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12/13/2011

PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS

59TH AVENUE SIDEWALK

NOVEMBER 2011



CITY OF GLENDALE

ENGINEERING DEPARTMENT
5850 W. Glendale Avenue, Glendale, Arizona 85301 (623) 930-3630

PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS

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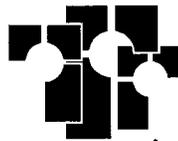
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GLENDALÉ

TABLE OF CONTENTS

NOTICE TO CONTRACTORS	1
INFORMATION FOR BIDDERS.....	2
1. ELIGIBILITY OF CONTRACTORS.....	2
2. PROPOSAL	2
3. WITHDRAWAL OF BID.....	2
4. LATE BIDS	2
5. AWARD OR REJECTION OF BIDS	2
6. BIDDERS INTERESTED IN MORE THAN ONE BID	3
7. CONTRACT AND INSURANCE	3
8. SUBCONTRACTORS' LISTING AND CERTIFICATION OF CONTRACT COMPLIANCE.....	3
9. INTERPRETATION OF PLANS AND DOCUMENTS	3
10. CHANGES TO PLANS AND DOCUMENTS	3
11. ADDENDUM	3
12. ASSIGNMENT OF CONTRACT	3
13. PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER	3
14. TIME OF COMPLETION.....	4
15. CITY OF GLENDALE TRANSACTION PRIVILEGE TAX.....	4
16. ALTERNATES.....	4
17. APPROVAL OF SUBSTITUTIONS	4
18. USE OF "EQUALS"	4
19. EXAMINATION OF CONTRACT DOCUMENTS AND VISIT SITE	4
20. BIDDERS IN DEFAULT	5
PROPOSAL.....	6
SUBCONTRACTOR LISTING AND CERTIFICATION OF CONTRACT COMPLIANCE	9
CONTRACT	10
CERTIFICATE OF INSURANCE.....	24
CONTRACTOR'S AFFIDAVIT/LIEN WAIVER	26
SUPPLEMENTAL GENERAL CONDITIONS	27
1. GENERAL.....	27
2. DEFINITIONS.....	27
3. PROPOSAL QUANTITIES	27
4. WITHDRAWAL OF PROPOSALS.....	27
5. LOSSES AND DAMAGES.....	28
6. DUST PREVENTION	28
7. EXCESS MATERIAL	28
8. STOCKPILE OF MATERIALS	28
9. REFUSE COLLECTION ACCESS	28
10. CLEAN-UP.....	28
11. SHOP DRAWINGS.....	28
12. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK.....	29
13. STATUS OF EMPLOYEES.....	29
14. LAWS AND REGULATIONS.....	29

15.	PERMITS.....	29
16.	ELECTRIC POWER AND WATER.....	29
17.	SURVEY CONTROL POINTS AND MONUMENTS	29
18.	EXISTING UTILITIES	29
19.	MAINTENANCE OF IRRIGATION FACILITIES	29
20.	OVERHEAD UTILITY LINES AND POLES.....	30
21.	SOUTHWEST GAS FACILITIES EXPOSED DURING CONSTRUCTION.....	30
22.	UNDERGROUND UTILITIES' BEDDING	30
23.	SEWER SERVICE LINES	30
24.	RIGHTS-OF-WAY	30
25.	SUBCONTRACTS	30
26.	PRE-CONSTRUCTION CONFERENCE.....	31
27.	OVERTIME	31
28.	CONTRACTOR'S CONSTRUCTION SCHEDULE.....	31
29.	CHARACTER OF WORKMEN	32
30.	HINDRANCES AND DELAYS	32
31.	LIQUIDATED DAMAGES	32
32.	PAYMENTS TO CONTRACTOR	33
	 SPECIAL PROVISIONS.....	 34
1.	SCOPE OF WORK.....	34
2.	DEFINITIONS.....	34
3.	SUSPENSION OF WORK	34
4.	COMPLIANCE WITH MANUFACTURER'S INSTRUCTIONS.....	34
5.	TRAFFIC REGULATIONS	34
6.	ENERGIZED AERIAL ELECTRICAL POWER LINES.....	36
7.	RECORD DRAWINGS.....	36
8.	CASH FLOW REPORT	36
9.	ALLOWANCE FOR CONSTRUCTION CONTINGENCIES.....	36

NOTICE TO CONTRACTORS

Sealed bids shall be either mailed to the City of Glendale Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona, 85301, or hand-delivered to the Engineering Department office, third floor, 5850 West Glendale Avenue, Glendale, Arizona, for furnishing all plant, material, equipment and labor, and to complete construction of: **PROJECT NO. -59TH AVENUE SIDEWALK**. Project will install 740' of four foot wide asphalt sidewalk along 59th Avenue between Kings and Juniper Avenues.

Bids must be received by the Engineering Department of the City of Glendale no later than November 14, 2011 at 5:00p.m. Any bid received after that time will not be considered and will be returned to the bidder.

Each bid shall be in accordance with the plans, specifications and contract documents, and shall be set forth and submitted on the BID DOCUMENTS included with the project specifications book. The BID DOCUMENTS may be removed from the project specifications book and submitted independently of such book.

The City of Glendale reserves the right to reject any or all bids or waive any informality or irregularity in a bid. No bidder may withdraw his bid for a period of fifty (50) days after opening and reading of the bids.

The City of Glendale is an equal opportunity employer and minority business enterprises and women's business enterprises are encouraged to submit bids.

CITY OF GLENDALE, ARIZONA

INFORMATION FOR BIDDERS

1. **ELIGIBILITY OF CONTRACTORS:** When calling for bids for contracts for public work to be performed on behalf of the State or any political subdivision thereof, which will be paid for from public funds, no bid shall be considered for performance of a contract, including construction work which is not submitted by a bidder duly licensed as a contractor in this State. No bid shall be awarded to any contractor or entity not authorized to do business in the State of Arizona by the Arizona Corporation Commission, as required by statute.
2. **PROPOSAL:** Bids to receive consideration shall be made in accordance with the following instructions:
 - (a) Before submitting a bid, bidders shall carefully examine the plans and specifications and contract documents, visit the site of the work, fully inform themselves as to all existing conditions and limitations.
 - (b) Bids shall be submitted on the "PROPOSAL" forms provided and delivered to the City of Glendale Engineering Department on or before the day and hour set in the "NOTICE TO CONTRACTORS," as published. Bids shall be enclosed in a sealed envelope marked on the outside lower right-hand corner indicating:
 1. The bidder's name and address.
 2. The project number.
 3. The title of the project.
 4. The time and date the bids are to be received.
 - (c) It is the sole responsibility of the bidder to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.
 - (d) The signatures of all persons shall be in longhand. Any interlineations, alterations, or erasures must be initialed by the signer of the bid.
 - (e) Bids shall not contain any recapitulations of the work to be done. No oral, telegraphic, telephonic, or modified proposals will be considered.
3. **WITHDRAWAL OF BID:** Any bidder may withdraw his bid, either personally, by telegram or by written request, at any time prior to the scheduled closing time for receipt of bids. No bid may be withdrawn by telephone. Any bid withdrawn will not be opened and will be returned to the bidder. After opening and reading of the bids, no bidder may withdraw his bid for a period of fifty (50) days from the date of opening and reading.
4. **LATE BIDS:** Bids received after the scheduled closing time for receipt of bids, as contained in the "Notice to Contractors," will not be considered and will be returned to the bidder.
5. **AWARD OR REJECTION OF BIDS:** The contract will be awarded to the lowest and best qualified responsive bidder complying with these instructions and with the "NOTICE TO CONTRACTORS." The City of Glendale, Arizona, however, reserves the right to accept or reject any or all bids or to waive any or all informalities or irregularities in the bid. Alternates may be accepted depending upon the availability of City funds. Accepted alternates will be considered in determining the lowest responsive and responsible bidder.

6. **BIDDERS INTERESTED IN MORE THAN ONE BID:** No person, firm or corporation shall be allowed to make, file, or be interested in more than one (1) bid for the same work unless alternate bids are called for in the specifications or any addenda. A person, firm, or corporation who has submitted a sub-proposal to a bidder, or who has quoted prices on materials to a bidder is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders.

7. **CONTRACT AND INSURANCE:** The form of contract, which the successful bidder as Contractor will be required to execute, and insurance form which he will be required to furnish are included in the contract documents and should be carefully examined by the bidder. The successful bidder shall use the forms provided or such other forms as are acceptable by the City. The contract and insurance form will be executed in three (3) original counterparts.

