



CITY OF YUMA CONSTRUCTION CONTRACT

Sample

On _____, 2014 the City of Yuma City Council (“CITY”) authorized the award of **Bid number 2014-20000147** for **YUMA VALLEY AREA PARK – SEEDING PROJECT to AWARDED CONTRACTOR NAME.**, (“CONTRACTOR”) doing business as a corporation located in the City of _____, County of _____ and State of Arizona.

For the consideration of the payments and agreements in this contract, to be made and performed by the CITY, the CONTRACTOR agrees with the CITY to commence and complete the project as follows:

Article 1: Contract Documents

The Contract Documents consist of the CITY-CONTRACTOR Contract, the Conditions of the Contract (General, Supplemental and other Conditions), the Drawings, the Project Manual, all Addenda issued prior to and all modifications issued after execution of the Contract, and all applicable laws, ordinances and regulations. A modification is (1) a written amendment to the contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the CITY or (4) a written order for a minor change in the WORK issued by the CITY. The Contract Documents include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the CONTRACTOR's Bid or portions of addenda relating to any of these, or any other documents, specifically enumerated in the CITY-CONTRACTOR Contract.

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified.

In interpreting the Contract, in the event of discrepancies or conflicts:

- 1) the Special Conditions govern over the Plans, and
- 2) the Plans govern over the Technical Specifications.
- 3) the Plans drawn with the largest scale govern, and
- 4) figured dimensions govern over scaled dimensions.

Article 2: The WORK

CONTRACTOR accepts the relationship of trust and confidence established with CITY by this Agreement, and covenants with the CITY to furnish CONTRACTOR's best skill, attention and judgment, and to cooperate with the Engineer in furthering the interests of the CITY. CONTRACTOR shall furnish all WORK under the Contract Documents and use CONTRACTOR's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the CITY. CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the WORK under CONTRACTOR.

The CONTRACTOR will perform all the WORK required under this Contract as described below:

Yuma Valley Area Park – Seeding Project

The project is located in Yuma, and consists of furnishing all materials, preparing the soil, applying Class I seed, and establishing the seeded areas for the Yuma Valley Area Park.

The City Engineer is the administrator of this Contract, and is the interpreter of the Contract Documents and the judge of the CONTRACTOR's performance of the WORK. All reference to the "City Engineer" or the "Engineer" in these documents includes the City Engineer, and authorized representatives.

Article 3: Time of Commencement and Completion

CONTRACTOR must begin work within 10 calendar days of the date established by the Notice to Proceed and, subject to modifications authorized by the Engineer, complete WORK as specified in Document No. 00030, Item 6.

Article 4: Contract Sum

The CITY will pay the CONTRACTOR for performance of the WORK, subject to additions and deletions by Change Order, the sum of: XXX Hundred Thousand, XXX Hundred Dollars and XX Cents (\$XXX)XXX.XX.

Article 5: Progress Payments

The CONTRACTOR must apply to the Engineer for progress payments. The CITY will make progress payments pursuant to Arizona Revised Statutes § 34-221 and with the Engineer's approval of CONTRACTOR's application.

5.1. Payment Applications

5.1.1 An "Application for Payment" is an invoice from CONTRACTOR to the CITY submitted in accordance with this Article 5. AN APPLICATION FOR PAYMENT SHALL NOT BE CONSIDERED COMPLETE UNLESS SUBMITTED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE 5 AND SHALL NOT BE DEEMED "SUBMITTED" IN ACCORDANCE WITH SUBPARAGRAPH 5.1.2 OR "RECEIVED" BY THE CITY IN ACCORDANCE WITH SUBPARAGRAPH 5.1.9 UNTIL COMPLETE.

5.1.2 As a condition precedent to the CITY's obligation to pay CONTRACTOR, CONTRACTOR shall send all monthly payment applications and final billing concurrently to the Accounting Division (original) and Engineer (copy), City of Yuma, for review and approval prior to payment.

5.1.3 When specifically required, as a condition precedent to CONTRACTOR's right to receive payment, with each Application for Payment, CONTRACTOR shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the CITY or Engineer to demonstrate that cash disbursements already made by CONTRACTOR on account of the Contract Sum equal or exceed (1) progress payments already received by CONTRACTOR; less (2) that portion of those payments attributable to CONTRACTOR's Fee; plus (3) payrolls for the period covered by the present Application for Payment. Lack of such documentation shall be a

standing objection to such Application for Payment and this Paragraph shall be a specific written finding of deficiency as contemplated by Subparagraph 5.1.9.

5.1.4 Each Application for Payment shall be based upon the most recent field measured quantities submitted by CONTRACTOR in accordance with Document 00300.

5.1.5 Applications for Payment shall show the Percentage Completion of each portion of the WORK as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

A. Take that portion of the Contract Sum properly allocable to completed WORK as determined by multiplying the verified quantities of work by the appropriate unit cost shown in Document 00300. Pending final determination of cost to the CITY of changes in the WORK, amounts not in dispute may be included in an Application for Payment, even though the Contract Sum has not yet been adjusted by Change Order.

B. The CITY may make 90% payment upon materials received and properly stored following verification of material storage at an approved site, and receipt of proof of CONTRACTOR'S payment to vendor.

C. Subtract retainage in accordance with Paragraph 5.2.

D. Subtract the aggregate of previous payments made by the CITY.

5.1.7 Notwithstanding any other term of the Contract, the CITY's or the Engineer's approval and/or payment of any Application for Payment shall not constitute acceptance of any WORK not in accordance with the Contract Documents.

5.1.8 Subject to the CITY's right to withhold payments in accordance with Paragraph 5.1.9, and provided an Application for Payment is received by the CITY in the method, with the documentation, and to the places specified herein not later than the last day of a month, the CITY shall make payment to CONTRACTOR no later than the twenty-first (21st) day of the following month.

5.1.9 An Application for Payment submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission in accordance with the requirements of this Article 5, unless before that time the Engineer prepares and issues a specific written finding setting forth those items in detail in the estimate of the WORK that are not approved for payment under the Contract.

5.1.10 In accordance with Paragraph 5.1.2 the estimate of the WORK shall be deemed received by the CITY on submission to the Engineer and the Accounting Division, concurrently, the Application for Payment. Neither party acting alone is authorized to receive the submission of Applications for Payment, review Applications for Payment or approve Applications for Payment. Only acting jointly may the parties complete all or any one of these functions.

5.1.11 The progress payment shall be paid on or before fourteen (14) days after the Application for Payment is certified and approved by the Engineer and City Accounting Division.

5.2. Retainage

5.2.1 Subject to CONTRACTOR's right to deposit securities in lieu of retainage in accordance with Subparagraph 5.2.5, ten percent (10%) of all Applications for Payment shall be retained by the CITY as a guarantee for complete performance of the Contract, to be paid to CONTRACTOR within sixty (60) days after delivery of the Notice of Project Completion to CONTRACTOR.

5.2.2 When the Contract is fifty percent (50%) completed, one-half (1/2) of the amount retained, including any securities substituted under Subparagraph 5.2.5 shall be paid to CONTRACTOR on CONTRACTOR'S request, provided CONTRACTOR is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained.

5.2.3 After CONTRACTOR is fifty percent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments made under CONTRACTOR may be retained providing CONTRACTOR is making satisfactory progress on the Project, except that if at any time the CITY determines satisfactory progress is not being made ten percent (10%) retention shall be reinstated for all progress payments made under the contract after the determination.

5.2.4 Retention of payments by the CITY longer than sixty (60) days after final completion and acceptance requires a specific written finding by the CITY of the reasons justifying the delay in payment. The City may not retain any monies after sixty (60) days that are in excess of the amount necessary to pay the expenses the CITY reasonably expects to incur in order to pay or discharge the expenses determined by the CITY in the finding justifying the retention of monies.

