1.00	$50,000.00	$50,000.00
6 M1058000	Construction Surveying And Layout	Job	1.00	51000.00	51000.00
7 M3360240	Asphalt Concrete For Permanent Pavement Replacement, Type C 3/4, 4" Thick	Sq. Yd.	508.00	49.00	24892.00
* 8 M3400405	Decorative Concrete Sidewalk, Std. Detail P-1230 Modified (6" Thick)	Sq. Ft.	10,098.00	6.50	105637.00
* 9 M3400406	Concrete Sidewalk, Std. Detail P-1230 Modified (6" Thick), Class A Concrete	Sq. Ft.	42,111.00	2.90	122121.90

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: **ND30060067-1 (00)**

Project No: **ND30060067-1**

Item No.	Description	Unit	Quantity	Unit Price	Total
* 10 M3400422	Concrete Sidewalk Ramp (SD1 - SD14) (9" Thick)	Sq. Ft.	6,372.00	5.25	33 453 00
11 M3400447	Concrete Driveway Entrance, MAG Standard Detail 251, (9" thick)	Sq. Ft.	312.00	6.25	1950 00
* 12 M3400551	Concrete Driveway, Return Type	Sq. Ft.	1,132.00	4.90	5,546.80
13 M3400566	Concrete Driveway Entrance, Standard Detail P-1255-2 (6" Thick)	Sq. Ft.	725.00	5.00	3,625 00
14 M3400665	Commercial Driveway Entrance (Detail P-1255-1, P-1255-2, & P-1255-3)	Sq. Ft.	5,759.00	4.10	23,611.90
15 M3402213	Concrete Vertical Curb, MAG Standard Detail 220, Type A, Modified (H = 9")	Lin. Ft.	1,766.00	14 00	24 724.00
16 M3402241	Concrete Valley Gutter, (Std Detail 240 or Modified Per Page V.G. - 1) With And/Or Without Concrete Aprons	Sq. Ft.	1,402.00	6.50	9113 00
17 M3450020	Adjust Existing Manhole Frame and Cover, MAG Std Detail 422 and COP Detail P1430	Each	1.00	394 00	394 00
* 18 M3453001	Adjust Existing Type "A" Water Valve, Standard Detail P-1391 and P-1391-1	Each	16.00	394 00	6304 00
19 M3500004	Remove and Salvage Historic Concrete Stamp	Each	43.00	225 00	9675 00

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
20 M3500012	Remove Historic Concrete Curb	Lin. Ft.	1,761.00	4.25	7484.25
21 M3500020	Remove Portland Cement Concrete Sidewalk, Driveway, Valley Gutter & Slab	Sq. Ft.	58,151.00	2.00	116302 00
22 M3500055	Remove Reinforced Concrete Slab	Sq. Yd.	347.00	20 00	6940 00
23 M3500060	Remove Asphalt Concrete Pavement	Sq. Yd.	764.00	11.50	8786 00
24 M3500150	Remove Tree, 12" Diam. and Larger	Each	78.00	750 00	58500 00
25 M3500300	Miscellaneous Removal and Other Work	Job	1.00	21000 00	21000 00
* 26 M3513120	2" PVC Electrical Conduit	Lin. Ft.	225.00	6.50	1462.50
* 27 M3513125	2-1/2" PVC Conduit For Traffic Signal	Lin. Ft.	1,050.00	12.80	13440 00
* 28 M3513250	No. 5 Junction Box	Each	6.00	420 00	2520 00
* 29 M3513270	No. 7 Junction Box	Each	2.00	545 00	1090 00

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: **ND30060067-1 (00)**

Project No: **ND30060067-1**

Item No.	Description	Unit	Quantity	Unit Price	Total
* 30 M3513500	Type A Signal Pole Foundation	Each	4.00	490 00	1960 00
* 31 M3513508	Type SM Signal Pole Foundation	Each	7.00	1550 00	10850 00
* 32 M3513843	Remove Existing Traffic Pole per Plan	Each	8.00	425 00	3400 00
* 33 M3513844	Remove Existing Signal Junction Box	Each	11.00	65 00	715 00
34 M3515045	Remove Existing Light Poles, Per Plan	Each	16.00	200 00	3200 00
35 M3515048	Street Lighting Per Plan, Complete and in Place	Job	1.00	303000 00	303000 00
36 M4012000	Traffic Control Devices	Job	1.00	60000 00	60000 00
37 M4013000	Allowance for Uniformed, Off-duty Law Enforcement Officer	Job	1.00	$4,000.00	$4,000.00
38 M4303000	Plant Establishment Guarantee and Maintenance (including water and power)	Month	12.00	2025 00	24300 00
39 M4304001	Decomposed Granite, 1/4" Minus For Path	Cu. Yd.	85.00	40 00	3400 00

BID PROPOSAL

Primary: **ND30060067-1 (00)**

Project No: **ND30060067-1**

Item No.	Description	Unit	Quantity	Unit Price	Total
40 M4304101	Decomposed Granite, 1" Sized	Cu. Yd.	273.00	53.00	14469.00
41 M4305005	5 Gallon Shrub	Each	306.00	14.00	4284.00
42 M4305036	36" Box, Trees	Each	258.00	435.00	112230.00
* 43 M4353500	Steel Edging, per Plan, Furnished and Installed	Lin. Ft.	910.00	6.00	5460.00
* 44 M4354201	Bench Per Detail, Furnish and Install	Each	36.00	750.00	27000.00
45 M4354501	Bicycle Rack, Furnish and Install	Each	6.00	500.00	3000.00
46 M4354600	Trash Receptacles, Furnish and Install	Each	6.00	950.00	5700.00
47 M4400260	1" PVC Irrigation Pipe, Schedule 40	Lin. Ft.	15,320.00	1.70	26044.00
48 M4400315	1- 1/2" PVC Irrigation Pipe, Schedule 80	Lin. Ft.	2,570.00	3.65	9380.50
49 M4400599	Quick Couplers	Each	7.00	160.00	1120.00

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: ND30060067-1 (00)

Project No: ND30060067-1

Item No.	Description	Unit	Quantity	Unit Price	Total
50 M4400600	Flush Cap	Each	19.00	16.00	304.00
51 M4403075	3/4" Reduced Pressure Backflow Prevention Unit and Cage	Each	3.00	1100.00	3300.00
* 52 M4404199	1" Electric Remote Control Valve And Emitter Control Assembly Per Detail	Each	14.00	265.00	3710.00
* 53 M4404310	1" Gate Valve	Each	46.00	150.00	6900.00
* 54 M4404505	Pressure Regulator	Each	14.00	93.00	1302.00
* 55 M4404509	Single Port Emitter and Riser Assembly with Bug Cap	Each	306.00	4.00	1224.00
* 56 M4404510	Multi-Port Emitter and Riser Assembly with Bug Cap	Each	516.00	13.50	6966.00
* 57 M4405115	1-1/2" Schedule 40 PVC Irrigation Sleeve	Lin. Ft.	3,900.00	2.80	10920.00
58 M4405120	2" Schedule 40 PVC Irrigation Sleeve	Lin. Ft.	1,083.00	2.80	3032.40
* 59 M4405300	3" Schedule 40 PVC Irrigation Sleeve	Lin. Ft.	910.00	5.25	4777.50

City of Phoenix

Program Id BE01RE23
Run Date 10/10/2012
Run Time 13:50

BID PROPOSAL

Primary: **ND30060067-1 (00)**

Project No: **ND30060067-1**

Item No.	Description	Unit	Quantity	Unit Price	Total
60 M4406020	Irrigation Controller, installed per plan	Each	3.00	5,900.00	17,700.00
61 M4406905	Flow Sensor with Master Valve Assembly and Filter	Each	3.00	950.00	2850.00
62 M6101801	Relocate Existing Water Meter, Box, and Cover	Each	25.00	575.00	14,375.00
63 M6101802	New Water Meter Box and Cover, Furnish & Install	Each	3.00	1,700.00	5100.00
64 M6101805	Water Service Connection (Main to Meter)	Each	3.00	1,700.00	5100.00

Subtotal for Project No: ND30060054-1
11th Street Streetscape Design-1 (Items 1 thru 64) $ 1,630,865.75

Total Amount of Construction Bid
Proj No: ND30060054-1 11th Street Streetscape Design-1 (Items 1 thru 64) $ 1,630,865.75

One Million, Six Hundred Thirty Thousand, Eight Hundred Sixty-five & .75 /100 Dollars

Written Words

City of Phoenix Project No.: **ND30060067-FTA**

THIS PROPOSAL IS SUBMITTED BY TALIS Construction Corporation

a corporation organized under the laws of the State of Arizona

a partnership consisting of N/A

a joint venture consisting of N/A

or individual trading as N/A

of the City of Tempe

FIRM TALIS Construction Corporation

ADDRESS 2342 S McClintock Drive

CITY Tempe STATE AZ ZIP CODE 85282

PHONE (480) 557-6100 FAX (480) 557-6200

BY _____
Officer and Title (signature)

Sandra Gonzalez - President
Officer and Title (print or type)

October 16, 2012
Date

WITNESS: If Contractor is an individual
(signature)

ATTEST: If Contractor is Corporation or Partnership
(signature and title)

Manuel Lopez, Vice President

ATTACHMENT A
DOCUMENTATION OF OUTREACH EFFORTS
(DUE AT TIME OF BID)

Project/Contract Name: 11th Street Pedestrian Imp.
Bidder: TALIS Construction Corp.
Base Bid Amount: $1,630,865.75

Local Manager: Chuck Watson
Address: 2342 S McClintock Drive
City/State/Zip: Tempe, AZ 85282
Email: Cwatson@talis.us
Phone #: (480) 557-6200 Fax: (480) 557-6200

Summary of Bidder's Outreach Activities relative to all businesses considered for this contract.