8. **SUBCONTRACTORS LISTING AND CERTIFICATION OF CONTRACT COMPLIANCE:** The contractor will be required to furnish the form of subcontractors listing and certification of contract compliance with the executed contract documents. This information is requested for tracking and insurance purposes only.

9. **INTERPRETATION OF PLANS AND DOCUMENTS:** If any person contemplating a bid for proposed contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, or finds discrepancies in or omissions from the plans and specifications, he may submit to the Engineering Department, a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Questions received less than ninety-six (96) hours before the bid opening time may not be answered. Any interpretation or correction of the documents will be made only by Addendum, duly issued and a copy of such Addendum will be mailed or delivered to each person receiving a set of such documents. The City of Glendale will not be responsible for any other explanations or interpretations of the proposed documents.

10. **CHANGES TO PLANS AND DOCUMENTS:** Any changes to the plans and documents shall be made only by Addendum. No verbal or other changes to the plans and documents will be valid. A copy of each Addendum will be mailed or delivered as provided in Section 12 below.

11. **ADDENDUM:** Any addenda will be faxed, mailed or delivered to all who are known by the City to have received a complete set of bid documents, and to offices where bid documents have been filed for review purposes. It is the responsibility of each bidder to ascertain that he has received all addenda issued by telephoning the office identified in the NOTICE TO CONTRACTORS as the location where bid documents are available prior to submitting his bid.

Bidders shall acknowledge all addenda in the appropriate location on the "PROPOSAL" form. Failure to acknowledge receipt of Addenda shall render the bid proposal non-responsive and it will be rejected.

12. **ASSIGNMENT OF CONTRACT:** No assignment by the Contractor of any contract to be entered into hereunder, or any part thereof, or of funds to be received thereunder by the Contractor, will be recognized by the Owner by the Owner unless such assignment has had prior approval of the Owner and consented thereto in writing.

13. **PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER:** The successful bidder may

obtain five (5) sets of plans and specifications for this project from the City.

14. TIME OF COMPLETION: The Contractor shall commence work under this project on or before the tenth day following receipt of the Notice to Proceed for that project from the City of Glendale and shall fully complete all work under the project within Fourteen (14) consecutive calendar days from and including the date of receipt of such Notice to Proceed. Time is of the essence in the completion of all work required under this contract. The Contractor shall, at all times, during the continuance of the contract, prosecute the work with such force and equipment as is sufficient to complete all work within the time specified.

15. CITY OF GLENDALE TRANSACTION PRIVILEGE TAX: The City of Glendale transaction privilege tax shall **NOT** be waived under the provisions of this contract. The current privilege tax rate can be obtained from the City of Glendale Sales Tax and Licenses Department. The Contractor shall be responsible for reporting and payment of all city, county, state or federal taxes.

16. ALTERNATES: Alternate proposals will not be considered unless called for in the documents or any addenda thereto. When alternates are requested, all requested alternates or alternate bid items, unless otherwise stated, shall be bid. If no change in the base bid will occur with the alternate, enter "No Change."

17. APPROVAL OF SUBSTITUTIONS: The materials, products and equipment described in the Documents and Addenda establish a standard or required function, dimension, appearance and quality to be met by any proposed substitution. No substitute will be considered, before bid opening, unless written request for approval has been received by the City Engineer at least ten (10) working days prior to the scheduled closing time for receipt of bids. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including any drawings, cuts, performance and test data and any other information necessary for evaluation of the substitute. Bidder shall not be entitled to approval of a substitute.

If a substitute is approved, the approval shall be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

18. USE OF "EQUALS": When the specifications for materials, articles, products and equipment state "or equal," contractor may bid upon, and use materials, articles, products and equipment which will perform equally the duties imposed by the general design. The City Engineering Department will have the final approval of all materials, articles, products and equipment proposed to be used as an "equal." It shall not be purchased or installed without the prior written approval from the City Engineering Department.

Approvals for "equals," before bid opening, may be requested in writing to the City Engineering Department for approval. Requests must be received at least ten (10) days prior to the date set for opening the Bid Proposals. The request shall state the name of the material, article, product or equipment for which the item is sought to be considered an equal and a complete description of the proposed equal including any drawings, cuts, performance and test data and any other information necessary for approval of the equal. All approvals will be issued in the form of an addendum.

19. EXAMINATION OF CONTRACT DOCUMENTS AND VISIT SITE: Before submitting a Bid Proposal, bidders should carefully examine the Contract Documents, visit the site of the work,

fully inform themselves as to all existing conditions and limitations. No consideration will be granted for any alleged misunderstanding of the material, articles or piece of equipment to be furnished or work to be done. It is understood that the tender of the Bid Proposal carries with it the agreement to all items and conditions referred to herein or indicated in the Contract Documents.

20. BIDDERS IN DEFAULT: No bid will be awarded to any person, firm or corporation that is not authorized by the Arizona Corporation Commission to do business in the State of Arizona, in arrears or is in default to the City of Glendale upon any debt or contract, or that is a defaulter as surety or otherwise upon any obligation to the City of Glendale, or has failed to faithfully perform any previous contract with the City of Glendale.

END OF INFORMATION FOR BIDDERS

PROPOSAL

Place CITY OF GLENDALE

Date NOV. 14, 2011

Proposal of JMH COMPANY, LTD a Corporation organized and existing under the laws of the State of Arizona. ~~a partnership consisting of _____; or an individual trading as _____.~~

TO THE HONORABLE MAYOR AND COUNCIL
CITY OF GLENDALE
GLENDALE, ARIZONA

Gentlemen:

The undersigned hereby proposes and agrees to furnish any and all required labor, materials, construction equipment, transportation and services for the construction of: - **59TH AVENUE SIDEWALK PROJECT**, in strict conformity with the plans and specifications for the following unit prices:

(Extension of these unit prices on the basis of estimated quantities and the totaling of these extensions are for the purpose of comparing bids only. The mathematics of such extensions and totaling will be checked and corrected by the Public Works/Engineering Department, before evaluating the bids, and the lowest of such corrected and checked totals will determine the lowest bids.)

1111 S. WASHINGTON, 1ST
5005 W. BELL RD
GLENDALE, AZ 85308

PH. (623) 435-9189 FAX (623) 930-0700

Project 59TH AVENUE SIDEWALK
Name

BASE BID

Item No.	Description	Quantity	Unit	Unit Cost	Total Cost
1.	Allowance for Construction Contingency	1	LS	<u>\$500.00</u>	<u>\$500.00</u>
2.	Mobilization/Demobilization	1	LS	<u>1085.00</u>	<u>1085.00</u>
3.	Traffic Control	1	LS	<u>250.00</u>	<u>250.00</u>
4.	Asphalt, 2" Thick	18.2	TN	<u>265.00</u>	<u>4823.00</u>
TOTAL BASE BID					<u>6,658.00</u>

Submit

JKH COMPANY, LTD
5939 W. BELL RD.
GLENDALE, AZ 85308
PH. (623) 435-9189 FAX (623) 939-0700

The undersigned hereby declares that he has visited the site(s) and has carefully examined the contract documents relating to the work covered by the above bid or bids.

Upon receipt of notice of the acceptance of this bid, we will execute the formal contract attached within ten (10) days, and will deliver the Certificate of Insurance.

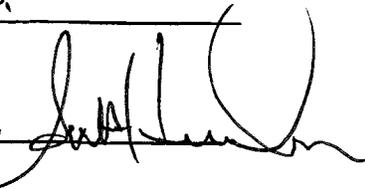
The undersigned has checked carefully all the above figures and understands that the City of Glendale, Arizona, will not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

The undersigned understands that the Mayor and Council of the City of Glendale, Arizona, reserves the right to reject any or all bids or to waive any informalities or irregularities in the bid.

Respectfully submitted,

Arizona Contractor's
Classification and
License No.

70060 - A -

JMH COMPANY, LTD.
Contractor
By SCOTT HENDERSON 

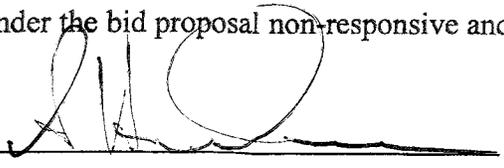
5939 W. BELL ROAD
GLENDALE, AZ 85308
(Complete business address)

Telephone Number: 623 435-9189
Fax Number 623 939-0700

Bidder shall signify receipt of all Addenda here (if any):

NONE

Failure to acknowledge receipt of all Addenda shall render the bid proposal non-responsive and will be rejected.

Acknowledged by 

JMH COMPANY, LTD
5939 W. BELL RD.
GLENDALE, AZ 85308
PH. (623) 435-9189 FAX (623) 939-0700

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and J.M.H. Company, Ltd., an Arizona corporation ("Contractor") as of the 13th day of December, 2011.

