

**CONSTRUCTION AGREEMENT BETWEEN CITY OF APACHE  
JUNCTION AND SCHOLZ CONTRACTING FOR PROJECT  
P&R- SSP 2024-004 DRAINAGE AND ADA CROSSING  
IMPROVEMENTS AT SUPERSTITION SHADOWS PARK**

THIS AGREEMENT made and entered into by and between the CITY OF APACHE JUNCTION (“City”), an Arizona municipal corporation, and SCHOLZ CONTRACTING, an Arizona limited liability company, (“Contractor”), sometimes collectively referred to as the “Parties” or individually as the “Party”.

**RECITALS**

- A. Contractor has responded to City’s request for bid (the “RFB” and response both being considered the “Contract Documents”) (on file with the City’s Finance Department) via RFB No. P&R SSP 2024-004, in which the Contractor asserts its willingness, ability and qualifications to provide this work and service (hereinafter referred to as the “Work”)
- B. City and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render such Work.
- C. City has complied with the public bidding requirements under Arizona Revised Statutes (“A.R.S.”) Title 34, and Apache Junction City Code Vol. I, Chapter 3, Administration, Article 3-7, Procurement Procedures, or such work is categorically exempt from such process.

**AGREEMENT**

NOW, THEREFORE, City retains Contractor to perform, and Contractor agrees to render the Work in accordance with the terms and conditions set forth as follows:

1. **PROJECT DESCRIPTION:** Contractor shall do and perform or cause to be done and performed in a good workmanlike manner, the Work in accordance with and as more fully described in “Notice Inviting Bid Proposals for Project Number P&R SSP 2024-004, which includes all required specifications.

A. Physical location of the project is:

1091 W Southern Ave.

Apache Junction, AZ 85119

2. **PAYMENTS & COMPLETION:** The total amount payable by the City to the Contractor is an amount not to exceed Two Hundred Ninety Two Thousand Eight Hundred Twenty Dollars and Zero Cents (\$292,820.00) (the "Contract Sum") for the performance of the Work under the Contract Documents except for changes authorized by properly executed change orders (contingency), which shall not exceed an additional 5% of the Contract Sum, in the amount of Fourteen Thousand Six Hundred Forty One Dollars (\$14,641.00) for a total of Three Hundred Seven Thousand Four Hundred Sixty One Dollars and Zero Cents (\$307,461.00). All contracts will be operable for their full term at the rates quoted in the initial bid proposal, unless otherwise extended in writing by the City. Upon notice that the Work is ready for final inspection or acceptance, a City representative shall promptly cause an inspection to be made. Once City finds the Work acceptable under the Contract Documents, City shall promptly submit for processing a certificate for payment stating that, to the best of its knowledge, information and belief on the basis of its observation and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that partial payment or the entire balance due the Contractor is payable. Final payment shall not become due until the Contractor submits to the City all required lien waivers, releases and any other data establishing payment or satisfaction of all Contractor's obligations. If any subcontractor refuses to furnish a release or waiver required by City, Contractor may furnish a bond to indemnify City against any such lien. If any such lien remains unsatisfied after all payments are made, Contractor shall refund to City all monies that the latter may be compelled to pay in discharging such liens, including all costs and reasonable attorney fees.

3. **CONTRACT TERM:** The Term of this Agreement is October 1, 2024, to June 30, 2025. This provision does not limit the liability of Contractor for actual damages sustained by City as a result of any breach of contract or warranty by Contractor. Extensions may be approved at times as the Parties mutually deem fit.

4. **LABOR AND MATERIALS:** Unless otherwise provided in the Contract Documents, Contractor shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, tools and machinery, water, heat, utilities, transportation, other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

5. **INSPECTIONS AND QUALITY OF WORK:** Contractor understands and agrees that inspection of the Work performed hereunder will occur by City. Contractor agrees that City will have the exclusive right to determine, in its sole discretion, whether the Work has been performed in accordance with the

Contract Documents. Contractor further agrees to make such corrections to the Work as may be directed by City to conform to said Contract Documents without requirement of a change order or any additional charge or cost to City whatsoever.