Firm	Business Status	Method of Solicitation	Type of Agreement	Proposed Contract or Agreement Amount	*Provide detailed explanation of why firm was or was not selected.	*Provide detailed explanation of how selection outcome was communicated to the firm.
Name: CD Development LLC Address: 4632 S. 36th St. City/State/Zip: Phx, AZ 85040 Email: ccorral@corraldesigngroup.com Trade Area: Landscape Years in business: 8 Approximate annual gross receipt sales: $1,000,000	X DBE (AZUCP Certified) __ SBE (C.O.P. Certified) __ Small Business Concern (SBC) __ Unknown	X Email __ Phone __ Fax Other: ____ (Specify)	X Subcontract __ Purchase Order __ Goods & Services __ Firm was not selected*	$ 215310.08 % ____ (of based bid) __ N/A	Good price no complaints at R.O.C.	Via telephone follow up with e-mail.
Name: Address: City/State/Zip: Email: Trade Area: Years in business: Approximate annual gross receipt sales:	__ DBE (AZUCP Certified) __ SBE (C.O.P. Certified) __ Small Business Concern (SBC) __ Unknown	__ Email __ Phone __ Fax Other: ____ (Specify)	__ Subcontract __ Supplier __ Goods & Services __ Firm was not selected*	$ ____ % ____ (of based bid) __ N/A		
Name: Address: City/State/Zip: Email: Trade Area: Years in business: Approximate annual gross receipt sales:	__ DBE (AZUCP Certified) __ SBE (C.O.P. Certified) __ Small Business Concern (SBC) __ Unknown	__ Email __ Phone __ Fax Other: ____ (Specify)	__ Subcontract __ Supplier __ Goods & Services __ Firm was not selected*	$ ____ % ____ (of based bid) __ N/A		

Allowable Goods and Services are those that are directly related to this contract.
NOTE: If additional space is required, please copy and submit multiple pages of this Attachment.

ATTACHMENT B
SMALL BUSINESS UTILIZATION COMMITMENT
(DUE AT TIME OF BID)

On behalf of the Bidder, I certify under the penalty of perjury that the information submitted herein is true and correct:

1) The *firms indicated as selected* in **Attachment A** will participate in this contract;

2) The Bidder will comply with the Outreach Requirements for Race- and Gender-Neutral Contracts for substitutions;

3) I understand and agree that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and

4) The following breakdown of participation by DBEs and small businesses certified or self-identified is true and correct:

Proposed participation as subcontractor, subconsultant, or supplier as a percentage of this contract's value:

DBE $ 215,310.08 Small Business $ _____

13 % of Base Bid _____ % of Base Bid

Name of Bidder: TALIS Construction Corporation

Printed Name Authorized Person: Chuck Watson - Project Manager

Signature of Authorized Person: Chad W. Watson

ATTACHMENT C -1

LETTER OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER

(TO BE COMPLETED AND SIGNED BY THE DBE FIRM – DUE AT TIME OF BID)

PROJECT DESCRIPTION: 11TH STREET PEDESTRIAN AND TRANSIT IMPROVEMENT PROJECT **PROJECT NUMBER: ND30060067 FTA**

TO: TALIS Construction Corp.
(Insert name of Bidder)

1 The undersigned herein attests that they hold certification as a Disadvantaged Business Enterprise (DBE) granted by the following member of the Arizona Unified Certification Program:

Arizona Dept. of Transportation

(Please note that certification as a Small Business Enterprise (SBE) does not meet the requirements of this project as a DBE. Firms must be DBE certified and listed on the directory of certified DBE firms for the Arizona Unified Certification Program (AZUCP) and maintained by the Arizona Department of Transportation at www.AZDBE.org to be eligible for consideration as a DBE)

2. The undersigned is prepared to perform the following scope(s) of work on the above referenced project:

PART A: COMPLETE THIS PORTION IF THE SCOPE OF SERVICES PROVIDED AT AN HOURLY OR UNIT RATE			
Description	**Number of Hours/Units**	**Hourly/Unit Price**	**Total Quote Amount**
Landscape / Irrigation			$215310.08
PART B: COMPLETE THIS PORTION FOR TRADE AREAS THAT WILL NOT BE PERFORMED AT AN HOURLY OR UNIT RATE			
NOTE: BROKER, TRUCKING, HAULING, AND UNIFORMED OFFICER SERVICES MUST USE PART A ABOVE			
Description			**Total Quote Amount**
			$

3. If trucking and hauling services are included in ***Part A*** above, the undersigned affirms the following:

# of trucks needed to perform the job _____	# of trucks owned by the proposed DBE _____
# of trucks to be leased from a DBE _____	# of trucks to be leased from a non-DBE _____

4. The undersigned affirms the amount of fees and commissions for work quoted in Part A above are as follows.

Contract Amount $_____ Fees/Commissions Portion of Contract Amount $_____

5 The undersigned will sublet and/or award $_____ of the Total Quote Amount to a non-DBE firm

6. The undersigned will sublet and/or award $ _____ of the Total Quote Amount to another certified DBE firm

On the 16 day of October, 2012, by signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the Bidder receive award of this contract from the City of Phoenix.

CD Development LLC — 602.222.9822
(Print DBE Firm Name) (Phone Number)

Carlos Corral — Carlos Corral, Estimator
(Authorized Signature) (Print Name and Title)

ATTACHMENT C-2

LETTER OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER INSTRUCTIONS AND WORKSHEET

THE FOLLOWING IS BEING PROVIDED AS AN *EXAMPLE* FOR CALCULATING THE AMOUNTS THAT SHOULD BE ENTERED ONTO ATTACHMENT C-1. FOR ASSISTANCE, PLEASE CONTACT THE EQUAL OPPORTUNITY DEPARTMENT AT 602-495-0887.

Part I. Fees and Commissions: Insert the information from Step One below in Section 2 – *Part A* of the LOI form (Attachment C-1) Transfer the information from Step Three to Section 4 of the form This part is applicable to the use of uniformed officers to provide traffic control and security services at an hourly rate by non-employees or other services where the DBE is a broker of materials or services and retains a fee or commission for providing those services

STEP ONE			
Total Number of Hours/Units	Per Hour/Unit Bid Amount	Total Quote Amount	Calculation Formula
200	**$30**	**$6,000**	**200 × $30 = $6,000**
STEP TWO			
Per Hour/Unit Bid Amount	Hourly/Unit Rate Paid	DBE Firm Commission/Fee	Calculation Formula
$30	**$21**	**$9**	**9 / 30 = 30%**
STEP THREE			
Gross Bid Amount (from Step One)	Commission/Fee % (from Step Two)	Amount Counted as DBE Participation	Calculation Formula
$6,000	**30%**	**$1,800**	**$6,000 × .30 = $1,800**

Part II. Trucking and Hauling DBEs should indicate in Sections 2, Part A, and Section 3 of the LOI form (Attachment C-1) information regarding DBE trucking on the contract The City allows 100 percent of the payments for services provided by DBE-owned and DBE-leased trucks to be counted You can also count all of the charges for non-DBE-leased trucks, up to the number of DBE-owned and DBE-leased trucks on the project The payments for non-DBE-owned or DBE-leased trucks above the number of DBE-owned and DBE-leased trucks cannot be counted in full Only the fees and commissions that the DBE firm retains over and above the leasing costs they pay for non-DBE owned or leased trucks can be counted **The City will require proof of the leasing arrangements prior to determining compliance.**

STEP ONE	STEP TWO	STEP THREE
Total number of trucks to be used on the contract	Number of trucks owned by the DBE that will be used on the contract	Number of DBE leased trucks that can be counted in full
10	**2**	**2**
STEP FOUR	**STEP FIVE**	**STEP SIX**
Number of non-DBE leased trucks that can be counted in full (the number of trucks indicated here cannot exceed the sum of trucks in Step 2 and Step 3)	Number of non-DBE leased trucks that cannot be counted in full (total number of non-DBE leased trucks minus number of trucks in Step 4)	Fees and Commissions that will be retained by the DBE for the trucks in Step 5 that cannot be counted in full
4	**2**	**Total cost being charged to Bidder minus leasing cost of each truck times # trucks in Step 5**

Part III. Construction Trade Areas DBE must indicate in the Description of Section 2, Part B of the LOI form (Attachment C-1), ***all*** scope(s) of work associated with the Total Quote Amount DBE must complete Section 5 and Section 6 if it intends to sublet or award any amount of the Total Quote Amount to other DBEs and/or non-DBEs