5.2.5 In lieu of the retention provided in this Paragraph, the CITY, at the option of CONTRACTOR, shall accept as a substitute an assignment of time certificates of deposit of banks licensed by this state, securities of or guaranteed by the United States of America, securities of this state, securities of counties, municipalities and school districts within this state or shares of savings and loan institutions authorized to transact business in this state pursuant to A.R.S. § 34-221(c)(5) in an amount equal to ten percent (10%) of all Applications for Payment that are retained by the CITY as a guarantee for complete performance of the Contract. If the CITY accepts substitute security as described in this subparagraph for the ten percent (10%) retention, CONTRACTOR is entitled to receive all interest or income earned by this security as it accrues and all such security in lieu of retention shall be returned to CONTRACTOR by the CITY within sixty (60) days after final completion and acceptance of all material, equipment and WORK covered by the Contract if CONTRACTOR has furnished the CITY satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the WORK. In no event shall the CITY accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to setoff against either the CITY or CONTRACTOR in relationship to the certificates or shares assigned.

Article 6: Final Payment

Upon the Engineer's certification that the WORK has been completed and the Contract has been fully performed, all documentation, including the written concurrence of bonding agencies, if applicable, has been received, and the CITY has accepted the WORK, the CITY will make final payment. Final Payment and acceptance of the WORK will not relieve the CONTRACTOR of its obligation to warrant the WORK for a period of one year.

Article 7: General Conditions

7.1. Definitions:

7.1.1 CITY. The word "CITY" as used in these documents refers to the City of Yuma, Arizona. The official representative of the CITY in these proceedings is the City Administrator, City of Yuma, Arizona or authorized designee.

7.1.2 ENGINEER. The word "Engineer" means the City Engineer or firm or person(s), and their properly authorized assistants and inspectors, designated by the City Engineer to prepare Plans and administer construction of the WORK.

7.1.3 CONTRACTOR. The word "CONTRACTOR," as used in the Project Manual or in the contract means the person, firm or corporation with whom the contract is made by the CITY.

7.1.4 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 or Project Manual for this WORK but does not include those who merely furnish material not so worked.

7.1.5 PLANS. The word "Plans," as used in the Project Manual or in the Contract, means the official plans, working drawings or supplemental drawings or exact reproductions thereof, authorized by the City Council, City of Yuma, Arizona which show the locations, character, dimensions and details of the project and the WORK to be done and which are to be considered as a part of the contract, supplementary to the Project Manual.

7.2. Project Administration

7.2.1 In conformance with Arizona Revised Statutes § 42-5006 and the Arizona Department of Revenue criteria concerning construction project tax liabilities and, as a requirement of this Contract, the CONTRACTOR must provide to the City of Yuma one of the following documents:

- (a) A copy of the **Tax Liability Bond** issued by the Arizona Department of Revenue, naming this specific project as being bonded.
- (b) A current **Bond Exemption Certificate** issued by the Arizona Department of Revenue, naming this specific project as being exempt.

7.2.2 The Purchasing Division will issue the project's **Notice To Proceed** and **Notice Of Completion** documentation.

7.2.3 The CONTRACTOR shall comply with the Arizona Pollutant Discharge Elimination System (AZPDES) stormwater water Phase II requirements and in particular the Construction General Permit # AZG2003-001, as amended. The cost of such compliance must be incorporated into the appropriate Bid Form line item cost(s) and no separate payment will be made for this compliance.

7.2.4 Prior to and as a prerequisite of the **Notice to Proceed** the CONTRACTOR shall provide the Engineer with the following submittals for review and approval:

- (a) Proposed project materials
- (b) Construction schedule
- (c) Schedule of Values for anticipated payment requests
- (d) Safety plan
- (e) Material Safety Data Sheets (MSDS)
- (f) Traffic Control Plan
- (g) Letter to residents and/or businesses to be affected by the project, advising of the type and approximate duration of the project.
- (h) Listing of after-hours/emergency contact personnel for the CONTRACTOR and subcontractor(s).
- (i) Certificates of training for all workers who will be cutting, tapping, or handling asbestos cement pipe.
- (j) A complete and accurate Notice of Intent (NOI) for coverage under the Arizona Pollutant Discharge Elimination System (AZPDES) Construction General Permit No. AZG2003-001 to be submitted to Arizona Department of Environmental Quality (ADEQ). Concurrently with the Notice of Intent (NOI), the CONTRACTOR shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP). A copy of the SWPPP must be provided to the Engineer. The SWPPP must be available for ADEQ review.
- (k) Written designation of a "competent person", in accordance with the definition in 29 CFR Part 1926.32(f), whenever a competent person is required by a standard. This person shall remain on the Project site or be IMMEDIATELY available during all construction activities associated with the person's field of competency. Additionally, CONTRACTOR shall submit certification that the competent person has successfully completed a minimum of eight (8) hours of OSHA training related to that field of competency.
- (l) A plan designed by a registered professional engineer registered in the State of Arizona for the sloping or benching of excavations greater than in excess of twenty feet (20'), and in accordance with 29 CFR Part 1926, 650-652.

7.2.5 CONTRACTOR must submit all monthly estimates and final billing concurrently to the Engineer (copy) and to the Accounting Division (original), City of Yuma, for review and approval prior to payment.

7.2.6 It is expressly understood by the CONTRACTOR that the estimated quantities found in the **Bid Form** section of the Project Manual are estimates only for the purpose of bid comparison and that the final payment quantities will be measured in place subsequent to the completion of construction and paid for at the contract price bid for each item.

7.2.7 CONTRACTOR is advised that the following sequence of events for issue of final payment by the City of Yuma is as follows:

(a) The **Contractor's Affidavit Regarding Settlement of Claims** and **Sub Contractor's Affidavit Regarding Settlement of Claims** are submitted to the assigned City of Yuma Project Manager.

(b) A copy of the **Affidavit** and **Consent of Surety** is sent by the CONTRACTOR to the CONTRACTOR's Bonding Surety with a request to release final contract payment to the CONTRACTOR.

(c) Once the Bonding Surety advises, in writing (**Consent of Surety**) to Purchasing, that payment of final contract monies to the CONTRACTOR is approved, the City of Yuma Accounting Division is requested to schedule the issue of the final payment.

7.2.8 In a coordinated effort with the Engineer's representative, or designee, the CONTRACTOR will be responsible for the preparation and furnishing of "As-Built" record drawings. The CONTRACTOR shall obtain one set of plans from the City Engineering Department, or designee and record, in red colored pencil, all cases where actual field construction differs from WORK shown on plans. All concealed WORK and utility locations will be dimensioned. No separate payment will be made for this activity. The cost for same must be incorporated into the appropriate **Bid Form** line item cost.

7.2.9 The CONTRACTOR shall notify the Engineer immediately of any conditions requiring changes to the plans.

7.2.10 After the construction is complete and the project's disturbed area is stabilized to at least 70% of natural background levels or responsibility of the project has been assumed by another operator, the CONTRACTOR must submit to ADEQ a Notice of Termination (NOT) to end participation in AZPDES program. A copy of the NOT must be provided to the Engineer.

7.3. Safety

7.3.1 Occupational Safety and Health (OSHA) Standards for General Industry and Construction (Title 29, Code of Federal Regulations, Parts 1910 and 1926 as amended), the Manual on Uniform Traffic Control Devices (MUTCD) and the City of Yuma's Environmental Health and Safety Regulations are applicable in this Contract.

7.3.2 The Safety Plan specified in 7.2.4 (d) must address all phases of construction to be undertaken, as called out in this Contract. The Plan must also include the Contractor's Accident Prevention Policy, addressing measures to control hazards associated with materials, equipment, and safety inspections.

7.3.3 The CONTRACTOR must provide the name of a designated safety person and competent person for coordination during the life of the project.

7.3.4 The CONTRACTOR must keep all regulatory agencies and affected businesses, including but not limited to the City of Yuma's Police Department, Public Works Department, Fire Department, Utilities Department, Rural Metro Fire Corporation, the Yuma County Sheriff's Department, Irrigation Districts, School Districts and private business informed of restrictions to traffic flow due to the construction operations.