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in the **Notice to Contractors** and the attached **Exhibit A** ("Project");
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project, the plans and specifications, the **Information for Bidders**, and the **Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions**;
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows:

1. Project.

- 1.1 **Scope.** Contractor will provide all services and material necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors, providers or consultants retained by City.
- 1.2 **Documents.** The following documents are, by this reference, entirely incorporated into this Agreement and attached Exhibits as though fully set forth herein:
 - (A) Notice to Contractors;
 - (B) Information for Bidders;
 - (C) MAG General Conditions, Supplemental General Conditions, Special and Technical Provisions;
 - (D) Proposal;
 - (E) Bid Bond;
 - (F) Payment Bond;
 - (G) Performance Bond;
 - (H) Certificate of Insurance;
 - (I) Appendix; and
 - (J) Plans and Addenda thereto.

Should a conflict exist between this Agreement (and its attachments), and any of the incorporated documents as listed above, the provisions of this Agreement shall govern.

1.3 Project Team.

- (A) **Project Manager.** Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, to complete the project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement.

(B) Project Team.

- (1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team."
- (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor.

(C) Sub-contractors.

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. If not otherwise stated in **Exhibit A**, the Project shall be completed by no later than Fourteen (14) consecutive calendar days from and including the date of receipt of the Notice to Proceed.

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services and materials for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Contractor warrants that:

- (A) Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- (B) Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default of this Agreement.

3.3 **Compliance.** Services and materials will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, or other standards and criteria designated by City.

3.4 **Coordination; Interaction.**

- (A) If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities").
- (B) Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- (C) If the Project does not involve Coordinating Entities, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the

proper execution of the Project.

- 3.5 Hazardous Substances.** Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project.
- 3.6 Warranties.** At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment as satisfaction of the Contractor's warranty under this subsection.
- 3.7 Bonds.** Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance bonds as required under A.R.S. § 34-608.
- 4. Compensation for the Project.**
- 4.1 Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$6,658.00, as specifically detailed in the Contractor's bid and set forth in **Exhibit B** ("Compensation").
- 4.2 Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.
- (A) Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.
- (B) Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
- 5. Billings and Payment.**
- 5.1 Applications.**
- (A) The Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- (B) The period covered by each Payment Application will be one calendar month ending on the last day of the month.
- 5.2 Payment.**
- (A) After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- (B) Payment may be subject to or conditioned upon City's receipt of:
- (1) Completed work generated by Contractor and its Sub-contractors; and
- (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.
- 5.3 Review and Withholding.** City's Project Manager will timely review and certify Payment Applications.
- (A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- (B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.
- (C) Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale

Transaction Privilege License and Federal Taxpayer identification numbers.

- (D) City will temporarily withhold Compensation amounts as required by A.R.S. 34-221(C).

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery.

- (A) Contractor will be equitably compensated any services and materials furnished prior to receipt of the termination notice and for reasonable costs incurred.
- (B) Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with Project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- (A) Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages.
- (B) If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. Insurance.

7.1 Requirements. Contractor must obtain and maintain the following insurance ("Required Insurance"):

- (A) Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively, "Contractor's Policies"), until each Parties' obligations under this Agreement are completed.
- (B) General Liability.
- (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- (C) Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and 1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- (D) Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- (E) Equipment Insurance. Contractor must secure, pay for, and maintain all-risk insurance as

necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors.

- (F) Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
- (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- (G) Certificates of Insurance.
- (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under this Agreement.
- (H) Other Contractors or Vendors.
- (1) Other contractors or vendors that may be contracted by Contractor with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement.
 - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- (I) Policies. Except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as additional insureds on all liability policies required by this section.
- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties.

7.2 Sub-contractors.

- (A) Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- (B) City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- (C) Contractor and Sub-contractors must provide to the City proof of Required Insurance whenever requested.

7.3 Indemnification.

- (A) To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- (B) This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- (C) Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

7.4 **Waiver of Subrogation.** Contractor waives, and will require any Subcontractor to waive, all rights of subrogation against the City to the extent of all losses or damages covered by any policy of insurance.

8. Immigration Law Compliance.

- 8.1 Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 8.2 Any breach of warranty under subsection 8.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 8.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 8.1 above.
- 8.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 8.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section 8.
- 8.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 8.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 8.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

9. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation

of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

10. **Prohibitions.** Contractor certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran.
11. **Non-Discrimination Policies.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, religion, color sex or national origin. Contractor must develop, implement and maintain non-discrimination policies and post the policies in conspicuous places visible to employees and applicants for employment. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section.

12. **Notices.**

12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- (A) The Notice is in writing, and
- (B) Delivered in person or by private express overnight delivery service (delivery charges prepaid), certified or registered mail (return receipt requested).
- (C) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- (D) The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- (E) Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 **Representatives.**

- (A) Contractor. Contractor's representative ("Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

Scott Henderson
J.M.H. Company, Ltd.
5939 W. Bell Road
Glendale, AZ 85308

- (B) City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
Attn: Dave Kohnert
5850 West Glendale Avenue
Glendale, Arizona 85301

With required copies to:

City of Glendale
City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

City of Glendale
City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

- (C) Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
 - (2) A notice will not be considered to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
 - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.
- (D) **Changes.** Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.
13. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.
14. **Entire Agreement; Survival; Counterparts; Signatures.**
- 14.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.
- (A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
 - (B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
 - (C) Any solicitation, addendums and responses submitted by the Contractor are incorporated fully into this Agreement as Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.
- 14.2 **Interpretation.**
- (A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
 - (B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
 - (C) The Agreement will be interpreted in accordance with the laws of the State of Arizona.
- 14.3 **Survival.** Except as specifically provided otherwise in this Agreement each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 14.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval.
- 14.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 14.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.
- 14.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.
15. **Dispute Resolution.** Each claim, controversy and dispute ("Dispute") between Contractor and City will be

resolved in accordance with Exhibit C. The final determination will be made by the City.

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Compensation
Exhibit C	Dispute Resolution

The parties enter into this Agreement as of the date shown above.

City of Glendale,
an Arizona municipal corporation



By: Larry J. Broyles, P.E.
Its: City Engineer

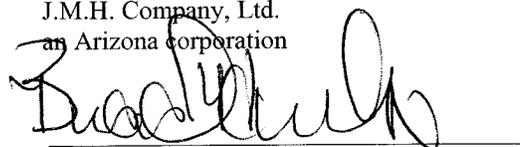
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

J.M.H. Company, Ltd.
an Arizona corporation



By: Brad J. Henderson
Its: President

WOMEN-OWNED/MINORITY BUSINESS [] YES [X] NO
CITY OF GLENDALE TRANSACTION PRIVILEGE TAX NO. [REDACTED]
FEDERAL TAXPAYER IDENTIFICATION NO. [REDACTED]

**EXHIBIT A
CONSTRUCTION AGREEMENT**

PROJECT

Install a 740' four foot wide asphalt sidewalk along 59th avenue between Kings and Juniper Avenues.

**EXHIBIT B
CONSTRUCTION AGREEMENT**

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

By bid, including all services, materials and costs.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$6,658.00.

DETAILED PROJECT COMPENSATION

As shown on Page 7 of the Bid Schedule.

EXHIBIT C
CONSTRUCTION AGREEMENT

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
- (A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
- (B) The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
- (C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
- (A) The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
- (B) The arbitrator selected must be an attorney with at least 15 years experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

- 2.5 **Final Decision.** The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 **Costs.** The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.
4. **Exceptions.**
- 4.1 **Third Party Claims.** City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.
- 4.2 **Liens.** City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 **Governmental Actions.** This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.



CERTIFICATE OF LIABILITY INSURANCE

OP ID TO

DATE (MM/DD/YYYY)

12/08/11

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 THE MAHONEY GROUP - PHOENIX 20410 N. 19th Ave Ste 170 Phoenix AZ 85027-1405 Phone: 623-215-1300 Fax: 623-215-1333	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: JMHCO-1	FAX (A/C, No):
	INSURED JMH Company, Ltd 5939 W. Bell Rd Glendale AZ 85308	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Cincinnati Insurance Company		10677
INSURER B: New Hampshire Insurance		23841
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

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	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		X	EPP0100328	09/15/11	09/15/12	EACH OCCURRENCE \$ 1000000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500000
							MED EXP (Any one person) \$ 10000
							PERSONAL & ADV INJURY \$ 1000000
							GENERAL AGGREGATE \$ 2000000
							PRODUCTS - COMP/OP AGG \$ 2000000
							\$
	GENL AGGREGATE LIMIT APPLIES PER:						
		<input type="checkbox"/> POLICY	<input checked="" type="checkbox"/> PROJECT	<input type="checkbox"/> LOC			
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			EPP0100328	09/15/11	09/15/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
							\$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$			EPP0100328	09/15/11	09/15/12	EACH OCCURRENCE \$ 1000000
							AGGREGATE \$ 1000000
							UMB cover \$
							over Emp \$
B	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC1310058	08/01/11	08/01/12	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
							E.L. EACH ACCIDENT \$ 100000
							E.L. DISEASE - EA EMPLOYEE \$ 100000
							E.L. DISEASE - POLICY LIMIT \$ 500000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: 59th Ave Sidewalk. City of Glendale. Additional Insured form GA233AZ 0207 attached.