6. **WARRANTY:** Contractor shall guarantee the Work against defective workmanship or materials for a period of one (1) year from the date of its final acceptance under the contract, ordinary wear and tear and unusual abuse or neglect excepted. Any omission on the part of City to condemn defective work or materials at the time of construction shall not be deemed an acceptance and Contractor will be required to correct defective work or materials at any time before final acceptance. Within one (1) year from the date of final acceptance due to faults in workmanship or materials, Contractor shall begin making the necessary repairs to the satisfaction of City within fourteen (14) calendar days of receipt of written notice from City. Such work shall include the repair or replacement of other work or materials damaged or affected by making the above repairs or corrective work all at no additional cost to City. In the case of Work materials or equipment for which warranties are required by the special provisions of the Contract Documents, Contractor shall provide or secure from the appropriate subcontractor or supplier such warranties addressed to and in favor of City and deliver same to City prior to final acceptance of the Work. Delivery of such warranties shall not relieve Contractor from any obligation assumed under any other provision of the contract. The warranties and guarantees provided in this subsection shall be in addition to and not in limitation of any other warranties, guarantees or remedies required by law, and shall survive the expiration of this Agreement for the time period mentioned above.

7. **TAXES:** Contractor shall pay all license, sales, consumer, transaction privilege, use and other similar taxes for the Work or portions thereof provided by Contractor which are legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than City.

8. **PERMITS & FEES:** Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, government fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the contract, and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. City permits for this Work will be provided to Contractor at no cost. Contractor represents and warrants that any license necessary to perform the Work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Contractor agrees to obtain a

business license pursuant to Chapter 8 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement and after termination of this Agreement any time work is performed pursuant to the warranty provisions set forth in Section 6. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by the city code. Any activity by subcontractors within the corporate city limits will invoke the same licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable licenses. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

9. **INDEPENDENT CONTRACTOR:** Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the Contract Documents. Contractor shall be responsible to City for the acts and omissions of its employees, subcontractors and their agents and employees and other persons providing any of the materials under any contract document.

10. **SUPERINTENDENT:** Contractor shall employ a competent project superintendent who shall be in attendance at the project site during the progress of the Work. The superintendent shall represent and be the community agent of Contractor and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. The designated superintendent shall be designated for each project and communicated to City before work is performed.

11. **PROGRESS SCHEDULE:** Contractor shall, immediately after entering into this Agreement, generate an estimated progress schedule, which shall be maintained and updated during the project. Work may progress during regular City business hours only if it is determined by City not to disturb normal operations.

12. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all

liability including but not limited to demands, claims, actions, fees, costs and expenses, including reasonable attorney and expert witness fees, arising from, or alleged to have arisen from, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, Work or services of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Agreement, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or its subcontractors in the performance of the Work under this Agreement or any subcontract. Contractor's duty to defend, hold harmless and indemnify City, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or any tier of Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable in the performance of the Work under this Agreement or subcontract. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. The rights and obligations under this Section shall survive termination of this Agreement.

13. **SUBCONTRACTORS:** All subcontractors chosen by Contractor will be subject to City's approval. All subcontractors shall be identified by Contractor prior to award of contract. Contractor shall make no substitutions for any subcontractor, person or entity previously selected without the approval of City.

14. **APPLICABLE LAW AND VENUE:** The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing Party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney fees, necessary witness fees and court costs to be determined by the court in such action.

**15. INSURANCE:** Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with policies and forms satisfactory to City.

All insurance required herein shall be maintained in full force and effect until all Work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, Work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Contractor shall be solely responsible for the deductible and/or self retention and City, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, City's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name City, its agents, officers, officials and employees as Additional Insureds.

## **REQUIRED COVERAGE**

### **Commercial General Liability**

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as that on Insurance Service Office, Inc. Policy Form No. CG 00011093, or the equivalent thereof.