7.3.5 The CONTRACTOR must protect pedestrians, bicycle and vehicular traffic at all times with properly positioned warning signs, devices and / or flaggers. All traffic control must be in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and with applicable Arizona and local codes.

(a) The CONTRACTOR is responsible for the submission of the Traffic Control Plan. All Traffic Control Plans must be submitted with "Traffic Control Plan Cover Sheet". The cover sheet must be the first sheet of the Traffic Control Plan and all sheets must be consecutively numbered. Plans will only be accepted when prepared by or under the direct supervision of a currently certified Work Zone Traffic Control Supervisor who must sign the cover sheet. Traffic Control Plans submitted without this sheet or without complete information will be rejected without review.

(b) The CONTRACTOR is responsible for the inspection of all traffic control installations used in conjunction with this project and shall inspect, at least twice daily, to ensure same conforms to the approved Traffic Control Plan. It is recommended that this inspection take place at the start and end of each workday, and approximately the same time on non-working days and at such times as felt such inspection may be required.

(c) The CONTRACTOR must provide the Engineer the name and telephone number of those persons responsible for these inspections and who are available for emergency after-hours call out.

(d) The CONTRACTOR must furnish, install and maintain such barricades, fences, railings, signs, warning lights, safety helmets and other devices as necessary for the general safety of both the public and employees of the CONTRACTOR and subcontractors on and around the work sites. Signs, barricades and warning devices utilized during this project must:

1. Be installed in accordance with a plan that has been provided to the CITY by a firm or personnel certified in the area of construction traffic control by the American Traffic Safety Services Association (ATSSA) or the International Municipal Signal Association (IMSA) and said plan has been accepted by the CITY, and;
2. Be installed and maintained by a firm or personnel certified in the area of construction zone traffic control by either ATSSA or IMSA.
3. Be National Cooperative Highway Research Program (NCHRP) Report 350 compliant.

(e) No separate payment will be made for the above activities. The cost for same must be incorporated into the appropriate **Bid Form** line item cost.

Upon request, the CONTRACTOR must furnish the CITY with documentation to verify that such certifications are current.

7.3.6 CONTRACTORS having questions concerning these regulations and the implications of same should contact the City of Yuma, Human Resources, Safety and Environmental Office at (928) 373-5092.

7.4. Provisions for Handling Emergencies

7.4.1 It is possible that emergencies may arise during the progress of the WORK which may require special treatment or make advisable extra crew shifts to continue the WORK for twelve (12), eighteen (18), or even twenty-four (24) hours per day. These emergencies may be caused by damage or possible damage to nearby existing structures or property, or by accidents. The CONTRACTOR must be prepared in case of such emergencies, to make all necessary repairs, and will promptly execute such WORK when required by the Engineer.

7.4.2 The after-hours/emergency response sequence to be utilized for this project is determined by the type and severity of the emergency.

911 shall be called in the event of a traffic accident, fire, medical emergency and assistance with a technical rescue and any other incident that requires Police/Fire involvement.

The City of Yuma Utilities Department will be called in the event of a water or wastewater emergency.

The City of Yuma Street Division may respond to the site of the problem and stabilize the situation by:

- (a) Erecting traffic control signs and barricades to safely divert traffic/motorists and/or pedestrians from the problem area.
- (b) Contacting the Senior Engineering Technician/Inspector responsible for the project or if the Inspector is not available, contacting the Engineering Field Supervisor, to notify the CONTRACTOR of the need to respond to the project site.
- (c) Commencing such remedial activities as may be necessary to stabilize the site and protect any adjacent infrastructures, until relieved by the CONTRACTOR.

7.5. Asbestos Cement Pipe

7.5.1 All CONTRACTORS engaged by the City of Yuma, Arizona to undertake construction involving repair, modification, removal and/or disposal of asbestos cement (cement asbestos) pipe must comply with those worker training requirements stipulated in 29 CFR 1926.1101, the Asbestos NESHAP regulations contained in 40 CFR 61 and special waste management rules for friable A.C.M. contained within Arizona Administrative Code R18-8-301/306, as well as subsequent amendments to or superseding documents concerning the above regulations.

7.5.2 The CONTRACTOR shall remove and dispose of all waste or scrap A.C. pipe generated during the course of the project, unless specifically noted otherwise in the contract documents.

7.6. Delays

7.6.1 If any delay is caused the CONTRACTOR by specific order of the Engineer to stop work or by failure of the CITY to provide the necessary right of way or site for installation, or by such unforeseen causes beyond the control of the CONTRACTOR, such delay may entitle the CONTRACTOR to an equivalent extension of time, except as otherwise provided hereinafter under **Suspension of WORK**. Provided, however, that when delay is caused by an order to suspend WORK given on account of climatic

conditions which in the opinion of the Engineer could have been reasonably foreseen, the CONTRACTOR will not be entitled to any extension of time on account of such order.

7.6.2 Application for extension of time must be approved by the Engineer and must be accompanied by the formal consent of the sureties, but an extension of time, whether with or without such consent, must not release the sureties from their obligations, which will remain in full force until the discharge of the Contract.

7.6.3 Standby time, if required, will be considered a delay to the project and, as such, will be addressed in accordance with the provisions of this section.

7.6.4 If a claim is timely filed in accordance with Article 8, the CITY agrees to negotiate in good faith with CONTRACTOR for the recovery of damages related to expenses incurred by CONTRACTOR for a delay for which the CITY is responsible, that is unreasonable under the circumstances and that was not within the contemplation of the Parties to the Contract. This subparagraph shall not be construed to void or contradict any provision in the Contract that requires notice of delays, provides for arbitration or other procedures for settlement, or provides for liquidated damages; such provisions shall include, but not be limited to, the terms of Article 8.

7.7. Suspension of WORK

The CITY reserves the right to suspend the whole or any part of the WORK herein specified, if deemed in its interest to do so, without compensation to the CONTRACTOR for such suspension other than extending the time for completing the WORK as much as it may have been delayed by such suspension. No allowance by way of damages will be made for any such delay.

7.8. Project Manual and Plans

The CONTRACTOR must keep on the WORK SITE a copy of the Project Manual and plans, and will at all times give the Engineer access thereto. Any drawings or plans listed in the Project Manual will be regarded as part of the Contract. Anything mentioned in the Project Manual and not shown on the Plans, or shown on the Plans and not mentioned in the Project Manual will be deemed as if shown as a part of this Contract. The Engineer may furnish from time to time such additional drawings, plans, profiles, and information, as he may consider necessary for the CONTRACTOR's guidance.

7.9. Lines and Grades

7.9.1 All WORK under this Contract must be built in accordance with the lines and grades shown on the Plans and as given by the Engineer. The Engineer will furnish only the basic reference lines and bench marks from which the CONTRACTOR will establish such other points as he may need, except as otherwise specified herein. The protection and care of such references is the responsibility of the CONTRACTOR and any references lost or destroyed will be replaced only at the CONTRACTOR's expense.

7.9.2 The Engineer will perform construction staking as follows:

- (a) Sewer lines: stake the centerline at an agreed upon offset every twenty-five feet (25') along the line and supply a cut sheet.
- (b) Sidewalks: stake an agreed upon offset line will be staked every twenty-five feet

(c) Curb and gutter: stake an agreed upon offset line will be staked every twenty-five feet (25') along the curb line.

(d) Rough grading base course or pavement: the elevations will be established from the concrete gutters or curb and stakes will be set by the CONTRACTOR except at the intersections which shall be "blue top" staked by the Engineer.

7.9.3 The CONTRACTOR's stakes and grades are subject to check by the Engineer for compliance with the Plans and Project Manual. The CONTRACTOR must keep the Engineer informed a reasonable time in advance, at least twenty-four (24) hours, as to the needs for checking lines and grades and for setting stakes in order that the same is done and all necessary measurements are made for record and payment with the minimum of inconvenience to the Engineer or of delay to the CONTRACTOR.