CERTIFICATE HOLDER**CANCELLATION**

CITYOGL City of Glendale Attn: Engineering Dept 5850 W Glendale Ave Glendale AZ 85301	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 <i>Carolyn Smith</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
1. Employee Benefit Liability Coverage	2
2. Unintentional Failure to Disclose Hazards	7
3. Damage to Premises Rented to You.....	8
4. Supplementary Payments	9
5. Medical Payments.....	9
6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.).....	9
7. 180 Day Coverage for Newly Formed or Acquired Organizations	10
8. Waiver of Subrogation	10
9. Automatic Additional Insured - Specified Relationships:	10
• Managers or Lessors of Premises;	
• Lessor of Leased Equipment;	
• Vendors;	
• State or Political Subdivisions - Permits Relating to Premises;	
• State or Political Subdivisions - Permits; and	
• Contractors' Operations	
10. Broadened Contractual Liability - Work Within 50' of Railroad Property	13
11. Property Damage to Borrowed Equipment.....	13
12. Employees as Insureds - Specified Health Care Services:	14
• Nurses;	
• Emergency Medical Technicians; and	
• Paramedics	
13. Broadened Notice of Occurrence.....	14

B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

1. Employee Benefit Liability Coverage

Each Employee Limit: \$ 1,000,000
Aggregate Limit: \$ 3,000,000
Deductible: \$ 1,000

3. Damage to Premises Rented to You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ _____

4. Supplementary Payments

- Bail bonds: \$ 1,000
- Loss of earnings: \$ 350

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
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4. Supplementary Payments	9
5. Medical Payments	9
6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.)	9
7. 180 Day Coverage for Newly Formed or Acquired Organizations	10
8. Waiver of Subrogation	10
9. Automatic Additional Insured - Specified Relationships:	10
Managers or Lessors of Premises; Lessor of Leased Equipment; Vendors; State or Political Subdivisions - Permits Relating to Premises; State or Political Subdivisions - Permits; and Contractors' Operations	
10. Broadened Contractual Liability - Work Within 50' of Railroad Property	13
11. Property Damage to Borrowed Equipment	13
12. Employees as Insureds - Specified Health Care Services	14
Nurses; Emergency Medical Technicians; and Paramedics	
13. Broadened Notice of Occurrence	14

B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

1. Employee Benefit Liability Coverage

Each Employee Limit: \$ 1,000,000
Aggregate Limit: \$ 3,000,000
Deductible: \$ 1,000

3. Damage to Premises Rented to You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ _____

4. Supplementary Payments

- Bail bonds: \$ 1,000
- Loss of earnings: \$ 350

5. Medical Payments

Medical Expense Limit: \$ 10,000

6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.)

Limits of Insurance (Each Occurrence)

Coverage a. \$1,000

Coverage b. \$5,000 unless otherwise stated \$ _____

Deductibles (Each Occurrence)

Coverage a. \$250

Coverage b. \$250 unless otherwise stated \$ _____

COVERAGE	PREMIUM BASIS (a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	RATE (For Limits in Excess of \$5,000)	ADVANCE PREMIUM
			(For Limits in Excess of \$5,000)
b. Care, Custody or Control			\$
TOTAL ANNUAL PREMIUM			\$

11. Property Damage to Borrowed Equipment

Each Occurrence Limit: \$ 10,000

Deductible: \$ 250

C. Coverages:

1. Employee Benefit Liability Coverage

a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage.**

(1) Insuring Agreement

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But

1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and

2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

(b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and

1) Occurs during the policy period; or

2) Occurred prior to the effective date of this endorsement provided:

a) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have

knowledge of a claim or "suit" when any "authorized representative";

i) Reports all, or any part, of the act, error or omission to us or any other insurer;

ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

b) There is no other applicable insurance.

(2) Exclusions

This insurance does not apply to:

(a) Bodily Injury, Property Damage or Personal and Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

(b) Dishonest, Fraudulent, Criminal or Malicious Act

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

(c) Failure to Perform a Contract

Damages arising out of failure of performance of contract by any insurer.

(d) Insufficiency of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation

Any claim based upon:

1) Failure of any investment to perform;

2) Errors in providing information on past performance of investment vehicles; or

3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

(f) Workers' Compensation and Similar Laws

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

(g) ERISA

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

(h) Available Benefits

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

(i) Taxes, Fines or Penalties

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

(j) Employment-Related Practices

Any liability arising out of any:

(1) Refusal to employ;

(2) Termination of employment;

(3) Coercion, demotion, evaluation, reassign-

ment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or

- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(3) **Supplementary Payments**

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B also apply to this Coverage.

b. **Who is an Insured**

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

- (1) If you are designated in the Declarations as:

- (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
- (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or di-

rectors. Your stockholders are also insureds, but only with respect to their liability as stockholders

- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

- (2) Each of the following is also an insured:

(a) Each of your "employees" who is or was authorized to administer your "employee benefit program".

(b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.

(c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:

(a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, and

(b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

c. **Limits of Insurance**

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section B, **Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules

below fix the most we will pay regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought;
- (c) Persons or organizations making claims or bringing "suits";
- (d) Acts, errors or omissions; or
- (e) Benefits included in your "employee benefit program"

(2) The Aggregate Limit shown in Section B. **Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

(3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section B. **Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

- (a) An act, error or omission; or
- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

(4) **Deductible Amount**

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be

reduced by the amount of this deductible.

- (b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

- 1) Our right and duty to defend the insured against any "suits" seeking those damages; and

- 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

- (d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

d. **Additional Conditions**

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

- (1) Item 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** is deleted in its entirety and replaced by the following:

2. **Duties in the Event of an Act, Error or Omission, or Claim or Suit**

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:
 - (1) What the act, error or omission was and when it occurred; and
 - (2) The names and addresses of anyone who may suffer dam-

ages as a result of the act, error or omission.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

- (2) Item 5. **Other Insurance** is deleted in its entirety and replaced by the following:

5. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the

method described in b. below.

b. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

c. No Coverage

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

e. Additional Definitions

As respects **Employee Benefit Liability Coverage, SECTION V - DEFINITIONS** is amended as follows:

- (1) The following definitions are added:

1. "Administration" means:

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or

- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
 - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
 - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

- c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

2. Unintentional Failure to Disclose Hazards

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

3. **Damage to Premises Rented to You**

- a. The last Subparagraph of Paragraph 2. **SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE, 2. LIABILITY Exclusions** is hereby deleted and replaced by the following:

Exclusions c. through q. do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

- b. The insurance provided under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you

- (1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above:

The exclusions under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, other than i. War and the Nuclear Energy Liability Exclusion, are deleted and the following are added:

This insurance does not apply to:

- (a) "Property damage":

- 1) Assumed in any contract; or
- 2) Loss caused by or resulting from any of the following:
 - a) Wear and tear;
 - b) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
 - c) Smog;
 - d) Mechanical breakdown including rupture or bursting caused by centrifugal force;

- e) Settling, cracking, shrinking or expansion; or
- f) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

- (b) Loss caused directly or indirectly by any of the following:

- 1) Earthquake, volcanic eruption, landslide or any other earth movement;
- 2) Water that backs up or overflows from a sewer, drain or sump;
- 3) 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.

- (c) Loss caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, or fire protection systems caused by or resulting from freezing, unless:

- 1) You did your best to maintain heat in the building or structure; or
- 2) You drained the equipment and shut off the water supply if the heat was not maintained.

- (d) Loss to or damage to:

- 1) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or
- 2) The interior of any building or structure, or to personal property in the building or structure

caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

c. Limit of Insurance

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

(2) Paragraph 6. of SECTION III - LIMITS OF INSURANCE is hereby deleted and replaced by the following:

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.

(3) The amount we will pay is limited as described in Section B. **Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

4. Supplementary Payments

Under SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:

a. Paragraph 2. is replaced by the following:

Up to the limit shown in Section B. **Limits of Insurance, 4.a. Bail Bonds** of this endorsement 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.

b. Paragraph 4. is replaced by the following:

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 the limit shown in Section B. **Limits of Insurance, 4.b. Loss of Earnings** of this endorsement per day because of time off from work.