ATTACHMENT D

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SUBCONTRACTOR/SUBCONSULTING/PROCUREMENT REPORT

(To be submitted with each Pay Request, including with the Final Pay Request)

(1) PAY REQUEST NO._____ (2) REPORT PERIOD FROM _____ TO _____ SHEET ____ OF ____

(3) PROJECT NAME _____ (4) PROJECT NO. _____ (5) CONTRACT AMOUNT $_____

(6) CONTRACT NO. _____

		CONTRACT RELATED			FOR CURRENT BILLING CYCLE			PRIOR TO THIS BILLING CYCLE			
(7) FIRM NAME REP NAME & PHONE NUMBER	(8) SCOPE OF WORK	(9) ORIGINAL CONTRACT AMOUNT	(10) CONTRACT ADJUSTMENT	(11) REVISED CONTRACT AMOUNT	(12) AMOUNT INVOICED BY FIRM	(13) AMOUNT RETAINED THIS PERIOD	(14) AMOUNT TO BE PAID TO FIRM	(15) TOTAL AMOUNT INVOICED BY FIRM	(16) TOTAL AMOUNT RETAINED	(17) TOTAL AMOUNT PAID TO FIRM	(18) PERCENT OF CONTRACT COMPLETED
TOTALS											

(19) CONTRACTOR'S NAME _____

(20) AUTHORIZED SIGNATURE _____

(21) DATE_____

FOR CITY OF PHOENIX USE

Percent of project completed _____ % Date _____

City Project Manager _____ _____
(Print Name) (Signature)

ATTACHMENT E

CERTIFICATION OF FULL/FINAL PAYMENT TO DBE FIRMS

(TO BE COMPLETED BY THE SUCCESSFUL BIDDER AND DBE FIRM UPON COMPLETION OF WORK)

Successful Bidder AFFIDAVIT:

The undersigned, having contracted as the Successful Bidder on Project # _____, hereby certifies that full payment *(including all retention)* has been made to the DBE firm cited below The total value of all payments made to the DBE firm for materials and/or work performed on this project contract is as follows

DBE Firm: _____ Total Amount Paid: $ _____

This certification is made under Federal and State laws concerning false statement Supporting documentation for this payment is subject to audit and should be retained for a minimum of three (3) years from the project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the Successful Bidder, all documentation supporting the Successful Bidder's position with regards to delayed or withheld payment(s) should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By: _____ _____
Authorized Agent for Successful Bidder (Print Name and Title)

Date _____

DBE FIRM AFFIDAVIT:

The undersigned DBE firm hereby certifies that a contract was entered into with the above named Successful Bidder to perform work or provide materials on the project cited in this document I further certify that the total amount of payments received as provided herein by the prime contract is accurate and unchallenged

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By. _____ _____
Authorized Agent for DBE Firm (Print Name and Title)

Date _____

CITY OF PHOENIX
LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS

PROJECT NO.: ND30060067 FTA **PROJECT DESCRIPTION:** 11th Street Pedestrian and Transit Improvement Project

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER ADDITIONAL TRADE/SUPPLIER AREAS IF NECESSARY)	SELF-PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER
Landscaping	☐YES ☒NO	CD Development, LLC.	Carlos Corral	(602)222-9822
Electric	☐YES ☒NO	Kimbrell Electric, Inc.	John Kimbrell	(602) 265-2111
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			
	☐YES ☐NO			

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project for an amount greater than or equal to 5% of the base bid. These companies shall not be removed or replaced on the project without prior written approval by the City of Phoenix Project Manager. If a subcontracting and material supplier trade area is not listed, the City will assume that work in that trade area will be self performed by the company signing below.

COMPANY NAME TALIS Construction Corporation **SIGNATURE** Chuck W. Watson II

NAME & TITLE Chuck Watson - Project Manager PHONE NUMBER (480) 557-6100 DATE October 16, 2012

EMAIL ADDRESS: cwatson@talis.us

CITY OF PHOENIX

LIST OF ALL SUBCONTRACTORS AND SUPPLIERS

PROJECT NO.: ND30060067 FTA **PROJECT DESCRIPTION: 11th Street Pedestrian and Transit Improvement Project**

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER ADDITIONAL TRADE/SUPPLIER AREAS IF NECESSARY)	SELF-PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER
Concrete Work	☒YES ☐ NO	Self Performed - TALIS	Chuck Watson	(480) 557-6100
Grading & Paving	☒YES ☐ NO	Self Performed - TALIS	Chuck Watson	(480) 557-6100
Demo & Hauling	☒YES ☐ NO	Self Performed - TALIS	Chuck Watson	(480) 557-6100
Water Services	☒YES ☐ NO	Self Performed - TALIS	Chuck Watson	(480) 557-6100
Barricades	☒YES ☐ NO	Self Performed - TALIS	Chris Rocha	(602) 989-1355
Electrical	☐YES ☒ NO	Kimbrell Electric, Inc.	John Kimbrell	(602) 265-2111
Landscape	☐YES ☒ NO	CD Development, LLC	Carlos Corral	(602) 222-9822
Concrete	☐YES ☒ NO	Ft. McDowell Yavapai Mat.	Joe Nazeck	(480) 837-2358
Pipe / Fittings	☐YES ☒ NO	Ferguson Waterworks	Brian Williams	(602) 495-8420
	☐YES ☐ NO			
	☐YES ☐ NO			
	☐YES ☐ NO			

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project. These companies shall not be removed or replaced on the project without prior written approval by the City of Phoenix Project Manager. If a subcontracting and material supplier trade area is not listed, the City will assume that work in that trade area will be self performed by the company signing below.

COMPANY NAME TALIS Construction Corporation **SIGNATURE** Chuck W. Watson

NAME & TITLE Chuck Watson, Estimator / Project Manager PHONE NUMBER 480-557-6100 DATE October 17, 2012

EMAIL ADDRESS: cwatson@talis.us

BIDDER'S DISCLOSURE STATEMENT

Authorized Contact for this Disclosure Statement

Name: Sandra Gonzalez

Title: President

E-mail: Sandyg@talis.us

Phone number: 480-557-6100

FAX number: 480-557-6200

List any other DBA, trade name, other identity, or EIN used in the last five (5) years, the state or country where filed, and the status (active or inactive): (if applicable): No other DBA's, EIN # is 86-0786364

Business Characteristics

Business entity type – Please check appropriate box and provide additional information:

☒	Corporation	Date of incorporation: 6-30-93
☐	Limited Liability Company	Date organized:
☐	Limited Liability Partnership	Date of registration:
☐	Limited Partnership	Date established:
☐	General Partnership	Date established:
☐	Sole Proprietor	How many years in business?:
☐	Other (explain)	date established:

Was the business entity formed in the State of Arizona? Yes X No

If no, indicate jurisdiction where Business Entity was formed: —

Is the Business Entity currently registered to do business in Arizona with the Arizona Corporation Commission? Yes X No_____ Not required _____ (if sole proprietor or general partnership)

Does the Business Entity have a City of Phoenix business privilege license? Yes X No_____ If "no" explain and provide detail such as "not required" or "application in progress" or other reason.

Is the Business Entity publicly traded? Yes_____ No X

Is the responding Business Entity a Joint Venture? Note: If the Submitting Business entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture. Yes_____ No X

Is the Business Entity's Principal Place of Business/Executive office in Phoenix? If "no" does the Business Entity maintain an office in Phoenix? Yes X No_____ Not in Phoenix, but in Tempe, AZ

Provide the address and phone number for the Phoenix office. Yes_____ No X 2342 S. McClintock Dr., Tempe, AZ 85023

Is the business certified by Phoenix as a Small Business Enterprise? No

Identify Business Entity Officials and principal Owners:

Name(s) Sandra Gonzalez Title President Percentage ownership 100 %(Enter 0% if not applicable).

Name(s) Manuel Lopez Title Vice President Percentage ownership 0 %(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ___%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ___%(Enter 0% if not applicable).

Affiliates and Joint Venture Relationships – N/A

Does the Business entity have any Affiliates? Yes_____ No X Attach additional pages if necessary.

Affiliate name: N/A

Affiliate EIN (if available): N/A.

Affiliate's primary Business Activity: N/A
Explain relationship with Affiliate and indicate percent ownership, if applicable. —

Are there any Business Entity Officials or Principal Owners that the Business Entity has un common with this Affiliate? N/A
Individual's name: —

Position/Title with Affiliate: N/A

Has the Business Entity participated in any joint Ventures within the past three years? Yes_____ No_X_
(Attach additional pages if necessary)

Joint Venture Name:_N/A_____

Joint venture EIN (if applicable):_N/A_____

Identify parties to the Joint Venture:_N/A_____

Contract History

Has the Business Entity held any contracts with the city of Phoenix in the last three (3) years? Yes_X_ No_____ If "yes" attach a list. See Attached List.

Integrity – Contract Bidding

Within the past three (3) years, has the Business Entity or any Affiliate been suspended or debarred from any government contracting process or been disqualified on any government procurement? NO

Been subject to a denial or revocation of a government prequalification? Yes_____ No_X_

Been denied a contract award or had a bid rejected based upon a finding of a non-responsibility by a government entity? Yes_X_ No_____ See Attached.