7.10. Character of Workmen

7.10.1 Only skilled foremen and workmen will be employed on WORK requiring special qualifications.

7.10.2 When required by the Engineer, the CONTRACTOR shall remove from this project and any other project CONTRACTOR is performing for the CITY any person who commits trespass, or is, in the opinion of the Engineer, disorderly, dangerous, insubordinate, or incompetent. The CONTRACTOR shall save harmless the CITY from any damage or claims for compensation that may arise due to the enforcement of this section of the specifications.

7.11. Material and Workmanship

7.11.1 All material must be of the specified quality, and equal to the approved samples, if samples have been submitted. All WORK must be done and completed in a thorough, workmanlike manner, notwithstanding any omission from the Project Manual or from the Plans. It is the duty of the CONTRACTOR to call the Engineer's attention to apparent errors or omissions, and request instructions before proceeding with the WORK.

7.11.2 All defective WORK or material must be removed from the premises by the CONTRACTOR, whether in place or not, and must be replaced with new and satisfactory WORK or material in such manner as the Engineer may direct. All material and workmanship of whatever description is subject to the inspection of, and rejection by the Engineer, if not in conformance with the specifications.

7.11.3 On all questions concerning the acceptability of material, machinery and classifications of material, execution of the WORK, conflicting interest of CONTRACTOR's performance of related WORK, and the determination of costs, the decision of the Engineer is final and binding upon all parties.

7.11.4 Any defective material or workmanship, or any unfaithful or imperfect WORK which may be discovered before the final acceptance of the WORK must be corrected immediately at the request of the Engineer, without extra charge, notwithstanding that it might have been overlooked in previous inspections. Failure to inspect WORK does not relieve the CONTRACTOR from any obligation to perform sound and reliable WORK as herein specified.

7.12. Infringement of Patents

The CONTRACTOR must hold and save the CITY, its officers, agents and employees harmless from and against all and every demand or demands of any nature or kind, for or on account of the use of any patented invention, article or appliance, included in the material or supplies hereby agreed to be furnished under the contract. The CONTRACTOR must secure and file with his proposal such valid license as may be requisite and necessary to enable the CITY, its officers, agents and employees, or any of them to use such invention, article, material or appliance, without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. If the CONTRACTOR neglects to secure such licenses as may be necessary and requisite for the purpose aforesaid, the CITY may, at its option, refuse to consider such bid.

7.13. Methods and Appliances

The methods and appliances adopted by the CONTRACTOR must be such as will, in the opinion of the Engineer, secure a satisfactory quality of work and will enable the CONTRACTOR to complete the WORK in the time agreed upon.

7.14. Subcontractors

7.14.1 If any part of the WORK to be done under this Contract is subcontracted, the subcontracting must be done in accordance with, and the CONTRACTOR agrees to be bound by, the following provisions:

(a) All subcontracts must be in writing and must provide that all WORK to be performed thereunder will be performed in accordance with the terms of the Contract. All subcontracts must be approved by the Engineer before said subcontract is executed.

(b) The subcontracting of any or all of the WORK to be done will in no way relieve the CONTRACTOR of any part of his responsibility under the contract. In case the terms of the subcontract are, in the opinion of the Engineer, unsatisfactory from the standpoint of the CITY, or in case the WORK being done under any subcontract is not conducted in a manner satisfactory to the Engineer, the CONTRACTOR must, upon written notice to this effect, cause such subcontract to be terminated and the subcontractor and the employees to be removed from the WORK. Any loss or damage that may be suffered on account of such action will be borne by the CONTRACTOR.

7.15. Relations to Other Work

The CONTRACTOR will so far as practicable, arrange the WORK and dispose of his materials in such a manner as not to interfere with any other work which may be scheduled for the same area, and must arrange to perform his WORK in proper sequence with other work. When two or more contractors are engaged in installation or construction work in the same vicinity, the Engineer is authorized to direct the order, manner and rate in which each may conduct the WORK so far as it affects other contracts.

7.16. Protection of Person and Property

The CONTRACTOR must protect against injury any public or private lawns, gardens, shrubbery or trees encountered in the WORK. All obstructions to traffic must be guarded by barriers and illuminated at night. The CONTRACTOR must not trespass upon private property. Access to private property will be by written permission of the property owner

as obtained by the CONTRACTOR. Under all circumstances the CONTRACTOR must comply with the laws and regulations relative to the safety of persons and property and the interruption of traffic, as well as the convenience of the public. The CONTRACTOR will be held responsible for and required to make good at his own expense, all damage to persons and property caused by carelessness or neglect on the part of the CONTRACTOR or subcontractor, or the agent or employees of either, during the progress of the WORK and until its final acceptance. Prior to the commencement of construction, the CONTRACTOR must contact adjacent property owners, who have structures such as fences, buildings, etc. adjacent to the proposed construction and note with the CITY deficiencies that exist. Further deficiencies caused by the CONTRACTOR must be repaired to the satisfaction of the CITY at the cost of the CONTRACTOR.

7.17. Utilities

7.17.1 Locations of existing public utility lines shown on the plans are approximate only. Where WORK is to be performed adjacent to or across utility lines, the CONTRACTOR must verify the locations in the field and take the necessary precautions. The CONTRACTOR must contact the local utility companies before trenching across any existing underground utility line. Any damage to a utility shall be repaired at the CONTRACTOR's expense and the CONTRACTOR will indemnify and hold harmless the City of Yuma for any direct or indirect damage to utilities.

7.17.2 It is the CONTRACTOR's responsibility, in accordance with Arizona Revised Statutes § 40-360.21 et seq., to notify Arizona Blue Stake (800-782-5348) at least forty-eight (48) hours in advance of beginning construction.

7.17.3 Omissions from, or inclusion of, utility locations on plans is not to be considered as the non-existence of, or definite location of, existing underground utilities.

7.17.4 Adjustment of utility facilities other than those of the City of Yuma will be the responsibility of that particular utility, i.e. Qwest Communications, Southwest Gas Corporation, Arizona Public Service Company, and Time Warner. The CONTRACTOR will notify and coordinate with said companies to assure the WORK is completed in an expeditious manner.

7.18. Irrigation Ditches

Where the WORK involves the crossing or cutting into irrigation ditches, canals or waste ditches, the CONTRACTOR must make such arrangements with the operators of the same as may be necessary to avoid delays in irrigation service and damage to the WORK. Any irrigation ditches, canals, or waste ditches so cut shall be restored to its original condition in the shortest time practicable.

7.19. Changes in the WORK

7.19.1 The CITY, without invalidating the Contract, may order extra WORK or make changes by altering, adding to, or deducting from the WORK, the Contract being adjusted as specified herein. All such WORK will be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

7.19.2 Extra WORK is that WORK not shown or detailed on the Plans or specified. Such WORK will be governed by all applicable provisions of the Project Manual.

7.19.3 In order to facilitate the need for field modification documentation; an Extra Work Order form is typically utilized by the City Engineering Department to direct the increase or reduction of the scope of WORK. A copy of the Extra Work Order (Document 00580) format is appended elsewhere within this Project Manual. While the Extra Work Order can direct or authorize increases in WORK, payment for that additional WORK cannot be processed until the Contract has been modified through issuance of a Change Order, which may address several Extra Work Orders, as well as measured quantity changes.

7.19.4 At the time of the project pre-construction conference the CONTRACTOR must identify to the Engineer those personnel authorized to execute Change Orders and/or field generated Extra Work Orders on the behalf of the CONTRACTOR. This identification must be in writing and bear the notarized signature of an officer for the CONTRACTOR.

7.19.5 The Engineer has the authority to increase or decrease the scope of WORK in the Contract. The total value of these changes may not exceed ten percent (10%) of the total amount of the contract, as approved by City Council. Any single item identified under the scope of work may be increased or decreased by any amount as long as the total amount of the Contract is not changed by more than ten percent (10%). If any changes in the scope of work included in the Contract increase the total amount of the Contract by a value equal to or more than ten percent (10%) it will require the concurrence and approval of the Yuma City Council and therefore establish a new cumulative total contract value.