Such policy shall contain a severability of interest provision and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, or the equivalent thereof, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the Work, services or operations, Contractor shall purchase and maintain, at all times during prosecution of the Work, services or operations under this Agreement, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Contractor's work, service or operations under this Agreement. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's Commercial General Liability insurance.

#### Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or the equivalent thereof). Such insurance shall include coverage for loading and off-loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

#### Workers' Compensation

Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's

employees engaged in the performance of the Work or services; 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.

By execution of this Agreement, Contractor certifies as follows:

"I am aware and understand the provisions of A.R.S. § 23-901 *et seq.* which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of this chapter, and I will comply with such provisions before commencing the performance of the Work of this Agreement."

If Contractor has no employees for whom workers' compensation insurance is required, Contractor shall submit a declaration or affidavit to City so stating and covenanting to obtain such insurance if and when Contractor employs any employees subject to coverage.

In case any work is subcontracted, Contractor will require subcontractors to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Contractor.

#### Certificates of Insurance

Prior to commencing work or services under this Agreement, Contractor shall furnish City with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. The form of the certificates of insurance and endorsements shall be subject to the approval of the Apache Junction City Attorney's Office, shall comply with the terms of this Agreement, and shall be issued and delivered to City Attorney, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ, 85119.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's Work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. Policies or certificates and completed forms of City's Additional Insured Endorsement (or a substantially equivalent insurance company form acceptable to the City Attorney) evidencing the coverage required by this section shall be



filed with the City and shall include the City as an additional insured. The policy or policies shall be in the usual form of a public liability insurance, but shall also include the following provision:

“Solely as respects work done by or on behalf of the named insured for the City of Apache Junction, it is agreed that the City of Apache Junction and its officers and employees are added as additional insureds under this policy.”

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days’ prior written notice to City.

16. **CHANGE ORDERS:** A change order is a written order to Contractor, approved by a City representative, issued after execution of this construction agreement authorizing a change in the Work or an adjustment in the construction agreement sum or the construction agreement time. A change order signed by Contractor indicates his agreement therewith. City may, without invalidating this construction agreement, order changes in the Work within the general scope of this construction agreement consisting of additions, deletions or other revisions, the construction agreement sum and the construction agreement being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of this construction agreement. City representative shall have authority to order minor changes in the Work not involving an adjustment in the construction agreement sum or extension of construction agreement time and not inconsistent with the intent of this construction agreement. All such changes shall be affected by written order and shall be binding upon City and Contractor.

17. **SUCCESSORS, ASSIGNMENT & DELEGATION:** City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the contract documents. Neither Party to the contract shall assign the contract or sublet it as a whole or delegate the duties hereunder, without the written consent of the other, nor shall Contractor assign any monies due or to become due to it without the previous written consent of City.

18. **WRITTEN NOTICE:** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first-class postage prepaid to the last business address known to them who gives the notice.

19. **CLAIMS FOR DAMAGES:** Should either Party to the contract suffer injury or damage to personal property because of any act or omission of the other Party or of their employees or agents for whose acts they are legally liable, claims shall be made in writing to such other Parties within a reasonable time after the first observance of such injury or damages.

20. **PAYMENT & PERFORMANCE BONDS:** City shall have the right to require Contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising hereunder.

21. **SAFETY:** Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

22. **RIGHTS & REMEDIES:** The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches hereunder except as may be specifically agreed to in writing.

23. **FORCE MAJEURE:** Neither City nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular Contractors, subcontractors, vendors or investors desired by Contractor in connection with the obligations under this Agreement. Contractor agrees that Contractor alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section

shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

**24. TERMINATION BY CITY:**

**A. TERMINATION BY CITY:** City shall be permitted to terminate this Agreement if in the discretion of the city manager or his or her designee, believes Contractor has failed to meet the terms of this Agreement. City shall provide Notice of Termination to Contractor by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

**B. TERMINATION BY CONTRACTOR:** Contractor may terminate this Agreement if City fails to make payment as agreed upon in this document. Any other termination will be deemed a breach of contract by Contractor. Contractor shall provide Notice of Termination to City by Certified U.S. Mail ten (10) calendar days before such termination takes effect.