Agreed to a voluntary exclusion from bidding/contracting with a government entity? Yes_____ No_X_

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes_____
No_X_

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes_____
No_X_

For each "Yes" answer above, provide an explanation of the issues.

Integrity – Contract Award

Within the past three (3) years has the Business Entity or any Affiliate been suspended, cancelled, or terminated for cause on any government contract? Yes_____
No_X_

Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract? Yes_____
No_X_

For each "yes" answer, provide an explanation. (Attach explanation on a separate sheet of paper).

Certifications/Licenses

Within the past three (3) years, has the Business Entity or Affiliate had a revocation, suspension, or disbarment of any business or professional permit and/or license? Yes_____ No_X_____

If "yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

Legal Proceedings

Within the past three (3) years, has the Business Entity of any Affiliate: Yes_____ No_X_____

Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation? Yes_____ No_X_____

Been the subject of an indictment, grant of immunity, judgment or conviction, (including entering into a plea bargain for conduct constituting a crime)? Yes_____ No_X_____

Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? Yes_____ No_X_____

Had a government entity find a willful prevailing wage or supplemental payment violation? Yes_____ No_X_____

Been involved in litigation as either a plaintiff or a defendant involving a copyright or patent infringement violation or an anti-trust violation? Yes_____ No_X_____

Other than previously disclosed, for the past three (3) years:

(I) Been subject to the imposition of a fine or penalty in excess of $1000 imposed by any government as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination ; or

(ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity? Yes_____ No_X_____

If "yes" provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues. N/A

Leadership Integrity

If the Business Entity is a joint Venture Entity, answer "N/A – Not Applicable" to questions below:

Within the past three (3) years has any individual previously identified, or any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute, or approve bids, proposals, contracts or supporting documentation with the city of Phoenix been subject to: Yes____ No_X_____
A sanction imposed relative to any business or professional permit and/or license? Yes_____ No_X_____
An investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct? Yes_____ No_X_____

TALIS

CORPORATION

Description:	Contract Number:
WMR: 31st to 35th Ave., Bethany Home to Missouri	WS85500358 JOC 131888 Agr. #2
30th Avenue Campbell Ave. to Hazelwood St. Imp.	ST87750116 JOC 133427 Agr. #4
33rd Ave. Elm Street to Camelback Improvements	ST87750115 JOC 133427 Agr. #3
Hazelwood Street: 31st Ave. to Coolidge Improvements	ST87750114 JOC 133427 Agr. #2
79th Avenue & Thomas Improvements	ST87750117 JOC 133427 Agr. #5
33rd Avenue & Glenrosa	ST87750113 JOC 133427 Agr. #1
Danbury Road Paving	ST87110116 JOC 120742 Agr. #155
Grovers Avenue Paving	ST87110115 JOC 120742 Agr. #150
20th Street Improvements	ST87750124 JOC 120742 Agr. #152
26th Street Improvements	ST87110120 JOC 120742 Agr. #141
Fire Hydrant Installation South Central	WS85500389 JOC 131888 Agr. #01
30th Street & Beck Lane Improvements	ST87710131 JOC 120742 Agr. #144
Invergordon Storm Drain Improvements	DY83140021 JOC 120742 Agr. #151
Transit Center Maintenance Repairs	PT00130011 JOC 131885 Agr. #01
Norton Fight Back Area 4 Sidewalk Improvements	ND30020014 JOC 120742 Agr. #145
WMR: 7th St – 12th St and Roeser Rd to Broadway Rd	WS85500335 JOC 123735 Agr. #12
39th Avenue & Yorkshire Drive	WS85500386 JOC 123735 Agr. #11
WMR: Missouri Ave – Bethany Home Rd, 31st Ave – 27th Ave	WS85500365 JOC 131448 Agr. #2
WMR: 15th St – 16th St, Marguerite Ave – Corona Ave	ND30100038 JOC 120742 Agr. #129
Coronado Road: Alley – 11th Street	ST87750127 JOC 120742 Agr. #139
525 E. Mountain View Road Local Drainage	ST83140010 JOC 120742 Agr. #137
Peoria Ave & North Ln Traffic Calming Improvements	ST89320116 JOC 120742 Agr. #127
Pierce Street Narrowing: Central to 1st Street	AR84850025 JOC 120742 Agr. #128
1st Street Narrowing: Fillmore St to McKinley St	CD30000019 JOC 120742 Agr. #119
48th Street South of Warner	ST83130298 JOC 120742 Agr. #101
Equestrian Trail At Appaloosa DrTraffic Calming	ST89320120 JOC 120742 Agr. #120
Bus Bay: WB Indian School Rd, Far Side 32nd St	PT00140221 JOC 120742 Agr. #125
Bus Bay: WB Indian School Rd, Far Side 24th St	PT00140220 JOC 120742 Agr. #124
WMR CM@R: Vineyard-Southern, 7th Ave-Central	WS85500367
4942 E. Lake Point Ct.	ST83140042 JOC 120742 Agr. #116
Bus Bay: WB Thomas Rd, Far Side 24th St	PT00140175 JOC 120742 Agr. #110
Bus Bay: NB 19th Ave, Far Side Van Buren St	PT00140172 JOC 120742 Agr. #108
47th Ave & Bell Road Storm Drain	WS85400007 JOC 120742 Agr. #114
Sherman Park Phase VIII, 21st Ave: Buckeye-Sherman St	ND30010019 JOC 120742 Agr. #112
Sherman Park Phase VII, 22nd Ave: Buckeye-Sherman St	ND30010018 JOC 120742 Agr. #111

2342 South McClintock Drive ▲ TEMPE, AZ 85282-2674 ▲ OFFICE (480) 557-6100 ▲ FAX (480) 557-6200

GENERAL CONTRACTING ▲ ROC099126 A ▲ ROC179332 K-37 ▲ CONSTRUCTION MANAGEMENT

56th Street: Indian School Rd – Lafayette Blvd	ST83140050 JOC 120742 Agr. #113
Portland Cement Concrete Repair	JOC 129961
Roundabout @ 3rd Street and Maryland Avenue	ST89320115 JOC 120742 Agr. #96
WMR: 24th St-38th St, Osborn Rd-Indian School Rd	WS85500364 JOC 123735 Agr. #10
WMR: 40th St-44th St, Greenway Rd-Paradise Ln	WS85500368 JOC 123735 Agr., #8
WMR: 16th St-20th St, Bethany Home Rd-Maryland Ave	WS85500366 JOC 123735 Agr. #9
Campbell Avenue Storm Drain: 32nd St. to 35th St.	ST83140032 JOC 120742 Agr. #103
WMR: 9th Place and Claremont Street	WS85500135 JOC 123735 Agr. #9
WMR: Sheridan Street & Virginia Avenue	WS85500135 JOC 123735 Agr. #10
COP Fire Hydrant Install-South	WS85500328 JOC 120742 Agr. 100
Sidewalk Ramp Retrofit JOC 3	126341 Agr. #3
So Phx Village Ph 2 Sidewalks	ND30070275 CDBG-R
Palm Lane Sidewalk Improvements	ST87750111 JOC 120742 Agr. #88
COP Fire Hydrant North QS 43-21	WS85500327-1
20th Street Sidewalk Improvements	ST87110119 JOC 120742 Agr. #91
20th Avenue Sidewalk Improvements	ST87750109 JOC 120742 Agr. #92
No Access Route: 32nd Street & Bell Road	ST87500005 JOC 120742 Agr. #72
Sidewalk Ramp Retrofit JOC 2	ST87400140 JOC 126341 Agr. #2
3502 W Lamar ADA Sidewalks	ST87500012 JOC 120742 Agr. #71
39th Avenue Storm Drain	ST83130210 JOC 120742 Agr. #80
Maryvale Ph 3 Sidewalk Improvements	ST87750101 JOC 120742 Agr. #82
Baseline & 59th Ave Bottleneck	ST85100319 JOC 120742 Agr. #74
Palomino Sidewalks Ph 2 Area 3	ST87750075 JOC 120742 Agr. #81
Osborn Rd Storm Drain Improvements	ST83130244 JOC 120742 Agr. #78
Sidewalk Ramp Retrofit JOC 1	ST87400140 JOC 126341 Agr. #1
Bus Bay: WB Indian School – 7th Street	PT00140223 JOC 120742 Agr. #76
39th Ave: Cesar Chavez Park	ST89320086 JOC 120742 Agr. #57
Watermain #343	WS85500343 JOC 123735 #4 & 5
Watermain #334	WS85500334 JOC 123735 #6 & 7
Camelback Rd & 22nd Street	ST87500003 JOC 120742 Agr. #66
Median Island Modifications	ST89340461 JOC 120742 Agr. #67
56th & Exterior Traffic Circle	ST89320102 JOC 120742 Agr. #63
24th Avenue & Grand Avenue ADA Improvements	ST87500009 JOC 120742 Agr. #61
43rd Avenue ADA Improvements	ST87500007 JOC 120742 Agr. #60
Baseline Road Island Modification	ST89320086 JOC 120742 Agr. #57
Watermain #333	WS85500333 JOC 123735 # 1 & 3
56th Street Sidewalk	ST87110114 JOC 120742 Agr. #54