7.19.6 In giving instructions, the Engineer has authority to make minor changes in the WORK not involving extra cost and not inconsistent with the purposes of the WORK. Otherwise, except in an emergency endangering life or property, no extra work or change will be made unless pursuant to a written order by the Engineer; and no claim for an addition to the total amount of the Contract will be valid unless so ordered.

7.19.7 The value of any such extra work or change may be determined in one or more of the following ways:

- (a) By CONTRACTOR's estimate and the Engineer's acceptance of a lump sum;
- (b) By unit prices named in the Contract or subsequently agreed upon;
- (c) By actual cost, with fifteen percent (15%) added for superintendence, use of tools and profit.

7.19.8 Actual cost will include the cost of labor, material, insurance, taxes, and equipment rental. The cost of labor is the amount paid for same as shown by the payrolls of the CONTRACTOR, with cost of insurance added when such can be shown to have been paid. The cost of material is the actual price paid for same delivered at the site of the WORK. Fifteen percent (15%) will not be added to any unit or lump sum prices herein specified. In case the WORK is performed by a subcontractor, the said fifteen percent (15%) will be added only once to the actual cost of the WORK; however, the CONTRACTOR may add five percent (5%) to the subcontractor's price to cover his own overhead.

7.19.9 If none of the above methods is agreed upon, the CONTRACTOR, provided he receives an order as above, shall proceed with the WORK. In such case and also under paragraph 7.19.7(c) above, the CONTRACTOR must keep and present daily to the Engineer a complete, thorough, written breakdown of all labor, materials, and equipment covering all extra WORK for the previous day. The Engineer reserves the right to examine the CONTRACTOR's payroll and all other CONTRACTOR's records pertaining to the costs of materials, equipment, labor, and other applicable documents.

7.19.10 If the CONTRACTOR, on account of conditions developing during the progress of the WORK, finds it impracticable to comply strictly with this Project Manual and applies in writing for a modification of requirements or of methods of work, such change may be made or authorized by the Engineer if not detrimental to the WORK and if without additional cost to the CITY.

7.20. Roads

The CONTRACTOR must keep open streets and roads, subject to interference by the prosecution of the WORK, covered by this contract until the WORK is completed, unless otherwise approved by the Engineer.

7.21. Land

The land on which the WORK of this contract is to be performed will be provided by the CITY.

7.22. Sanitation

7.22.1 The Engineer must establish and police sanitary rules and regulations for all persons employed under the contract. If the CONTRACTOR fails to enforce these rules the CITY may enforce them at the expense of the CONTRACTOR.

7.22.2 It is the CONTRACTOR's responsibility to provide adequate sanitary facilities on the locale of the project for use by the CONTRACTOR's employees.

7.23. Night Work

The CONTRACTOR may also be permitted or required to work at night, if in the opinion of the Engineer such work is necessary to maintain the required progress or protect the WORK from the elements. If ordered or permitted to work nights, the CONTRACTOR must provide sufficient and satisfactory lighting and other facilities. The CONTRACTOR will receive no extra payment, but compensation will be considered as being included in the prices stipulated for the appropriate items.

7.24. Disposal of Excavated Material

7.24.1 Before any arrangements for disposal of excavated materials are made, the CONTRACTOR will consult with the CITY, and the CITY will have first claim on all excavated materials. In the event the CITY refuses all or part of the excavated materials, it is the responsibility of the CONTRACTOR to make arrangements for and dispose of such materials.

7.24.2 Should soils excavated under the project be deposited upon properties within the City of Yuma, the site and proposed plan for placement of fill must first be reviewed and approved by the Engineer to assure conformance with the City's Drainage Policy (Ordinance Nos. 1670 and 1836).

7.25. Protection of WORK and Cleaning Up

The CONTRACTOR is responsible for the care of all WORK until its completion and final acceptance, and the CONTRACTOR must at his own expense replace damaged or lost material and repair damaged parts of the WORK, or the same may be done by the CITY, and the CONTRACTOR and his sureties shall reimburse the CITY for all costs and expenses incurred. All new concrete construction that becomes broken or shows evidence of cracks must be completely replaced at the CONTRACTOR's expense. Under no circumstances will patchwork be performed to repair new concrete WORK. The CONTRACTOR takes all risks from weather and casualties, and may not make any charge for delay from such causes. The CONTRACTOR may, however, be allowed a reasonable extension of time on account of such delays, subject to the conditions previously specified. The CONTRACTOR will remove from the vicinity of the completed WORK all plant equipment and materials belonging to the CONTRACTOR or used under the CONTRACTOR's direction during construction. The CONTRACTOR must clean up all waste or excess materials within the established WORK limits within the project so as to make a neat and workmanlike finish to the entire project. In the event of the CONTRACTOR's failure to remove said materials, the same may be removed by the CITY and the CONTRACTOR and his sureties shall reimburse the CITY for all costs and expenses incurred.

7.26. Inspection by Engineer

7.26.1 IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO CONSTRUCT THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND PROJECT MANUAL. INSPECTION BY THE ENGINEER PRIOR TO THE FINAL INSPECTION WILL NOT RELIEVE THE CONTRACTOR OF THIS RESPONSIBILITY.

7.26.2 Tests, inspections and approvals of portions of the WORK required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. CITY shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity, and shall bear all related costs of tests, inspections and approvals.

7.26.3 If the Engineer, or public authorities having jurisdiction determine that portions of the WORK require additional testing, inspection or approval not included under Paragraph 7.26.2, the Engineer will make arrangements for such additional testing, inspection or approval. Such costs, except as provided in Paragraph 7.26.4, shall be at the CITY'S expense.

7.26.4 If such procedures for testing, inspection or approval under Paragraphs 7.26.2 and 7.26.3 reveal failure of the portions of the WORK to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the CONTRACTOR's expense.

7.26.5 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CITY..

7.26.6 Test or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the WORK.

7.26.7 CONTRACTOR shall implement and observe a program of quality assurance as set forth in the Contract Documents or as otherwise reasonably directed by the Engineer.

7.26.8 The Engineer will:

(a) Inspect all sub-base and base courses before placing of succeeding or surface courses.

(b) Be present during the construction of all asphalt or asphaltic items of WORK.

(c) Inspect all formwork for any concrete items prior to placement of concrete. The CONTRACTOR must notify the Engineer one day in advance of when the WORK will be ready for inspection.

(d) Inspect placement of concrete and make necessary tests. The CONTRACTOR must notify the Engineer one day in advance of the intended time of concrete placement.

7.26.9 The Engineer may require that a sample section of curb and gutter, curb, sidewalk or other concrete items be constructed and finished to the satisfaction of the Engineer before the CONTRACTOR is permitted to proceed with construction.

7.26.10 The Engineer will inspect all trenches for pipe or other utilities prior to the installation of the pipe or utilities. The Engineer may be present during all pipe-laying operations. The Engineer will require satisfactory operation tests of all utility lines. The CONTRACTOR must notify the Engineer at least one day in advance of the time of need for an inspection or the intended performance of any of the items of construction.

7.27. Guarantee of WORK

7.27.1 The CONTRACTOR **must** guarantee the WORK against defective material and/or workmanship for a period of one (1) year from the date established by the Notice Of Project Completion issued by the Purchasing Division to note acceptance of the completed WORK. Upon discovery, repair work or replacement required in the opinion of the Engineer must be done immediately by the CONTRACTOR at the CONTRACTOR's own expense.

7.27.2 If the CONTRACTOR fails to repair such defective material and/or workmanship, or to make replacements within five (5) days after written notice by the CITY, it is agreed that the CITY will make such repairs and replacements and the actual cost of the required labor and material will be chargeable to and payable by the CONTRACTOR.

7.27.3 Any omission on the part of the Engineer to condemn defective work or material at the time of construction will not be deemed an acceptance, and the CONTRACTOR will be required to correct defective work or material at any time before acceptance of final payment and within one (1) year thereafter.