5. Medical Payments

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section B. **Limits of Insurance, 5. Medical Payments** of this endorsement.

6. Voluntary Property Damage and Care, Custody or Control Liability Coverage

a. Voluntary Property Damage Coverage

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

- (1) Damage is caused by the insured, or
- (2) Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

b. Care, Custody or Control Liability Coverage

SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property, Subparagraphs (3), (4) and (5) do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

a. The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought, or
- (3) Persons or organizations making claims or bringing "suits".

b. Deductible Clause

- (1) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (2) **Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit**, applies to each claim or "suit" irrespective of the amount.
- (3) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

7. 180 Day Coverage for Newly Formed or Acquired Organizations

SECTION II - WHO IS AN INSURED is amended as follows:

Subparagraph a. of Paragraph 4. is hereby deleted and replaced by the following:

- a. Insurance 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;

8. Waiver of Subrogation

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to Us is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

9. Automatic Additional Insured - Specified Relationships

- a. The following is hereby added to **SECTION II - WHO IS AN INSURED**:

- (1) Any person or organization described in Paragraph 9.a.(2) below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

- (a) A written contract or agreement; or
- (b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

- (a) The written or oral contract or agreement is:

- 1) Currently in effect or becomes effective during the policy period; and
- 2) Executed prior to an "occurrence" or offense to which this insurance would apply; and

- (b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

- (2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

- (a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises 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 be a tenant in that premises.

- 2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.
- (b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 9.a.(4) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
- (c) Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, 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:
- 1) The insurance afforded the vendor does not apply to:
 - a) "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;
 - b) Any express warranty unauthorized by you;
 - 2) This insurance does not apply to any insured person or organization:
 - a) From whom you have acquired such products, or any ingredient, part or container, entering into, ac-
- c) Any physical or chemical change in the product made intentionally by the vendor;
 - d) Repackaging, unless 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;
 - e) 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;
 - f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g) 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.
- 2) This insurance does not apply to any insured person or organization:
- a) From whom you have acquired such products, or any ingredient, part or container, entering into, ac-

shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

b) Supervisory, inspection, architectural or engineering activities.

3) "Your work" for which a consolidated (wrap-up) insurance program has been provided by the primecontractor-project manager or owner of the construction project in which you are involved.

b. Only with regard to insurance provided to an additional insured designated under Paragraph 9.a.(2) Subparagraph (f) above, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

c. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance** is hereby amended as follows:

Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

(1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or

(2) For any other valid and collectible insurance available to the additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under

this endorsement shall also be excess.

10. Broadened Contractual Liability - Work Within 50' of Railroad Property

It is hereby agreed that Paragraph f.(1) of Definition 12. "Insured contract" (**SECTION V - DEFINITIONS**) is deleted.

11. Property Damage to Borrowed Equipment

a. The following is hereby added to Exclusion j. **Damage to Property** of Paragraph 2., **Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

(1) The Limits of insurance shown in the Declarations are replaced by the limits designated in **Section B. Limits of Insurance, 11.** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in **Section B. Limits of Insurance, 11.** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

(a) Insureds;

(b) Claims made or "suits" brought; or

(c) Persons or organizations making claims or bring "suits".

(2) Deductible Clause

(a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible amount stated in **Section B. Limits of Insurance, 11.** of this endorsement. The limits of insurance will not be reduced by the application of such Deductible amount.

(b) Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit, applies to each claim or "suit" irrespective of the amount.

(c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

12. Employees as Insureds - Specified Health Care Services

It is hereby agreed that Paragraph 2.a.(1)(d) of SECTION II - WHO IS AN INSURED, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a. Nurses;
- b. Emergency Medical Technicians; or
- c. Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

13. Broadened Notice of Occurrence

Paragraph a. of Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit (SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is hereby deleted and replaced by the following:

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

CITY OF GLENDALE, ARIZONA
PUBLIC WORKS/ENGINEERING DEPARTMENT

CONTRACTOR'S AFFIDAVIT
REGARDING
SETTLEMENT OF CLAIMS

PROJECT - 59TH AVENUE SIDEWALK

To the City of Glendale, Arizona

Gentlemen:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$ _____, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless the City of Glendale against any and all liens, claims of liens, suits, actions, damages, charges, costs, litigation expenses, attorneys' fees and any other and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performance and materials furnished for the performance of said installation.

Signed and dated at _____, this ____ day of _____, 20__.

Contractor

By _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20

Notary Public

My Commission Expires: _____

SUPPLEMENTAL GENERAL CONDITIONS

1. GENERAL: By Ordinance No. 1110 New Series, the City of Glendale adopted the "Uniform Standard Specifications for Public Works Construction," which are sponsored and distributed by the Maricopa Association of Governments. Copies of these documents, with revisions, are on file in the office of the City Engineer of the City of Glendale, and are hereby made a part of these Contract Documents.

Whenever in the Uniform Standard Specifications, the words "The Contracting Agency" are used, the meaning shall be the City of Glendale.

In all cases where ASTM, AASHTO, AWWA, USAG, Federal, City of Phoenix, MAG Specifications, Maricopa County, Arizona State Highway, or other standard specifications are referred to, unless otherwise stated, revisions, supplements or addenda issued on or before the date of this contract, shall prevail. In the event of any conflict between these project specifications and the requirements of the plans, detail drawings, MAG Standard Details and Specifications, these project specifications shall prevail.

2. DEFINITIONS: The following terms, as used in or pertaining to the Contract Documents, are defined as follows:

CITY: The word "City" refers to the City of Glendale, Arizona. The official representative of said City in these proceedings shall be the City Engineer.

CONTRACTOR: The word "Contractor" means the person, firm, or corporation with whom the Contract is made by the City.

MATERIALS: The term "Materials" includes, in addition to materials incorporated in the project, equipment and other material used and/or consumed in the performance of the work.

SUBCONTRACTOR: The word "Subcontractor" includes those having a direct contract with the Contractor and those who furnish material worked to a special design according to the plans and/or specifications for this work, but does not include those who merely furnish materials not so worked.

ENGINEER: The word "Engineer" means a person, firm or corporation duly authorized by the City, to act for the City in staking out the work, inspecting materials and construction, and interpreting plans and specifications.

CONTRACT DOCUMENTS: The words "Contract Documents" mean the Notice to Contractors, Information for Bidders, "Uniform Standard Specifications for Public Works Construction," MAG General Conditions, Supplemental General Conditions, Special Provisions, Supplemental Specifications, Proposal, Contract, Certificates of Insurance, Plans and Addenda thereto.

3. PROPOSAL QUANTITIES: It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated as stated in the Proposal, are only approximate and are to be used SOLELY for the purpose of comparing, on a consistent basis, the proposals offered for the work under this Contract; and the Contractor further agrees that the City will not be held responsible if any of the quantities shall be found incorrect; and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission, or mis-statement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the Contractor from the execution and completion of the whole or any part of the work in accordance with the specifications and the plans herein mentioned, or for the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in this Contract.

4. WITHDRAWAL OF PROPOSALS: No proposal shall be withdrawn following the opening and reading of the bids for a period of 50 days from the date of opening without the consent of the

contracting agency through the body or agent duly authorized to accept or reject the proposal.

5. LOSSES AND DAMAGES: All loss or damage arising out of the nature of the work to be done or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in and/or during the prosecution of the work, or from any casualty whatsoever of every description, shall be sustained and borne by the Contractor at his own cost and expense except as otherwise provided by the contract documents or the laws of the State of Arizona.

6. DUST PREVENTION: The Contractor shall take whatever steps, procedures or means required to prevent abnormal dust conditions due to his construction operations in connection with this contract. The dust control measures shall be maintained at all times during construction of the project, to the satisfaction of the Engineer, in accordance with the requirements of the "Maricopa County Health Department Air Pollution Control Regulations" which have been adopted pursuant to A.R.S. § 36-779.

The Contractor shall be required to obtain the necessary permit from the Maricopa County Air Pollution Control Bureau, 1001 N. Central Ave., Phoenix, Arizona 85004 - telephone (602) 506-6727.

7. EXCESS MATERIAL: Excess material shall be removed from the work site and wasted at a location approved by the Engineer. Broken concrete and asphalt may be delivered to the Glendale Sanitary Landfill located at 115th Avenue and Glendale Avenue. The prevailing regulations and fee schedule will not be waived for work under this project. All materials, to be disposed of at the landfill, shall be weighed and disposed of at the prevailing rate.