Illini Street Sidewalk Improvements	ST87750090 JOC 120742 Agr. #51
Maryvale CDBG Phase II	ST87750100 – CDBG
44th St. & Bell Road Storm Drain	ST83140001 JOC 120742 Agr. #44
Intersection: 19th Avenue & Thunderbird	ST85100226 – FHWA
Hubbell Street Sidewalks	ST87750093 JOC 120742 Agr. #43
Bus Bay: 19th Avenue & Indian School Road	PT00140093 JOC 120742 Agr. #35
SW 107th Avenue to 99th Avenue	ST87750084 JOC 120742 Agr. #32
2008 Portland Cement Repairs	ST87400116
Sherman Street Sidewalk Improvements	ND30010014 JOC 120742 Agr. #37
Van Buren Street Left Turn Lane	ST85100298 JOC 120742 Agr. #36
Hanny's Sidewalk Retrofit	CD10000001 JOC 120742 Agr. #33
Watermain #314	WS85500314 JOC 120742 #24 & 36
Keim Drive Sidewalks	ST87750102 JOC 120742 Agr. #30
2nd Avenue Streetscape	ST89320046
73rd Avenue	ST87110103 JOC 120742 Agr. #29
38th Street-Rosemonte-Utopia	ST87110106 JOC 120742 Agr. #11
Sueno Park Sidewalk & Lights	PA75200383
Sunnyslope Lane	ST87110099 JOC 120742 Agr. #13
38th Street	PT00280008 JOC 120742 Agr. #6
Bus Bay: 27th Avenue & Northern	PT00140062 JOC 120742 Agr. #3
Virginia Avenue Storm Drain	ST83150001 JOC 120742 Agr. #2
Roosevelt Street	ST83140001 JOC 120742 Agr. #1
Traffic Circle / Median & Fence	ST89320080 JOC 113071 Agr. #42
Dayton Storm Drain @ Virginia	ST83130259 JOC 113071 Agr. #43
Andalucia Ph 1&2 Sidewalks	ST87750079 ST87750080
Bus Bay: 16th Street & Missouri	PT00140176 JOC 113071 Agr. #41
EB Bus Bay: Buckeye & 27th Avenue	PT00140148 JOC 113071 Agr. #38
WB Bus Bay: Buckeye & 27th Avenue	PT00140149 JOC 113071 Agr. #40
Central Avenue Waterline	WS85500210 JOC 113071 Agr. #37
2nd Street Storm Drain	ST83130274 JOC 113071 Agr. #36
Bus Bay: 27th Avenue & Northern	PT00140063 JOC 113071 Agr. #35
Bus Bay: 43rd Avenue & Thomas	PT001400145 JOC 113071 Agr. #34

TALIS

CORPORATION

1.) On one bid, we did not submit the Letter of Intent for the DBE we were going to utilize on the project. The City of Phoenix rejected our bid due to the omission.

2.) On another bid, a subcontractor fraudulently submitted a letter of intent stating they were a certified DBE when in fact they were not. The City of Phoenix rejected our bid due to the subcontractor falsifying the document.

2342 South McClintock Drive ▲ TEMPE, AZ 85282-2674 ▲ OFFICE (480) 557-6100 ▲ FAX (480) 557-6200

GENERAL CONTRACTING ▲ ROC099126 A ▲ ROC179332 K-37 ▲ CONSTRUCTION MANAGEMENT

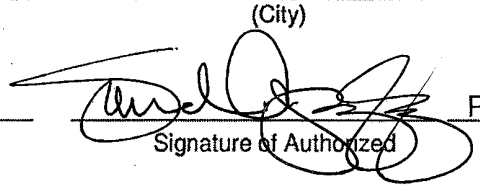
BUY AMERICA CERTIFICATE
FOR COMPLIANCE WITH TITLE 49 USC § 5323(J)(1)
(For Procurement of Steel, Iron, or Manufactured Products)
(EXCLUDES ROLLING STOCK)

11th STREET PEDESTRIAN AND TRANSIT IMPROVEMENT PROJECT
PROJECT NO. ND30060067 FTA

(Complete form and submit with bid)

The Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 5323(j) (1) and the applicable regulations in 49 CFR Part 661.

Executed on October (Date) 16, 2012, at Tempe (City), Arizona (State)

Sandra Gonzalez (Typewritten or Printed Name)  (Signature of Authorized) President (Official Title)

BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 49 USC §. 5323(J)(1)

The Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(1), but it may qualify for an exception pursuant to Title 49 USC § 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Executed on _____ (Date) ___, 2012, at _____ (City), _____ (State)

_____ (Typewritten or Printed Name) _____ (Signature of Authorized) _____ (Official Title)

ANTI-LOBBYING CERTIFICATION

11th STREET PEDESTRIAN AND TRANSIT IMPROVEMENT PROJECT
PROJECT NO. ND30060067 FTA

(Complete form and submit with bid)

Instructions for Certification – Submit "BIDDER'S CERTIFICATION ACKNOWLEDGEMENT – APPENDIX A, 49 CFR PART 20 – CERTIFICATION REGARDING LOBBYING" form shown below.

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

BIDDERS'S CERTIFICATION ACKNOWLEDGEMENT - APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

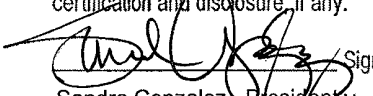
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq* .)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, TALIS Construction, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Sandra Gonzalez - President
Name and Title of Contractor's Authorized Official

October 16, 2012
Date

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

STATE OF: Arizona)
)
) ss
COUNTY OF: Maricopa)

Sandra Gonzalez
(Name of Individual)

being first duly sworn upon oath deposes and says:

That he is President
(Title)

of TALIS Construction Corporation
(Name of Company, Firm or Corporation)

and that, pursuant to Subsection 112(c) of Title 23, United States Code and Title 44, Chapter 10, Article 1, and Title 34, Chapter 2, Article 4 of Arizona Revised Statutes, he certifies that neither he nor anyone associated with the company, firm, or corporation mentioned above has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of fully competitive bidding in connection with project:

CITY OF PHOENIX PROJECT NO.: **ND30060067-FTA**

Subscribed and sworn to before me this

16 day of October, 2012.

Signature

My Commission expires: 6-5-2014

Notary Public

If by a Corporation:

(Seal)

OFFICIAL SEAL
KELLEY HLAVSA
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires June 5, 2014

DEBARRED AND SUSPENSION CERTIFICATION

Choose one alternative:

☒ The Bidder, TALIS Construction, certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this IFB been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this IFB had one or more public transactions (federal, state or local) terminated for cause or default.

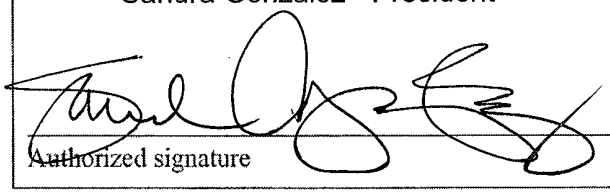
OR

☐ The Bidder is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Bidder certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 U.S.C. Sec. Sections 3801 are applicable thereto.

Executed in Tempe, Arizona **(insert city and state).**

Name: Sandra Gonzalez - President



Authorized signature

October 16, 2012

Date

BOND ISSUE OR BUDGET PROJECT CONTRACT

THIS AGREEMENT, made and entered into this **28th** day of **November, 2012**, by and between **Talis Construction Corporation**, **an Arizona corporation**, hereinafter designated the CONTRACTOR, and the City of Phoenix, an Arizona municipal corporation, hereinafter designated the OWNER.

WITNESSETH: That the said Contractor, for and in consideration of the sum to be paid him by the said Owner, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for himself, his heirs, executors, administrators, successors, and assigns as follows:

ARTICLE I - SCOPE OF WORK: The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of Project No. **ND30060067 FTA**, **11th Street Pedestrian and Transit Improvements**, and to completely and totally construct the same and install the material therein for the Owner, in a good and workmanlike and substantial manner and to the satisfaction of the Owner through its Engineers and under the direction and supervision of the Engineer, or his properly authorized agents and strictly pursuant to and in conformity with the Plans and Specifications prepared by the Engineers for the Owner, and with such modifications of the same and other documents that may be made by the Owner through the Engineer or his properly authorized agents, as provided herein.

ARTICLE II - CONTRACT DOCUMENTS: The Call for Bids, Plans, Standard Specifications and Details, Special Provisions, Addenda (if any) and Proposal, as accepted by the Mayor and Council per Council Minutes of **November 28, 2012**, Performance Bond, Payment Bond, Certificates of Insurance, and Change Orders (if any) are by this reference made a part of this Contract to the same extent as if set forth herein in full.

ARTICLE III - TIME OF COMPLETION: The Contractor further covenants and agrees at his own proper cost and expense, to do all work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the proposal pamphlet.

ARTICLE IV – FINAL PAYMENT: For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the Owner, through its Engineer, and to his satisfaction, the Owner agrees to pay the said Contractor the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit bid price on the Proposal made a part hereof, and to make such payment within sixty days after final inspection and acceptance of the work.