7.28. General

7.28.1 At least 48 hours in advance of the start of construction, the CONTRACTOR must advise all residents and businesses in the immediate vicinity of the project of the type of WORK that is to be undertaken and its approximate duration.

7.28.2 If this project requires the interruption of water/sewer service to a property, the CONTRACTOR must advise property owners/lessees of the interruption at least

twenty-four (24) hours in advance of the start of construction.

7.28.3 Access to adjacent properties, cross streets or use of streets scheduled for improvement must be reasonably maintained and fully re-established at the end of each workday.

7.28.4 The CONTRACTOR must maintain dust abatement activities for the duration of the project, including weekends and holidays.

(a) The CONTRACTOR must maintain adequate moisture levels in the surface materials to eliminate blowing dust from these materials.

(b) All haul trucks, whether involved in delivery or removal activities must be covered and/or tarped in order to prevent the loss of material from trucks by winds, either natural or caused by the movement of the truck or, in accordance with City of Yuma Ordinance No. 2638.

(c) No separate payment will be made for these activities. The cost for same will be incorporated into the appropriate Bid Form line item cost.

Article 8: Obligations.

8.1. Contractor

8.1.1 The CONTRACTOR must do all the WORK, and furnish all labor, equipment, transportation, tools, and materials required for the completion of the WORK, free from all claims, liens, and charges, in the manner and under the conditions specified in the Contract.

8.1.2 The WORK and materials furnished must conform strictly with the Project Manual accompanying this Contract. The CONTRACTOR guarantees that all materials and equipment furnished under this contract will be new, unless otherwise specified, and that all WORK is of good quality, free from defects and in conformance with the contract Project Manual. Non-conforming WORK is considered defective. The use of the words "or equal" following the name of any manufacturer, vendor or proprietary product will mean that, in the opinion of the CITY, articles or materials which are offered as a substitute must be equal in quality and performance to the articles or materials specified. The CONTRACTOR must submit requests for substitution to the CITY, and will not proceed with the installation or use any proposed substitution without written permission from the Engineer.

8.1.3 The CITY reserves the right to perform work related to this project and to use its own forces, and to award other contracts in connection with the project related to the WORK.

8.1.4 The CONTRACTOR must not assign this contract as a whole without written consent of the CITY. Any assignment without such consent may, at the option of the CITY, terminate this Contract. No portion of this Contract will be assigned to a subcontractor without the written consent of the Engineer.

8.1.5 The CONTRACTOR must designate a superintendent upon the award of the Contract and notify the Engineer via notarized letter of the superintendent's name, address and telephone number. The superintendent will be in charge of the operations of the CONTRACTOR in the performance of the WORK and is authorized to accept any notice, consent, order, direction, decision or other communication on behalf of the

Yuma Valley Area Park - Seeding Project

CONTRACTOR that may be given to the superintendent under the Contract. The CONTRACTOR must, until the WORK has been completed, keep a competent superintendent at the WORK site during working hours. The CONTRACTOR must, upon the request of the City Engineer, remove any superintendent who, in the opinion of the City Engineer, is incompetent or has in the opinion of the City Engineer engaged in improper conduct, and will designate another superintendent who is acceptable to the City Engineer. The CONTRACTOR will not substitute a superintendent without the written notice to and consent of the Engineer. Failure to comply with this paragraph by the CONTRACTOR entitles the Engineer to refuse to issue any certificate until the superintendent has returned to the WORK site or another superintendent who is acceptable to the Engineer has been substituted.

8.1.6 The CONTRACTOR understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The CONTRACTOR must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.1.7 By entering into this Agreement, Contractor certifies to the CITY that Contractor does not have, and will not have during the term of this Contract, scrutinized business operations in Sudan or Iran as those terms are defined in A.R.S. § 35-391 *et seq.* and § 35-393 *et seq.*

8.1.8 The CONTRACTOR must guard or otherwise protect the WORK and its site, and protect the contract specifications, plans, drawings, information, materials, plants and real property, whether or not supplied by the CITY to the CONTRACTOR, against loss or damage from any cause.

8.1.9 If the CONTRACTOR fails to comply with any decision or direction given by the Engineer, the Engineer may employ such methods as the Engineer deems advisable to undertake that action which the CONTRACTOR failed to pursue. The CONTRACTOR must, on demand, pay the City an amount that is equal to the aggregate of all costs, expenses, damage incurred or sustained by the City by reason of the CONTRACTOR's failure to comply with any decision or direction of the Engineer, including the cost of any methods employed by the Engineer to complete the WORK.

8.1.10 The CONTRACTOR may, within ten days after the communication to the CONTRACTOR of any decision or direction, protest that decision or direction. A protest must be in writing, contain full reasons for the protest, be signed by the CONTRACTOR and be given to the City by delivery to the City Engineer. A written protest by the CONTRACTOR will not relieve the CONTRACTOR from complying with the decision or direction that is the subject of the protest. If the CONTRACTOR files a protest, any compliance by the CONTRACTOR with the decision or direction that was protested will not be construed as an admission by the CONTRACTOR of the correctness of that decision or direction, or prevent the CONTRACTOR from taking whatever action the CONTRACTOR considers appropriate in the circumstances. The CONTRACTOR must make a protest within three months after the date that a Notice of Project Completion is issued. If the City Engineer determines that the CONTRACTOR's protest is justified, the CITY will pay the CONTRACTOR the cost of the additional labor, plant and material necessarily incurred by the CONTRACTOR in carrying out the protested decision or direction.

8.1.11 If the CONTRACTOR incurs or sustains any extra expense or any loss or damage that is directly attributable to:

- 1) a substantial difference between the information relating to soil conditions at the WORK site that is contained in the Plans and Project Manual specifications or other documents supplied to the CONTRACTOR for use in preparing the CONTRACTOR's tender or a reasonable assumption of fact based thereon made by the CONTRACTOR, and the actual soil conditions encountered by the CONTRACTOR at the WORK site during the performance of the contract, or
- 2) any neglect or delay that occurs after the date of the Contract on the part of the CITY in providing any information or in doing any act that the Contract either expressly requires the CITY to do or that would ordinarily be done by the CITY in accordance with the usage of the trade, the CONTRACTOR must, within ten days of the date the actual soil conditions were encountered or the neglect or delay occurred, give the Engineer written notice of intention to claim for the extra expense, loss or damage incurred. If the CONTRACTOR has given a notice, the CONTRACTOR must give the Engineer a written claim for the extra expense, loss or damage within 30 days of the date that a Notice of

Project Completion is issued and not afterwards. A written claim must contain a sufficient description of the facts and circumstances giving rise to the claim to enable the Engineer to determine whether or not the claim is justified and the CONTRACTOR must supply such further and other information for that purpose as the Engineer requires from time to time. If the Engineer determines that a claim is justified, the CITY will make an extra payment to the CONTRACTOR in an amount that is calculated by the Engineer. If, in the opinion of the Engineer, an occurrence results in a savings of expenditure by the CONTRACTOR in performing the contract, the amount set out in the Articles of Agreement shall be reduced by an amount that is equal to the saving. If the CONTRACTOR fails to give a notice and a claim within the times stipulated, no extra payment will be made to the CONTRACTOR in respect of the occurrence.

8.1.12 The CONTRACTOR shall maintain accurate and complete financial records of its activities and operation relating to this Contract in accordance with generally accepted accounting principles. CONTRACTOR agrees that CITY, or the CITY's authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Contract. All such material, including, but not limited to, all financial records, timecards and other employment records, and proprietary data and information, shall be kept and maintained by CONTRACTOR and shall be made available to CITY during the term of this Contract and for a period of five (5) years thereafter unless CITY's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by CONTRACTOR at a location in Yuma County, Arizona, provided that if any such material is located outside Yuma County, Arizona, then at CITY's option, CONTRACTOR shall pay CITY for travel, per diem, and other costs incurred by CITY to examine, audit, excerpt, copy or transcribe such material at such other location.