8. STOCKPILE OF MATERIALS: The Contractor may place or stockpile materials in the public right-of-way, if approved by the Engineer, provided they do not prevent access to adjacent properties or prevent compliance with traffic regulations.

Traffic shall not be required to travel over stockpiled materials, and proper dust control shall be maintained.

9. REFUSE COLLECTION ACCESS: At any time the project construction shall require the closure or disruption of traffic in any roadway, alley, or refuse collection easement such that normal refuse collection will be interfered with, the Contractor shall, at least 48 hours prior to causing such closure or disruption, make arrangements with the Field Operations Department in order that refuse collection service can be maintained.

10. CLEAN-UP: After all work under this contract is completed, the Contractor shall remove all loose concrete, lumber, wire, reinforcing, debris, and other materials not incorporated in the work, from the site of the work. Clean-up shall include the removal of all excess pointing mortar materials within pipes and removal of over-size rocks and boulders left after finish grading. The contractor shall provide for the legal disposal of all waste products, debris, etc., and shall make necessary arrangements for such disposal.

11. SHOP DRAWINGS: The Contractor shall provide shop drawings as may be necessary for the prosecution of the work as required by the contract documents. The Engineer shall promptly review all shop drawings. The Engineer's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing which substantially deviates from the requirements of the contract documents shall be evidenced by a change order.

When submitted for the Engineer's review, shop drawings shall bear the contractor's certification that he has reviewed, checked, and approved the shop drawings and that they are in conformance with the requirements of the contract documents.

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

be available to the Engineer.

12. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK: The Contractor shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until the entire contract is completed and accepted, in writing, by the City. The Contractor shall turn over the entire work in full accordance with the specifications before final settlement shall be made.

13. STATUS OF EMPLOYEES: Contractor shall be responsible for assuring the legal working status of its employees and its subcontractor's employees.

14. LAWS AND REGULATIONS: This Contract shall be governed by and constructed in accordance with the laws of the State of Arizona. The Contractor shall keep himself fully informed of all existing and future City and County Ordinances and Regulations and State and Federal Laws and Occupational Safety and Health Standards (OSHA) in any manner affecting the work herein specified. He shall at all times observe and comply with said Ordinances, Regulations, or Laws.

15. PERMITS: The City has obtained certain required permits which are included in the project specifications, but it will be the duty of the Contractor to determine that all the necessary permits have been obtained. The Contractor shall, at his own expense, obtain all required permits which have not been furnished by the City. A no-fee permit will be issued for work in the City of Glendale right-of-way and easement. (Also see Paragraph 7. Dust Prevention.)

16. ELECTRIC POWER AND WATER: The Contractor shall make his own arrangements for electric power and water. Subject to the convenience of the City, he may be permitted to connect to existing facilities where available, but he shall meter and bear the cost of such power or water. Fire hydrant meters may be obtained from the City of Glendale. Installation and removal of meters should be scheduled at least forty-eight (48) hours in advance through the Public Works/Utilities Division at 930-2700. A \$325 deposit is required for each meter. The cost of the water is at the prevailing rate.

17. SURVEY CONTROL POINTS AND MONUMENTS: Existing survey monuments indicated on the plans or found during construction shall be protected by the Contractor, and in the event removal is necessary, removal and replacement shall be performed by permission of the Engineer, under direct supervision of the Engineer or his authorized representative. Survey monuments shall be constructed to conform to the requirements of MAG Specifications, Section 405, and Standard Details.

18. EXISTING UTILITIES: The Contractor is hereby advised that the location of all utilities, as shown on the plans, may not be complete nor exact and the Contractor shall satisfy himself as to the exact location of the utilities by contacting Blue Stake or the utility companies before proceeding with the work. After the underground utilities are located by Blue Stake or the utility company, the contractor shall excavate in a careful and prudent manner to prevent unwillful damage to the underground utilities.

In the event the Contractor or its Subcontractor damages an existing, properly identified underground City of Glendale water or sewer line, the Contractor shall be responsible for the repairs at its expense.

The exact location of all existing underground service utilities, whether or not indicated on the plans, shall be determined by the Contractor at no expense to the City, and he shall conduct his work so as to prevent interruption of service or damage to them.

The Contractor shall protect existing utility services and be responsible for their replacement if damaged by him, or to make necessary adjustment in their location, if required, in order to complete the work for his Contract.

Utility companies and other interested parties have been provided with construction plans and the construction schedule for this project. The Contractor shall comply with MAG Specifications 105.6 to cooperate with the utility companies.

19. MAINTENANCE OF IRRIGATION FACILITIES: Where irrigation facilities interfere with

construction, the Contractor shall remove and replace the affected irrigation facilities to its original condition. Final acceptance of replaced facilities will depend upon final approval of the Engineer.

20. OVERHEAD UTILITY LINES AND POLES: Contractor is advised that when work around overhead lines and poles is required on a project the Contractor is required to coordinate with Utility Companies who own and operate overhead lines and poles. The coordination may include, but not be limited to the following activities: pole bracing, de-energizing of lines, and temporary relocations. Contractor is responsible to contact the applicable Utility Company representative and discuss his proposed construction methods; in order to determine what actions the Utility Company must take and the costs related to those actions. The Contractor shall include these costs in the applicable bid items for this project.

The primary and the backup representatives for this review and cost determinations are as follows:

Arizona Public Service:	Mr. Bobby Garza	602-371-7989
Qwest:	Mr. Ron Floyd	602-630-1932
Salt River Power:	Mr. Al Baizel	602-236-0840
Cox Communications:	Mr. Randy Sims	623-694-9593
Cox Communications:	Ms. Suzanne Holzer	623-328-3522

21. SOUTHWEST GAS FACILITIES EXPOSED DURING CONSTRUCTION: The Contractor, upon exposing a gas line during construction, shall call SOUTHWEST GAS at 602-271-4277. The Southwest Gas patrolman will respond, usually within an hour, to inspect the line. Minor cuts or abrasions to the pipe coating will be rewrapped and tracer wire will be reconnected at no cost to the City.

22. UNDERGROUND UTILITIES' BEDDING: All water, sewer, storm drain, irrigation and other conduits installed within the City of Glendale shall be bedded from bottom of excavation to one foot above the pipe with granular bedding material meeting the requirements of Section 601.4.6 of MAG Uniform Standard Specifications. The initial bedding under the pipe is required for pipe having an inside diameter of 12 inches or larger, and in all cases where rock larger than 1-1/2" is encountered in the trench bottom.

23. SEWER SERVICE LINES: The Contractor shall be responsible for locating, and protecting from damage during construction, all sewer service lines within the project which are not owned by the City. Contractor will be permitted to review the "as-builts" to assist Contractor in locating the non-City owned sewer service lines. These "as-builts" were prepared, and supplied to the City, by private developers or contractors who installed the non-City owned sewer service lines. Therefore, the City does not guarantee or warranty the accuracy of such "as-builts" and the contractor, as a condition for being allowed to review such "as-builts", hereby agrees to hold the City harmless for any and all damages or other expenses contractor may incur as a result of any inaccuracies or incorrect information in these "as-builts".

24. RIGHTS-OF-WAY: The City will provide rights-of-way and easements for all work specified in this Contract, and the Contractor shall not enter or occupy with man, tools, equipment or materials any private ground outside the property of the City of Glendale, Maricopa County, Arizona, without the consent of the owner of such property.

25. SUBCONTRACTS: Subcontracts shall be in accordance with, and the Contractor shall be bound by, the following provisions:

All subcontracts shall be subject to the approval of the City.

All subcontracts shall be in writing and shall provide that all work to be performed thereunder shall be performed in accordance with the terms of the Contract.

Certified copies of any and all subcontracts shall be furnished to the City Engineering Department; however, prices may be omitted.

Subcontracts shall conform to the regulations governing employment of labor.

The subcontracting of any part of the work will in no way relieve the Contractor of his responsibility under the Contract.

26. **PRE-CONSTRUCTION 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 Engineer will schedule a Pre-Construction Conference. This will be held at the City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona.

The purpose of this Conference is to establish a working relationship between the Contractor, Utility Companies, and the Engineer. The agenda will include critical elements of the construction schedule, procedures for handling shop drawings and other submittals, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility companies, emergency telephone numbers for all representatives involved in the course of construction, and establishment of the Notice to Proceed date.

Minimum attendance by the Contractor shall be a responsible official of the company/corporation, who is authorized to execute and sign documents on behalf of the company/corporation.