ARTICLE V - REQUIREMENTS OF CONTRACTORS: Any Contractor in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. The Contractor shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties herein named, on the date and year first above written.

The Contractor agrees that this Contract, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), as bid in the Proposal.

PROJECT NO. ND30060067 FTA
11TH STREET PEDESTRIAN AND TRANSIT IMPROVEMENTS

$1,630,865.75

City of Phoenix,
an Arizona municipal corporation
(OWNER)
DAVID CAVAZOS,
CITY MANAGER

By: _____
CITY ENGINEER

ACTING CITY ATTORNEY CSC

APPROVED AS TO FORM THIS 3 DAY
OF January 20 13

ATTEST: CITY CLERK

Talis Construction Corporation,
an Arizona corporation
(CONTRACTOR)

By: _____
(Signature and Title) Sandra Gonzalez, President

Authority - City Council Awarded
November 28, 2012

CITY CLERK DEPT.
2013 JAN -4 AM 9:41

BOND NO. 609002502

Two Originals Issued

CONTRACT BOND
STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENT, that, **Talis Construction Corporation,** (hereinafter called the Principal), as Principal, and The Ohio Casualty Insurance Company, a corporation organized and existing under the laws of the State of Ohio, with its principal office in the City of Fairfield, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Phoenix in the County of Maricopa, State of Arizona, (hereinafter called the Obligee), in the amount of **ONE MILLION SIX HUNDRED THIRTY THOUSAND EIGHT HUNDRED SIXTY FIVE DOLLARS AND SEVENTY FIVE CENTS ($1,630,865.75)**, for the payment thereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the **28th** day of **November, 2012**, for **PROJECT NO. ND30060067 FTA, 11th Street Pedestrian and Transit Improvements,** for 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 THIS OBLIGATION IS SUCH, that, if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract or any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it were copied at length herein.

THE prevailing party in a suit on this Bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

WITNESS our hands this 27th day of November, 20 12

Talis Construction Corporation
PRINCIPAL SEAL

By: Sandra Gonzalez, President

The Ohio Casualty Insurance Company
SURETY SEAL

A.M. BEST RATING: A

By: Jennifer Castillo
ATTORNEY-IN-FACT

Paffenbarger & Walden, LLC
AGENT OF RECORD

1121 E Missouri Ave Suite 102
Phoenix, AZ 85014
AGENT ADDRESS

(602) 212-9160
TELEPHONE NUMBER

By: Jennifer Castillo
ARIZONA RESIDENT AGENT

BOND NO. 609002502

Two Originals Issued

LABOR AND MATERIALS BOND
STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this Bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENT, that, **Talis Construction Corporation,** (hereinafter called the Principal), as Principal, and The Ohio Casualty Insurance Company, a corporation organized and existing under the laws of the State of Ohio, with its principal office in the City of Fairfied, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Phoenix in the County of Maricopa, State of Arizona, (hereinafter called the Obligee), in the amount of, **ONE MILLION SIX HUNDRED THIRTY THOUSAND EIGHT HUNDRED SIXTY FIVE DOLLARS AND SEVENTY FIVE CENTS ($1,630,865.75),** for the payment thereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the **28th** day of **November, 2012,** for **PROJECT NO. ND3006006 7 FTA, 11th Street Pedestrian and Transit Improvements,** for 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 THIS OBLIGATION IS SUCH, that, if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it were copied at length herein.

THE prevailing party in a suit on this Bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

WITNESS our hands this 27th day of November, 20 12

Talis Construction Corporation
PRINCIPAL SEAL

By: Sandra Gonzalez, President

The Ohio Casualty Insurance Company
SURETY SEAL

A.M. BEST RATING: A

By: Jennifer Castillo
ATTORNEY-IN-FACT

Paffenbarger & Walden, LLC
AGENT OF RECORD

1121 E Missouri Ave Suite 102
Phoenix, AZ 85014
AGENT ADDRESS

(602) 212-9160
TELEPHONE NUMBER

By: Jennifer Castillo
ARIZONA RESIDENT AGENT

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

THIS IS TO CERTIFY, THAT THIS INSTRUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE WITH THE DEPARTMENT OF INSURANCE OF THE STATE OF ARIZONA AND CONSISTS OF 1 PAGE(S)

HEREUNTO SET MY HAND AND THE OFFICIAL SEAL OF THIS DEPARTMENT

FOR THE DIRECTOR OF INSURANCE THIS 12 MAY 2011.

AUTHORIZED REPRESENTATIVE

CERTIFICATE NO.: 274452

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

CERTIFICATE OF AUTHORITY

I, CHARLES R. COHEN, Director of Insurance of the State of Arizona, do hereby certify that

THE OHIO CASUALTY INSURANCE COMPANY
Domiciled in Ohio
NAIC NO. 24074

has complied with the requirements of the Arizona Revised Statutes and is hereby authorized, subject to the provisions thereof and the Charter Powers of said Company, to transact the following kinds of insurance:

CASUALTY WITH WORKERS' COMPENSATION
DISABILITY
MARINE AND TRANSPORTATION
PROPERTY
SURETY
VEHICLE

within the State of Arizona until terminated at the request of the insurer or suspended or revoked by the Director of Insurance.

Arizona Revised Statutes § 20-217 (C) states:

"Certificate of Authority is the property of the State of Arizona. Upon termination at the request of the insurer or revocation by the Director of Insurance, the insurer shall immediately deliver the Certificate of Authority to the Director of Insurance."

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Director of Insurance at the City of Phoenix. The effective date of this Certificate is February 13, 2002.

Charles R. Cohen
Director of Insurance

RF-5 (01-97)

274452 0002048

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.
This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 5562401

American Fire and Casualty Company
The Ohio Casualty Insurance Company
West American Insurance Company

Liberty Mutual Insurance Company
Peerless Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of Ohio, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, that Peerless Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Andrew J. Paffenbarger; Bob Walden; Diane L. Arment; Jennifer Castillo; Joseph A. Clarken III; Scott Wareing

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

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of September, 2012.

American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
Peerless Insurance Company
West American Insurance Company

By: _____
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss
COUNTY OF KING

On this 12th day of September, 2012, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, Peerless Insurance Company and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

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

By: _____
KD Riley , Notary Public

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

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of November, 20 12.

By: _____
David M. Carey, Assistant Secretary

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

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/26/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Yvonne Knizek
Lovitt & Touche' Inc - Tempe 1050 West Washington St, #233 Tempe AZ 85281	PHONE (A/C, No, Ext): 602-956-2250 FAX (A/C, No): 602-956-2258 E-MAIL ADDRESS: yknizek@lovitt-touche.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Westfield Group	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

TALIS Construction Corp.
2342 S McClintock Drive
Tempe AZ 85281

COVERAGES **CERTIFICATE NUMBER:** 601023488 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	Y	Y	CMM7582072	4/18/2012	4/18/2013	EACH OCCURRENCE	$2,000,000
	[X] COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$300,000
	[ ] CLAIMS-MADE [X] OCCUR						MED EXP (Any one person)	$10,000
							PERSONAL & ADV INJURY	$2,000,000
							GENERAL AGGREGATE	$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$4,000,000
	[ ] POLICY [X] PRO-JECT [ ] LOC							$
A	AUTOMOBILE LIABILITY	Y		CMM7582072	4/18/2012	4/18/2013	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	[X] ANY AUTO						BODILY INJURY (Per person)	$
	[ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	[ ] HIRED AUTOS [ ] NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	[ ] UMBRELLA LIAB [X] OCCUR			CMM7582072	4/18/2012	4/18/2013	EACH OCCURRENCE	$5,000,000
	[ ] EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$5,000,000
	[ ] DED [X] RETENTION $0							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						[ ] WC STATU-TORY LIMITS [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] N/A (Mandatory in NH)						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Leased Rented Equipment Scheduled Equipment Special, ACV, 100% Co-ins			CMM7582072	4/18/2012	4/18/2013	LRE $300,000 Sch Eq $1,622,676	$1000 Ded $1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: Any and all operations by or on behalf of the insured during the policy terms indicated on this form. City of Phoenix, its officers, officials, agents, employees, and volunteers shall be named as additional insured's with respect to liability arising out of the activities performed by or on behalf of the permittee or contractor. Liability; Per Project Aggregate, Waiver of Subrogation and Primary Non Contributory applies Forms: GL: CG2010 10/01, CG2037 10/01, CG2503 5/09, CG 7094 08/05, CG7055 12/98. Auto: CA 7068 3/10. Subject to all policy terms, conditions, definitions and exclusions.

See Attached...

CERTIFICATE HOLDER

City of Phoenix
Street Transportation Department
200 W. Washington Street, 6th Floor
Phoenix AZ 85003

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Lovitt & Touche' Inc - Tempe	TALIS Construction Corp. 2342 S McClintock Drive Tempe AZ 85281
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Project: 11th Street Pedestrian and Transit Improvements Project
Project No. ND30060067 FTA

Additional Insured: The City of Phoenix, Its Officers, Officials, Agents, and Employees.