In the event that an audit of CONTRACTOR is conducted specifically regarding this Contract by any Federal or State Auditor, or by any Auditor or Accountant employed by CONTRACTOR or otherwise, then CONTRACTOR shall file a copy of such audit report with the CITY's Finance Director within thirty (30) days of CONTRACTOR's receipt thereof, unless otherwise provided by applicable Federal or State Law or under this Contract. CITY shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Failure on the part of CONTRACTOR to comply with any of the provisions of paragraph 8.1.11 shall constitute a material breach of contract and may be cause for debarment per Yuma City Code, Title 3, Chapter 36-56.

8.1.13 CITY shall schedule and conduct a preconstruction meeting and weekly meetings at the Project Site to discuss such matters as procedures, progress, and scheduling. CITY, shall prepare and promptly distribute minutes, as necessary.

8.2. Insurance

8.2.1 Without limiting any of its obligations or liabilities and at its own expense, the CONTRACTOR must purchase and maintain the stipulated minimum insurance with companies duly licensed to do business in the state of Arizona. All policies and forms must be satisfactory to the CITY. Use of alternative insurers requires CITY's prior approval.

8.2.2 The insurance policies, except Workers' Compensation, required by this contract, must name the CITY, and its employees, as Additional Insured. Any insurance coverage carried by the CITY or its employees is excess coverage, and not contributory coverage to that provided by the CONTRACTOR. All required policies shall contain a waiver of subrogation against the City of Yuma, its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

8.2.3 Except for the Commercial General Liability insurance subject to paragraph 8.2.9, the CONTRACTOR must maintain all insurance in full force and effect until all required WORK is satisfactorily completed and formally accepted. Failure to maintain the required insurance may, at the sole discretion of the CITY, constitute a material breach.

8.2.4 The policies may provide coverage which contains deductible or self-insured retentions. Such deductible or self-insured retentions are not applicable with respect to the coverage provided to the CITY under such policies. The CONTRACTOR is solely responsible for deductible or self-insured retention, and the CITY may require the CONTRACTOR to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

8.2.5 Prior to commencing WORK, the CONTRACTOR **must furnish Certificates of Insurance and formal endorsements**, issued by CONTRACTOR's insurers to the CITY as evidence that policies providing the required coverage, conditions, and limits are in full force and effect. Such certificates must identify this Contract number or name and must provide for not less than 30 days advance notice of cancellation, termination, or material alteration. Certificates must be sent directly to:

City of Yuma
Purchasing Division
One City Plaza
Yuma, AZ 85364-1436 or purchasingweb@yumaaz.gov

The Certificate Holder must be named as follows: **City of Yuma, Yuma, Arizona.**

8.2.6 The CONTRACTOR must carry **Workers' Compensation** insurance to cover obligations imposed by federal and state statutes having jurisdiction over the CONTRACTOR's employees engaged in the performance of the WORK, and Employer's Liability insurance of not less than **\$100,000** for each accident, **\$100,000** disease for each employee, and **\$500,000** disease policy limit. Contractor shall waive subrogation against the City of Yuma, its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR and shall require its insurers to waive subrogation against the City.

8.2.7 If any WORK is subcontracted, the CONTRACTOR must require all Subcontractors to provide Workers' Compensation and Employer's Liability of at least the amount required of the CONTRACTOR in paragraph 8.2.6 above.

8.2.8 The CONTRACTOR must carry **Commercial/Business Automobile Liability** insurance with a combined single limit for bodily injury and property damages of not less than **\$1,000,000**, each occurrence on all vehicles, whether owned or leased, used in performance of the WORK. Such insurance must include coverage for loading and unloading hazardous materials and wastes.

8.2.9 The CONTRACTOR must carry **Commercial General Liability** insurance with an unimpaired limit of not less than **\$1,000,000** for each occurrence with a **\$2,000,000** General Aggregate Limit. The policy must include coverage for bodily injury, products/completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract. The policy must be endorsed as primary and the coverage must not exclude Explosion, Collapse and Underground (X, C, U). The General Liability insurance policy must be written on a per occurrence, per project basis as evidenced **by annual Certificates of Insurance of continued coverage with formal endorsements**. No endorsement limiting or excluding a required coverage is permitted. All coverage's shall be on an occurrence basis. THE ADDITIONAL INSURED ENDORSEMENT REQUIRED HEREIN SHALL BE AN ISO FORM B (CG 20 10 1185 or CG 20 33 1001 plus CG 20 37 1001), OR EQUIVALENT.

8.2.10 The CONTRACTOR must carry **Umbrella/Excess Liability** insurance with an unimpaired limit of not less than **\$1,000,000** per occurrence combined limit Bodily Injury and Property Damage that "follows form" and applies in excess of the Commercial General Liability, Commercial/Business Automobile Liability and Employer's Liability, as required above.

8.2.11 If the CITY requires testing of equipment or other similar operations, the CONTRACTOR is responsible for providing appropriate insurance as may be deemed necessary by the City.

8.3. Performance and Payment Bonds

8.3.1 The CONTRACTOR must maintain a Performance Bond (Document 00510), which is acceptable to the CITY and in the full amount of this contract and for the duration of the Contract. CONTRACTOR's failure to maintain a Performance Bond is a default and the CITY may terminate this contract and pursue all remedies.

8.3.2 The CONTRACTOR must maintain a Payment Bond (Document 00520), which is acceptable to the CITY and in the full amount of this contract and for the duration of the Contract. CONTRACTOR's failure to maintain a Payment Bond is a default and the CITY may terminate this contract and pursue all remedies.

8.4. Indemnification

8.4.1 The CONTRACTOR must comply with all applicable federal, state, and local environmental laws, regulations and ordinances, and must indemnify the CITY for any required remediation and from all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death to any person, damage to any property, or any environmental damage arising out of violations of such laws, regulations, and ordinances.

8.4.2 The CONTRACTOR must indemnify and defend and hold harmless the CITY, and its employees, against all liability or loss, and against all claims or actions (including, but not limited to attorney fees, court costs, and the cost of appellate proceedings) based upon or arising out of damage or injury to persons (including death) or property caused by or sustained in connection with the performance of the WORK. The CONTRACTOR's indemnification responsibility extends to all Subcontractors and anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether a claim, damage, loss or related expense is caused in part by a party

indemnified under this Contract, including the CITY. The amount and type of insurance coverage does not limit the scope of this indemnity.

8.5. Rights and Remedies

8.5.1 The Engineer, or properly authorized agents, will

- 1) manage the project on behalf of the CITY;
- 2) calculate and determine the quantity of the WORK performed;
- 3) inspect all WORK for acceptance or rejection.

The Engineer has full authority to reject or condemn any WORK which does not conform to the terms and conditions of the Contract specifications.

8.5.2 If the CONTRACTOR neglects, fails or refuses to complete the WORK within the time herein specified, or any proper extension thereof granted by the CITY, then the CONTRACTOR agrees, as consideration for the awarding of this Contract, to pay to the CITY the amount of \$XXX.00 as determined in accordance with Document 00590, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contract is in default after the time stipulated in the Contract for completing the WORK. The said amount is fixed and agreed upon by and between the CONTRACTOR and the CITY because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the CITY would in such event sustain, and said amount is agreed to be the amount of damages which the CITY would sustain and said amount may be retained from time to time by the CITY from current periodical estimates.

It is further agreed that time is of the essence for each and every portion of this Contract and for the specifications wherein as definite and certain length of times if fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any WORK, the new time limit fixed by such extension shall be of the essence of this contract.

The CONTRACTOR will not be charged with liquidated damages or any excess cost when the CITY determines that the CONTRACTOR is without fault and the CONTRACTOR's reasons for the time extension are acceptable to the CITY. Further, the CONTRACTOR will not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due:

1. to any preference, priority or allocation order duly issued by the CITY;
2. to unforeseeable cause beyond the control and without the fault of negligence of the CONTRACTOR, including, but not restricted to, acts of God, or of the public enemy, acts of the CITY, acts of another contractor in the performance of a contract with the CITY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
3. to any delays of subcontractors or suppliers occasioned by any of the causes specified in subsection (1.) and (2.) of this article.