27. **OVERTIME:**

Regular Work Hours: The work required to be performed by the Plans and Specifications for the Project shall be performed only during regular working hours, unless the City has authorized overtime work in accordance with the procedures set forth below. Regular working hours shall be defined as one 8-1/2 hour shift per day, Monday through Friday, or, upon prior approval of the City, one 10-1/2 hour shift per day on a compressed four day work week during Monday through Friday. Regular working hours shall not include Saturdays, Sundays or City of Glendale recognized legal holidays.

Authorization and Costs: If the Contractor desires to schedule work for times other than regular work hours (overtime), the Contractor shall make a written request to the City at least two business days prior to the scheduled overtime. The City reserves the right to deny the request to work overtime based on the best interest and needs of the City. If an overtime request is denied, the City may, at its sole discretion, extend the contract time at no additional costs to the City.

In the event the Contractor does perform work overtime, with or without the prior approval of the City, the Contractor shall be responsible to the City for all additional costs that may be incurred by the City as a result of the Contractor's overtime work, including costs for engineering, inspections, testing, surveying and construction administration, all in accordance with MAG Section 108.5. However, the Contractor shall not be responsible for City's costs incurred as a result of overtime work requested by the City or overtime work resulting from an emergency which is not the responsibility of the Contractor or its employees, subcontractors or suppliers. The City's cost will be billed directly to the Contractor or may, at the City's option, be deducted from monies due the Contractor.

28. **CONTRACTOR'S CONSTRUCTION SCHEDULE:** Concurrently, with the execution of the contract and prior to the pre-construction conference, the Contractor shall submit a preliminary schedule for the Engineer's acceptance. The schedule shall be in sufficient detail to allow the Engineer to determine if the proposed schedule will conform to an approved program of construction operations, as determined by the contracting agency. Within ten calendar days after the preliminary schedule, described above, has been approved by the Engineer, the Contractor shall submit a progress schedule, utilizing the critical path method scheduling technique, showing the order in which he proposes to carry out the work, the dates on which he will start each phase of the work, and the contemplated date for completion of each phase. The Contractor shall not be permitted to commence construction until the schedule complying with this paragraph has been submitted to the City. The Contractor will not be granted any extension to the contract time or compensation for any damages as a result of the City's refusal to allow Contractor to commence construction until the critical path method progress schedule has been submitted and approved by the Engineer.

The critical path method (CPM) scheduling technique requires a breakdown of the entire work into

individual tasks and an analysis of the number of days required to perform each task. The schedule submitted to the City should highlight and identify the critical path for the project. After the work is in progress, the Contractor shall submit supplementary progress schedules, using the critical path method technique, of the progress to date and projection for completion. The supplementary progress schedules shall be submitted with each pay request in accordance with the paragraph, "Payments to Contractors," of these Supplemental General Conditions. The progress schedules shall be subject to the approval of the Engineer. In the event the Contractor fails to submit a supplementary progress schedule acceptable to the Engineer, the City may withhold further progress payments to the Contractor until the Contractor submits an acceptable supplementary progress schedule, which is approved by the Engineer, to the City. Schedule changes requiring an increase in the City's engineering personnel on the project shall not be put into effect until the Engineer has approved such increase and made arrangements for the required additional personnel.

29. CHARACTER OF WORKMEN: None but skilled foremen and workmen shall be employed on work requiring special qualifications. When required by the Engineer, the Contractor shall discharge any person who is, in the opinion of the Engineer, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. The Contractor shall keep the City harmless from damages or claims for compensation that may occur in the enforcement of this section of the specifications.

30. HINDRANCES AND DELAYS: Except as otherwise provided herein, no charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work embraced in this Contract; but such delays, if due to no fault or neglect of the Contractor, shall entitle the Contractor to an extension of time allowed for completing the work, sufficient to compensate for the delay, the amount of the delay to be determined by the Engineer, provided the Contractor shall give said Engineer immediate notice in writing of the cause of such delay.

30.1 Delay: In the event of a delay for which the City is solely responsible, which is unreasonable under the circumstances and which was not within the contemplation of City and Contractor at the time this Contract is executed, City and Contractor shall negotiate, in good faith, a payment by the City to Contractor for the expenses incurred by Contractor as a result of such delay, in accordance with the City of Glendale Engineering Department's POLICY STATEMENT FOR CALCULATING DELAYS AND DAMAGES. This provision shall not be construed to void any provision in the contract which requires notice of delay or provides for liquidated damages. However, if the delay is the result of any act or neglect of a third party, including the architect, engineer or other contractor employed by the City, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably foreseeable, unavoidable casualties, or any causes beyond the Contractor's control, the Contractor shall not be entitled to any payments or compensation for expenses incurred as a result of such delay, but the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine. No extension or compensation will be granted for any delay which is the result, wholly or partially, of any act or neglect of Contractor or any Subcontractor hired by Contractor.

31. LIQUIDATED DAMAGES:

31.1 Should the contractor fail to substantially complete the work under this contract within the time for completion stated in the paragraph "Time of Completion," in the Information for Bidders, then the contractor shall pay the City of Glendale, Arizona, liquidated damages, pursuant to the provisions of Section 108.9, Standard Specifications for Public Works Construction, Maricopa Association of Governments, until the work is substantially complete.

31.2 Should the contractor fail to fully and finally complete the work under this contract within the time for completion set forth in the paragraph "Time of Completion," in the Information for Bidders, even though the contractor has achieved substantial completion of the work within such time, then the contractor shall pay the City of Glendale, liquidated damages (pursuant to the provisions of Section 108.9, Standard Specifications for Public Works Construction, Maricopa Association of Governments), in an amount equal to 100% of the applicable liquidated damage rate set forth in MAG Section 108.9 for each and every calendar day of delay until the work is fully and finally complete and accepted.

31.3 The date of substantial completion shall be the date when the work is sufficiently complete, in

accordance with the contract documents, so the owner can fully occupy and utilize the work or designated portion thereof for the use for which it is intended, with all the project's parts and systems operable as required by the contract documents and all the work is complete, accessible, operable, and usable by the owner for its intended purpose(s), and all parts, systems and sitework are 100% complete and cleaned for the owner's use. Only incidental corrective work and final cleaning (if required), beyond cleaning needed for the owner's full use, may remain for final completion.

31.4 Full and final completion shall be that date when all work under the project, including incidental corrective work under punch list and final cleaning, has been completed and the entire project is accepted by the owner.

32. PAYMENTS TO CONTRACTOR: The measurements of quantities and the payments to the Contractor shall be in accordance with MAG Uniform Standard Specifications for Public Works Construction, Part 100 - General Conditions, Section 109 - Measurements and Payments.

Payments will be made on the basis of itemized, monthly statements prepared by the City and signed by the Contractor. The Contractor shall submit an itemized, duly certified and approved estimate for work completed through the last day of the preceding month in accordance with MAG Specifications, as amended by these Supplemental General Conditions. Upon approval of the pay estimate, the City will mail the check directly to the Contractor.

The pay estimate shall be accompanied by an updated progress schedule as required by these Supplemental General Conditions and a cash flow report when required by the Special Provisions. Approval of progress payments shall be conditional upon submittal of progress schedules and cash flow reports, when required, which are acceptable to the Engineer.

Upon 100% completion and acceptance of the project, and with the request for final payment, the Contractor shall complete and submit the "Contractor's Affidavit Regarding Settlement of Claims" form which is included in these specifications. Before final payment and release of retention, Contractor must arrange for its Surety to provide the City with a fully executed AIA Consent of Surety form. To avoid delays in the final payment, the Surety may send the Consent of Surety directly to the City via fax at (623) 915-2689, and mail the original to the City of Glendale Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona 85301. Should any ambiguity arise between the Contract and these Conditions, the provisions of the Contract shall prevail.