© 2008 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

POLICY NUMBER: CMM7582072

COMMERCIAL GENERAL LIABILITY
CG 20 37 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:	City of Phoenix, its officers, officials, agents, employees, and volunteers
Location And Description of Completed Operations:	Any and all projects/jobs
Additional Premium:	Included

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

POLICY NUMBER: CMM7582072

COMMERCIAL GENERAL LIABILITY
CG 20 10 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:
City of Phoenix, its officers, officials, agents, employees, and volunteers

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. **Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

© ISO Properties, Inc., 2000

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Projects:

All Projects

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:

   a. Insureds;

   b. Claims made or "suits" brought; or

   c. Persons or organizations making claims or bringing "suits".

3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.

4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A and for all medical expenses caused by accidents under Section I - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and

2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.

© Insurance Services Office, Inc., 2008

C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Section - III Limits of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS GENERAL LIABILITY EXPANDED PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

1. **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is amended as follows:

   Item 2. Exclusions a. is deleted and replaced with the following:

   a. Expected Or Intended Injury

      "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force for the purpose of protecting persons or property.

   Item 2. Exclusion g. (2) (a) is deleted and replaced with the following:

      (a) Less than 60 feet long; and

   Item 2. Exclusions j. Damage to Property (4) does not apply to borrowed equipment unless the "property damage" occurs while such equipment is being used to perform operations at the job site.

   Subject to the LIMITS OF INSURANCE the maximum limit we will pay in any one "occurrence" is $10,000.

   Item 2. Exclusions j. (6) second exception paragraph after (6) is deleted and replaced with the following:

   Paragraph (2) of this exclusion does not apply if the premises are "your work" and were not occupied, rented or held for rental by you beyond one year from the date "your work" was completed.

   Item 2. Exclusions l. is deleted and replaced with the following:

   l. Damage To Your Work

      "Property damage" to "your work" arising out of it and included in the "products-completed operations hazard".

      This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

      This exclusion only applies to that particular part of "your work" out of which the damage arises.

   The last paragraph of Item 2. Exclusions is deleted and replaced with the following:

   Exclusions c. through n. do not apply to damage by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - LIMITS OF INSURANCE.

2. The following coverages are added to **SECTION I - COVERAGES:**

   VOLUNTARY PROPERTY DAMAGE

   1. Insuring Agreement

      We will pay, at your request, for "property damage" to property of others caused by you, or while in your possession, arising out of your business operations. The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE.**

   2. Exclusions

      Coverage for Voluntary Property Damage does not apply to:

      a. "Loss" of property at premises owned, rented, leased, operated or used by you.

      b. "Loss" of property while in transit;

      c. "Loss" of property owned by, rented to, leased to, borrowed by or used by you;

      d. The cost of repairing or replacing:

         (1) "Your work" defectively or incorrectly done by you; or

         (2) "Your product" manufactured, sold or supplied by you;

         unless the "property damage" is caused directly by you after delivery of "your product" or completion of "your work" and resulting from a subsequent undertaking.

      e. "Loss" of property caused by or arising out of the "products-completed operations hazard."

3. Deductible

We will not pay for "loss" in any one "occurrence" until the amount of "loss" exceeds $250. We will then pay the amount of "loss" in excess of $250, up to the applicable limit of insurance.

4. Actual Cost

In the event of covered "loss", you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

CARE, CUSTODY OR CONTROL

1. Insuring Agreement

We will pay those sums the insured becomes legally obligated to pay as damages because of "property damage" to property of others while in your care, custody or control or property as to which you are exercising physical control if the "property damage" arises out of your business operations. The amount we will pay for damages is limited as described in SECTION III - LIMIT OF INSURANCE

2. Exclusions

Coverage for Care, Custody or Control does not apply to:

a. "Property damage" to property at any premises owned, rented, leased, operated or used by you;

b. "Property damage" to property while in transit;

c. The cost of repairing or replacing:

(1) "Your work" defectively or incorrectly done by you; or

(2) "Your product" manufactured, sold or supplied by you;

unless the "property damage" is caused directly by you after delivery of "your product" or completion of "your work" and resulting from a subsequent undertaking;

d. "Property damage" to property caused by or arising out of the "products-completed operations hazard".

3. Deductible

We will not pay for "property damage" in any one "occurrence" until the amount of "property damage" exceeds $250. We will then pay the amount of "property damage" in excess of $250, up to the applicable limit of insurance.

4. Actual Cost

In the event of covered "property damage", you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

WATER DAMAGE LEGAL LIABILITY

1. Insuring Agreement

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" arising out of water damage to premises that are both rented to and occupied by you. The amount we will pay for damages is limited as described in SECTION III - LIMITS OF INSURANCE.

2. Exclusions

Coverage for Water Damage Legal Liability does not apply to:

a. "Property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

b. "Property damage" caused by or resulting from any of the following:

(1) Wear and tear;

(2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

(3) Smog or smoke;

(4) Settling, cracking, shrinking or expansion;

(5) Insects, birds, rodents or other animals; or

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force.

c. "Property damage" caused directly or indirectly by any of the following:

(1) Any earth movement, such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting;

(2) Volcanic eruption, explosion or effusion;

(3) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

(4) Mudslide or mudflow;

(5) Water that backs up from a sewer or drain; or

(6) Water under the ground surface pressing on, or flowing or seeping through:

(a) Foundations, walls, floors or paved surfaces;

(b) Basements, whether paved or not; or

(c) Doors, windows or other openings.

d. "Property damage" caused by or resulting from any of the following:

(1) Water that leaks or flows from any plumbing, heating, air conditioning or fire protection system caused by or resulting from freezing, unless:

(a) You make a reasonable effort to maintain heat in the building or structure; or

(b) You drain the equipment and shut off the water supply if the heat is not maintained.

e. "Property damage" to:

(1) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or

(2) The interior of the premises caused by or resulting from rain or snow, whether driven by wind or not.

3. **SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is amended as follows:

Item 1.b. is deleted and replaced with the following:

b. Up to $1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

Item 1.d. is deleted and replaced with the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to $350 a day because of time off from work.

4. **SECTION II - WHO IS AN INSURED** is amended as follows:

Item 2.a.(1)(d) is deleted and replaced with the following:

(d) Arising out of his or her providing or failing to provide professional health care services.

This does not apply to nurses, emergency medical technicians or paramedics employed by you to provide health care services, but only if you are not in the business or occupation of providing such professional services.

Item 3. a. is deleted and replaced with the following:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

The following items are added as follows:

5. Vendors

Any person(s) or organization(s) with whom you agree in a written contract or agreement to name as an insured but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

a. The insurance afforded the vendor does not apply to:

(1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(2) Any express warranty unauthorized by you;

(3) Any physical or chemical change in the product made intentionally by the vendor;

(4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(a) The exceptions contained in subparagraphs 4. or 6.; or

(b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the productions.

b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

6. **Managers or Lessors of Premises**

Any person(s) or organization(s) with whom you agree in a written contract or agreement to name as an insured but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to be a tenant in that premises.

(2) Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s).

7. **Additional Insured - Controlling Interest**

Any person(s) or organization(s) with whom you agree in a written contract or agreement to name as an insured but only with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy the premises.

This does not apply to structural alterations, new construction and demolition operations performed by or for the person(s) or organizations(s).

8. **Additional Insured - Mortgagee, Assignee or Receiver**

Any person(s) or organization(s) with whom you agree in a written contract or agreement to name as an insured but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you.

This does not apply to structural alterations, new construction and demolition operations performed by or for the person(s) or organization(s).

9. **Additional Insured - Owners or Other Interests From Whom Land Has Been Leased**

Any person(s) or organization(s) with whom you agree in a written contract or agreement to include as an insured but only with respect to their liability arising out of the ownership, maintenance or use of that part of land leased to you subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to lease that land;

(2) Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s).

10. **Additional Insured - State or Political Subdivisions - Permits Relating to Premises**

Any state or political subdivision with whom you agree in a written contract or agreement to include as an insured subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

(1) The existence, maintenance, repair, construction, erection, or removal of adverting signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(2) The construction, erection, or removal of elevators; or

(3) The ownership, maintenance, or use of any elevators covered by this insurance.

11. **Additional Insured - Lessor Of Leased Equipment**

Any person(s) or organization(s) with whom you agree in a written contract or agreement, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

5. **SECTION III - LIMITS OF INSURANCE** is amended as follows:

Items 8. and 9. are added as follows:

8. The most we will pay under Voluntary Property Damage for "loss" arising out of any one "occurrence" is $250. The most we will pay for the sum of all "losses" under this coverage is $1,000.

9. The most we will pay under Care Custody or Control for "property damage" is $2,500 for each "occurrence". The most we will pay for the sum of all damages because of "property damage" under this coverage is $5,000.

10. The most we will pay under Water Damage Legal Liability for all "property damage" arising out of any one "occurrence" is $25,000.

7. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

Items e. and f. are added to **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** as follows:

e. The requirement in Condition 2. a. applies only when the "occurrence" or offense is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) An "executive officer" or insurance manager, if you are a corporation; or

(4) A manager, if you are a limited liability company.

f. The requirement in Condition 2. b. will not be breached unless the breach occurs after such claim or "suit" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) An "executive officer" or insurance manager, if you are a corporation; or

(4) A manager, if you are a limited liability company.