The CONTRACTOR must, within ten (10) days from the beginning of such delay, unless the CITY grants a further period of time prior to the date of final settlement of the Contract, notify the CITY, in writing, of the causes of the delay. The Engineer will ascertain the facts and extent of the delay and notify the CONTRACTOR within a reasonable time of its decision in the matter.

8.6. Termination

8.6.1 The CITY may unilaterally terminate this Contract, or any part of it, at any time, if any of the following conditions occur:

- 1) the CITY, at its sole discretion, determines conditions encountered prior to or during the WORK make it impossible or impractical to proceed with the WORK;
- 2) the CONTRACTOR breaches or defaults on any provisions of this Contract;
- 3) the CONTRACTOR abandons the WORK;
- 4) the parties mutually agree;
- 5) the CONTRACTOR fails to perform acceptable work or meet deadlines;
- 6) the CONTRACTOR is unable to continue because of financial problems;
- 7) the CONTRACTOR assigns the Contract without prior written approval from the City;
- 8) the WORK or any part of it is unnecessarily or unreasonably delayed in the opinion of the Engineer;
- 9) from any other cause that prevents the CONTRACTOR from performing the Contract and completing the WORK.

8.6.2 The CONTRACTOR will receive payment for the portion of the WORK actually completed as compensation in full for services performed to the date of termination. This payment amount will be determined by the Engineer.

8.6.3 The CITY and the CONTRACTOR will fully perform the provisions of this Contract, except that the CITY reserves the right to terminate or abandon the performance, or to abandon any portion of the project for which the CONTRACTOR has performed services. Termination of the Contract, or any portion of it, does not relieve the CONTRACTOR of his responsibilities for the completed WORK or the surety of its obligation for any just claims arising out of the WORK performed prior to termination.

8.6.4 The CITY will notify the CONTRACTOR in writing if the CITY terminates or abandons the service or any part of the project. Immediately after receiving notice, the CONTRACTOR must discontinue advancing WORK and proceed to close its operations.

8.6.5 Upon termination or abandonment, the CONTRACTOR must deliver to the CITY all reports and estimates entirely or partially completed, together with all unused materials supplied by the CITY. The CONTRACTOR must appraise the WORK completed and submit the appraisal to the CITY for evaluation.

8.7. Miscellaneous

8.7.1 SUCCESSOR AND ASSIGNS: This Contract is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Contract are binding upon the heirs, executors, administrators, successors, and assigns of both parties.

8.7.2 GOVERNING LAW: The laws of the State of Arizona govern this Contract as to validity, interpretation, and performance.

8.7.3 WAIVER: If either party fails to require the other party to perform any provision of this Contract, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Contract if the other party fails to exercise a right or remedy.

8.7.4 SEVERABILITY: If a court of competent jurisdiction holds any term, part or provision of this Contract to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining terms, parts, or provisions are not affected, and the rights and obligations of the parties are construed and enforced as if the Contract did not contain the invalid part, term, or provision.

8.7.5 INTEGRATION: This Contract contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Contract are valid or binding.

8.7.6 MODIFICATIONS: All modifications to this Contract are not effective unless in writing, signed and endorsed by the parties.

8.7.7 NO PARTNERSHIP: Nothing in this Contract constitutes a partnership or joint venture between the parties, and neither party is the principal or agent of the other.

8.7.8 JURISDICTION / ATTORNEYS' FEES: Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought exclusively in the Superior Court, Yuma County, Arizona, and for this purpose, each party hereby expressly and irrevocably consents to the exclusive jurisdiction and venue of such Court. The parties also expressly waive their right to remove any such action to federal court. If an action or proceeding is brought for failure to observe any of the provisions of this Contract, the prevailing party is entitled to recover, as part of such action or proceeding, all litigation and collection expenses, including but not limited to expert witness fees, court costs, reasonable attorney fees and, without limitation, all copying, duplication, scanning, imaging, and/or related expenses related to document management, reproduction, and/or recovery.

8.7.9 COMPLIANCE WITH LAW: The CONTRACTOR must comply with all federal, state, and local laws and ordinances applicable to its performance under this contract. The CONTRACTOR will comply with the Americans with Disabilities Act (ADA) and will indemnify the CITY for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. The CONTRACTOR will not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Contract, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964). In addition, the CONTRACTOR must include similar requirements of subcontractors in any contracts entered into for performance of the CONTRACTOR's obligations under this Contract. The CONTRACTOR agrees not to participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. In addition, the CONTRACTOR must include similar requirements of all subcontractors in contracts entered for performance of the CONTRACTOR's obligations under this Contract.

Yuma Valley Area Park - Seeding Project

8.7.10 TIME OF THE ESSENCE: Time is of the essence in this Contract. Unless otherwise specifically provided, any consent to delay in the CONTRACTOR's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.

8.7.11 CONFLICT OF INTEREST: This contract is subject to the Conflict of Interest provisions of the Arizona Revised Statutes § 38-511, as amended.

8.7.12 NOTIFICATIONS: Notifications required or permitted under this Agreement must be in writing and are deemed effective upon delivery if by electronic mail (e-mail), facsimile or delivery to the City Purchasing Division by a courier service or overnight delivery service or three days after posting with the U.S. Mail Service. Notice of change of address must be provided 30 days prior to the effective date.

8.7.13 EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS The following provisions, contained in Section 301 of Executive Order No. 11246, dated September 24, 1965, as amended, govern performance of work under City of Yuma contracts, are applicable to all City of Yuma agreements, and must be included in all agreements executed by the City for the performance of WORK. In this document, the term "agreement" means all contracts awarded by the City, and the term "CONTRACTOR", means parties awarded contracts by the City.

(a) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. Such action includes the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post notices provided by the CITY, setting forth the provisions of this Equal Opportunity clause, in conspicuous places available to employees and applicants for employment.

(b) The CONTRACTOR will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR.

(c) The CONTRACTOR will send a notice, provided by the CITY, advising the labor union or workers' representative of the CONTRACTOR's commitments under this Equal Opportunity Resolution, to each labor union or representative of workers with which he has a collective bargaining agreement, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The CONTRACTOR will comply with all provisions of Executive Order No. 11246, dated September 24, 1965, as amended, and with all the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246, dated September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, and will allow the CITY and the Secretary of Labor to access his books, records, and accounts in order to ascertain compliance with such rules, regulations, and orders.

(f) The Contract may be canceled, terminated, or suspended, in whole or in part if the CONTRACTOR does not comply with the provisions of this document. Other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, dated September 24, 1965, as amended, under rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law. Further, the CONTRACTOR may be declared ineligible for further City of Yuma contracts in accordance with procedures authorized in Executive Order No. 11246, dated September 24, 1965, as amended.

(g) The CONTRACTOR must include the provisions of subdivisions (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontract or vendor.

This Contract is effective on the _____ day of _____, 2014.

CONTRACTOR'S NAME

by _____

Print Name: _____

Title _____

Date _____

CITY OF YUMA

by _____

Gregory K. Wilkinson, CITY ADMINISTRATOR

ATTEST:

Lynda L. Bushong, CITY CLERK

Date Signed

APPROVED AS TO FORM:

Steven W. Moore, CITY ATTORNEY

CERTIFICATE OF VOTE

I, _____, hereby certify that I am the duly qualified and acting Secretary of **AWARDED CONTRACTOR'S NAME.** and I further certify that a meeting of the Directors of said Company, duly called and held on _____, at which all Directors were present and voting, the following vote was unanimously passed:

VOTED: To authorize and empower _____ (*Name of Person authorized to sign Documents*) to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

by _____
(Secretary of Corporation)

A True Copy:

(Notary Public)

My Commission Expires:

(Date)

(The person being empowered by this certificate must be the same person signing the contract)