END OF SUPPLEMENTAL GENERAL CONDITIONS

SPECIAL PROVISIONS

1. SCOPE OF WORK: Install a 740' four foot wide asphalt sidewalk along 59th avenue between Kings and Juniper Avenues.
2. DEFINITIONS:
 - A. Section: Reference to a Section on the plans or in these Specifications shall mean a Section of the Uniform Standard Specifications for Public Works Construction, sponsored and distributed by Maricopa Association of Governments (MAG), latest revision. The provisions of MAG Uniform Standard Specifications and Details for Public Works Construction, which are not altered or modified by the drawings or by these Special Provisions or by any subsequently issued Addendum, shall apply to the contract even though the Contractor's attention is not specifically drawn to such provisions.
 - B. Standard Detail: Reference to a MAG Standard Detail (MAG S.D.) on the plans or in these specifications shall mean a standard detail drawing in the latest revision of the Uniform Standard Specifications for Public Works Construction, sponsored and distributed by Maricopa Association of Governments. City of Glendale Standard Detail (C.O.G. S.D.) shall mean a standard detail drawing in the City of Glendale's Engineering Design and Construction Standards, latest revision. City of Phoenix Standard Detail (C.O.P. S.D.) shall mean a standard detail drawing in the Phoenix Supplemental Standard Details for Public Works Construction, latest revision.
3. SUSPENSION OF WORK: The Engineer reserves the right to suspend the work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract time in accordance with MAG Section 108.
4. COMPLIANCE WITH MANUFACTURER'S INSTRUCTIONS: In all instances wherein the item and/or specifications require installation or construction in accordance with either manufacturer's or supplier's recommendations and/or instructions, said recommendations and/or instructions shall be submitted with the applicable portions clearly marked for approval prior to the commencement of work on that item or portion of the contract.
5. TRAFFIC REGULATIONS:
 - 5.1 All traffic affected by this construction shall be regulated in accordance with the City of Phoenix "Traffic Barricade Manual," and these Special Provisions. The following traffic restrictions are minimum requirements throughout the construction period:
 - 5.1.1 All traffic restrictions listed herein are to supplement the City of Phoenix "Traffic Barricade Manual," and are not intended to delete any part of the manual. All reference in the "Traffic Barricade Manual" to "arterial" and/or "collector" streets shall mean "arterial and/or major arterial" streets and are referred to as "major" streets in the following sections.
 - 5.1.2 A minimum of two travel lanes (one for each direction) shall be maintained open to traffic at all times on all major streets. All work that enters or crosses a major street must be done at times other than 6:00 a.m. to 8:30 a.m., and 4:00 p.m. to 7:00 p.m.
 - 5.1.3 A travel lane shall be defined as ten (10) feet of roadway with a safe motor vehicle operating speed of twenty-five (25) miles per hour.
 - 5.1.4 A travel lane will not be considered as satisfactorily open to traffic until it has been graded reasonably smooth and is paved with a minimum of two (2) inches of asphalt. This shall be considered temporary pavement and shall be removed completely before proceeding with final surfacing.
 - 5.1.5 The Contractor shall provide and maintain all necessary traffic controls, and must provide flashing arrow boards to protect and guide traffic for all work in the construction area.
 - 5.1.6 Intersection area shall be defined as all of the area within the right-of-way of intersecting

streets, plus two-hundred fifty (250) feet beyond the center of the intersected streets on all legs of the intersection.

5.1.7 The Contractor shall maintain all existing traffic signs erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If any signs interfere with construction, the Contractor shall notify the Inspector at least 48 hours in advance for City forces to remove said signs. The Contractor shall be responsible for having all temporary traffic control signs installed and maintained during construction. The Transportation Department will re-set all traffic and street name signs to permanent locations when notified by the Engineer that construction is complete.

5.1.8 Local access to all properties on the subject project shall be maintained at all possible times in the form of a safe and reasonable direct route to at least one of the above defined major streets. Whenever local access cannot be maintained, the Contractor shall notify the affected property owner or user and the Engineer at least twenty-four (24) hours in advance.

5.1.9 The Contractor shall be required to provide a uniformed off-duty City of Glendale police officer to assist with traffic control whenever traffic in any one direction is restricted to one lane at a signalized major intersection or at other locations if it should become necessary in the opinion of the Engineer. During construction activities that do not restrict a major signalized intersection, police officer assisted traffic control is not required. If the Contractor chooses to use a police officer at other locations during peak traffic hours or to assist with his other traffic control operations, the cost shall be included in the lump sum for "Traffic Control" and not paid out of the hours allowed for "Off Duty Glendale Police Officer." All requests for off-duty officers will be made through the Glendale Police Department, Off-Duty Work Administrator. The Contractor must provide evidence of workmen's compensation coverage before any officer will be permitted to work.

Measurement for payment of the uniformed off-duty Glendale police officer hours will be made by the actual number of man-hours used for traffic control at signalized major intersections or as approved by the Engineer. Because the quantity of hours is dependent on the Contractors schedule of activities, the unit price bid for this item will be administered as a contingency bid item and any adjustment in hours will not be subject to the 20 percent limitation.

Payment for the off-duty Glendale police officer will be made at the contract unit price bid per hour for OFF DUTY GLENDALE POLICE OFFICER and shall include the net hourly rate of \$35.00 per police officer with a three (3) hour minimum. The net hourly rate shall be increased to include withholding for Federal, State, FICA, Medicare, Workmen's Compensation insurance and any payroll administrative costs.

5.1.10 The Contractor shall prepare a traffic control plan for the project and submit it to the City Transportation Director for review and approval at least seven (7) working days before the pre-construction conference. The traffic control plan shall include flashing arrow boards, barricades and signs, and shall address how local access to adjacent properties will be handled in accordance with the specifications herein. Any changes to the traffic control plan during construction shall be submitted to the City Transportation Director for approval at least seventy-two (72) hours before implementation.

Payment for this item shall be made at the contract lump sum price for TRAFFIC CONTROL.

5.1.11 It is the City's desire to maintain one lane of traffic in each direction on minor streets whenever possible. Should it become imperative for the Contractor to close off a portion of any minor street or reduce the travel way to a single lane, he must obtain approval from the City Transportation Director twenty-four (24) hours prior to implementing a traffic control change. He must provide all the necessary signs to detour traffic and/or

flagmen to control traffic for a single lane. The maximum amount of time that the street may be closed is from 9:00 a.m. until 4:00 p.m.

6. **ENERGIZED AERIAL ELECTRICAL POWER LINES:** The utility company maintains energized aerial electrical power lines in the immediate vicinity of this project. Do not consider these lines to be insulated. Construction personnel working in proximity to these lines are exposed to an extreme hazard from electrical shock. Contractors, their employees, and all other construction personnel working on this project must be warned of the danger and instructed to take adequate protective measures, including maintaining a minimum ten (10) feet clearance between the lines and all construction equipment and personnel. (See: OSHA Standard 1926.550(a)15.) As an additional safety precaution, Contractors should also be instructed to call the utility company to arrange, if possible, to have these lines de-energized or relocated when the work reaches their immediate vicinity. The cost of such temporary arrangements would be borne by the Contractor. The utility company can often respond to such requests if two days advance notice is given, but some situations may require up to sixty (60) days lead time for relocation or other arrangements.

7. **RECORD DRAWINGS:** The Contractor shall maintain one set of contract drawings with all changes, deviations, additions and deletions clearly marked thereon. Upon completion of the work, this set of drawings, shall be marked "RECORD DRAWINGS," dated, and delivered to the Engineer prior to approval of the Contractor's final payment request.

8. **CASH FLOW REPORT:** The Contractor shall prepare a Cash Flow Report for projected monthly project cash flow on a City provided form and submit it for approval prior to issuance of the Notice to Proceed. The accumulation of monthly pay estimate costs shall be plotted versus time in accordance with the proposed construction schedule. After approval, the Contractor shall submit an updated Cash Flow Report prior to the receipt of each Progress Payment. Each updated Cash Flow Report shall reflect the Contractor's actual monthly payment versus the actual elapsed contract time.

At the City's request, if the projected quarterly project cash flow varies by more than ten percent of the total contract price, the Contractor shall prepare a revised Cash Flow Report. Each revised Cash Flow Report is subject to approval by the City prior to issuance of the progress payment.

Revisions to the report resulting from Contractor initiated delays or work schedule changes shall be at no cost to the City. Any revisions required by City initiated delays or changes to the work shall be paid as an integral part of the approved Change Order.

9. **ALLOWANCE FOR CONSTRUCTION CONTINGENCIES:** Bid schedule includes a lump sum contingency allowance. This allowance is at all times the property of the City and is for the sole purpose of reimbursing Contractor for any unforeseen work not apparent at the time of bidding or additional work requested by the CITY OF GLENDALE.

No work anticipated for reimbursement under this Bid Item shall be initiated by Contractor until Contractor, City of Glendale Representative and City of Glendale agree on the scope and cost to perform the additional work. The Contractor shall prepare and submit to City of Glendale Representative a cost itemization and summary for the additional work. City of Glendale Representative and City of Glendale shall review and approve prior to Contractor proceeding with any additional work. Any portion of the stated sum not expended remains the property of the City of Glendale.

Work under this section shall consist of any additional work identified by the owner and contractor due to construction activity. All work under this item shall be itemized as per MAG requirements and deducted from the set amount of \$500.00. All work under this section shall include but is not limited to all necessary materials, tools, layout, survey and labor required to complete each task.

Measurement and payment for this item shall be made on an individual basis per task and as described above. Limit for this item is set at \$500.00 on the bid form, under line item ALLOWANCE FOR CONSTRUCTION CONTINGENCY.

END OF SPECIAL PROVISIONS