The following is added to Item **6. Representations**

d. Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of this policy shall not prejudice the coverage afforded by this policy, provided such failure to disclose all hazards or prior "occurrences" is not intentional.

The following is added to Item **8. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have against any person or organization with respect to which the insured has waived its right of recovery.

It is further agreed that work commenced under letter of intent or work order, subject to subsequent reduction to writing, with customers whose customary written contracts would require a waiver of recovery rights against them also falls within this blanket waiver of subrogation.

6. **SECTION V - DEFINITIONS** is amended as follows:

The following definition is added:

23. "Loss" means unintentional damage or destruction but does not include disappearance, theft, or loss of use.

7. Liberalization

If we adopt any revision that would broaden the coverage under this endorsement without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this endorsement.

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXPANDED PLUS COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

1. BUSINESS AUTO COVERAGE FORM CA 0001 IS MODIFIED AS FOLLOWS:

   SECTION II - LIABILITY COVERAGE, item A. 1. Coverage, Who Is An Insured is amended to include the following additional paragraphs:

   d. Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this coverage form.

      However, "insured" does not include any subsidiary that is an "insured" under any other liability policy or would be an "insured" under such a policy but for its termination or the exhaustion of its limits of insurance.

   e. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or a majority interest. However, coverage under this provision:

      (1) Does not apply if the organization you acquire or form is an "insured" under another liability policy or would be "insured" under such a policy but for its termination or the exhaustion of its limits of insurance;

      (2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

      (3) Is afforded only for the first 180 days after you acquire or form the organization or until the end of the policy period, whichever comes first.

   f. Any person or organization with whom you agreed in writing in a contract, agreement or permit, to provide insurance such as is afforded under this policy.

      This provision only applies if the written contract or agreement has been executed or permit has been issued, prior to the "bodily injury" or "property damage".

   g. Any "employees" of yours while using a covered "auto" you do not own, hire or borrow that "auto".

   SECTION II - LIABILITY COVERAGE, subparagraphs (2) and (4) of Item A. 2. a. Coverage Extensions, Supplementary Payments are deleted and replaced with the following:

   (2) Up to $5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 per day because of time off from work.

   SECTION II - LIABILITY COVERAGE, B. Exclusions, 5. Fellow Employee does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

   SECTION III - PHYSICAL DAMAGE COVERAGE is amended as follows:

   Item A. 4. Coverage, Coverage Extension is deleted and replaced by the following:

   4. Coverage Extensions

      a. Transportation Expenses

         We will pay up to $50 per day to a maximum of $1,000 for transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss."

      b. Personal Effects

         We will pay up to $500 for the "loss" of your personal effects that are contained in a covered "auto" due to the total theft of the covered "auto." We will pay only for those personal effects that are contained in covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

© Insurance Services Office, Inc., 2009

Our payment for loss of or damage to personal effects will apply only on an excess basis over other collectible insurance.

Item **A. Coverage**, is amended to include the following additional coverage items:

We will pay the expense of returning a stolen covered "auto" to you.

5. **Hired Auto Physical Damage**

   If Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this policy, then we will provide the same coverage(s) for those "autos" that you lease, hire, rent or borrow from others. The most we will pay for any one "accident" or "loss" is $50,000 or Actual Cash Value or Cost of Repair, whichever is less, minus a deductible for each covered "auto" that is equal to the largest deductible on the schedule of "autos" applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning.

6. **Fire Department Service Charge**

   When a fire department is called to save or protect a covered "auto", its equipment, its contents, or occupants from a covered cause of loss, we will pay up to $1,000 for your liability for fire department service charges:

   (1) Assumed by contract or agreement prior to loss; or

   (2) Required by local ordinance.

   No deductible applies to this additional coverage.

Under **Paragraph B. Exclusions** the following is added:

Mechanical breakdown does not apply to the accidental discharge of an airbag.

Item **B. Exclusions**, is amended to include the following:

Exclusions 4.c. and 4.d. do not apply to:

c. Cellular telephones and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss', and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto".

Item **C. Limits Of Insurance**, is amended to include the following:

5. For those businesses not shown in the Declarations as "auto" dealerships, the following provisions also apply:

   a. In the event of a total loss to a covered "auto", secured by an original lease or loan agreement, in which the cost of repairs plus the salvage value exceeds the actual cash value at the time of "loss", the most we will pay is the greater of:

      (1) The actual cash value of the covered "auto" at the time of "loss"; or

      (2) The amount you owe under the terms of the original lease or loan agreement to which the covered "auto" is subject, reduced by:

         (a) Overdue payments and associated financial penalties as of the date of "loss";

         (b) The transfer or rollover of a previous outstanding lease or loan balance from another vehicle to the original lease or loan for the covered "auto";

         (c) The dollar amount of any unrepaired damage which occurred prior to the date of a total loss, in which the cost of repairs plus the salvage value exceeds the actual cash value;

         (d) All refunds paid or payable to you as a result of the early termination of the lease or loan agreement or, to the extent financed, as a result of the early termination of any warranty or extended service agreement on the covered "auto";

         (e) Financial penalties imposed under the lease agreement for high mileage, excessive use or abnormal wear and tear; and

         (f) Nonrefundable security deposits.

Item **D. Deductible** is deleted and replaced with the following:

D. **Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations.

1. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

2. Any Collision Coverage deductible amount shall not apply to loss caused by collision between your covered "auto" and an "auto", other than a covered "auto", provided:

   a. The loss to the covered "auto" is greater than the deductible amount; and

   b. The owner or operator of such other "auto" has been identified; and

   c. The owner or operator of such other "auto" is legally liable for the loss to your covered "auto;" and

   d. There is a valid Property Damage Liability Insurance Policy applicable at the time of the accident with respects to the person or organization legally responsible for such loss to the covered "auto."

3. No deductible shall apply to glass damage if the glass is repaired rather than replaced.

SECTION IV - BUSINESS AUTO CONDITIONS is amended as follows:

Item **A. Loss Conditions, 2. a. Duties In The Event Of Accident, Claim, Suit Or Loss** is amended to include the following paragraph:

This requirement applies when the "accident," claim, "suit" or "loss" is first known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

The following is added to Item **5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right or recovery we may have against any person or organization for whom you are required in a written contract or agreement to include a waiver of transfer of rights of recovery against others to us, because of payments we make for injury or damage done under a contract with that person or organization.

Item **B. 2. General Conditions, Concealment, Misrepresentation Or Fraud** is amended to include the following additional paragraph:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Part because of such failure.

Item **B. 7. General Conditions, Policy Period, Coverage Territory** is amended to include the following additional paragraph:

6. For short-term (30 days or less) hired autos, the coverage territory is anywhere in the world, provided that if the Insured's responsibility to pay damages is determined in a "suit," that "suit" is brought in the territory described in Items **7.(1) - (4).**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OTHER INSURANCE CONDITION AMENDED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

When required by written contract with any additional insured owner, lessee, or contractor to provide insurance on a primary and noncontributory basis, Condition 4. of Section IV - Commercial General Liability Conditions is deleted and replaced by the following:

4. **Other Insurance**

If other valid and collectible insurance is available for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. **Primary Insurance**

This insurance is primary and noncontributory except when b. below applies.

b. **Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent, or on any other basis:

(1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk, or similar coverage for "your work;"

(2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or

(3) If the loss arises out of the maintenance or use of aircraft, "autos," or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A.

(4) If the loss is caused by the sole negligence of any additional insured, owner, lessee, or contractor.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/27/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER SCF Arizona and its subsidiaries 3030 N. 3rd Street Phoenix AZ 85012-3068	**CONTACT NAME:** SCF Arizona **PHONE (A/C, No, Ext):** 602.631.2600 or 866.284.2694 **FAX (A/C, No):** 602.631.2599 **E-MAIL ADDRESS:** askscf@scfaz.com or webcerts@scfaz.com
INSURED TALIS Construction Corporation 2342 S McClintock Dr Tempe AZ 85282	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A:** SCF Premier Insurance Company — 12741 **INSURER B:** **INSURER C:** **INSURER D:** **INSURER E:** **INSURER F:**

COVERAGES **CERTIFICATE NUMBER:** 414 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
	UMBRELLA LIAB OCCUR **EXCESS LIAB** CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** Y / N: N/A If yes, describe under DESCRIPTION OF OPERATIONS below			P10696	04/01/2012	04/01/2013	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Job #: ND30060067 FTA Location: 11th Street Pedestrian and Transit Improvements Project

CONCRETE OR CEMENT WORK - FLOORS, DRIVEWAYS, YARDS, OR SIDEWALKS & DRIVERS

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice to the certificate holder named, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents and representatives.

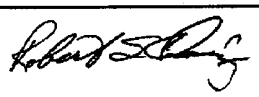
CERTIFICATE HOLDER

City of Phoenix
Street Transportation Department
200 W. Washington Street, 6th Floor
Phoenix AZ 85003

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



© 1988-2010 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

RELEASE BID BOND SO
DATE RELEASED 1/7/13