**25. RECORDS:** Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least two (2) years after termination of this Agreement and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

**26. AMENDMENT:** It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the parties. The representatives of the Parties (signatory for Contractor noted below or his or her designee, and the City Manager, or his or her designee) shall be authorized to execute future amendments or extensions of this Agreement.

**27. ENTIRE AGREEMENT:** This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any

apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

**28. SEVERABILITY:** City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

**29. TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

**30. CONFLICT OF INTEREST:** The provisions of A.R.S. § 38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this contract.

**31. CERTIFICATION PURSUANT to A.R.S. § 35-394:** In accordance with Arizona Revised Statutes § 35-394, Contractor/Consultant hereby certifies and agrees that Contractor/Consultant does not currently and shall not for the duration of this Agreement use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China, 2) any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and/or 3) any suppliers, contractors or subcontractors that use the forced labor or any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor/Consultant becomes aware during the term of this Agreement that Contractor/Consultant is not in compliance with this Section, then Contractor/Consultant shall notify the City within five (5) business days after becoming aware of such noncompliance. If Contractor/Consultant does not provide the City with written certification that Contractor/Consultant has remedied such noncompliance within one hundred eighty (180) days after notifying the City of such noncompliance, this Agreement shall terminate, except that if the Agreement termination date occurs before the end of such one hundred eighty (180) day remedy period, this Agreement shall terminate on such contract termination date.

**32. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL:** The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement shall be deemed automatically terminated by operation of law. Any such boycott is a material breach of contract.

**33. COMPLIANCE WITH FEDERAL AND STATE LAWS:** Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized representative as of this 12th day of September, 2024.

**CONTRACTOR:**

**SCHOLZ CONTRACTING, an Arizona  
limited liability company**

  
By: Jared Scholz

Its: Vice President

**CITY:**

**CITY OF APACHE JUNCTION, ARIZONA,  
an Arizona municipal corporation**

By: Walter "Chip" Wilson

Its: Mayor

**ATTEST:**

\_\_\_\_\_  
Jennifer Pena  
City Clerk

APPROVED AS TO FORM:

 9.16.24

---

Richard J. Stern  
City Attorney

# **Exhibit A**

**Bid Proposal**



**CHECKLIST OF REQUIRED DOCUMENTS TO BE SUBMITTED BY BIDDERS**

Bidders shall indicate by initialing below that each of the following have been included in the response:

X One signed original and two complete duplicate copies of proposal submittal.

X Scope of Work (Exhibit A)

X Surety Bid Bond (Exhibit B)

X Cost Proposal (Exhibit C)

X Similar Service History (Exhibit D)

X Exceptions – Additions – Corrections (Exhibit E)

X Understanding & Agreement (Exhibit F)

X Copies of State Licenses, Local Licenses & permits necessary for operation of business

Date: August 8th 2024



Signature of Bidder

Jared Scholz

Printed Name of Bidder

## **EXHIBIT A**

### **SPECIAL SPECIFICATIONS**

#### **SCOPE OF WORK FOR CONSTRUCTION SERVICES FOR DRAINAGE AND ADA CROSSING IMPROVEMENTS AT SUPERSTITION SHADOWS PARK FOR THE CITY OF APACHE JUNCTION**

**RFB PROJECT NO. P&R SSP 2024-004**

#### **SECTION 1. SCOPE OF WORK**

City was awarded a Land and Water Conservation Fund (“LWCF”) Grant for improvements at Superstition Shadows Park. Among those improvements is drainage and Americans with Disabilities (“ADA”) crossing. As this is a grant funded project, work must be completed prior to December 31, 2024.

Please see the attached design documents from J2 Engineering for specifications on work to be bid on. Please note that the Sheet Index does list sheets CV-202, LS-202 and LS-203 which are not attached to the design document as those are not part of this project and bid.

#### **SECTION 2. BID REQUIREMENTS**

**Questions on Request for Bid:** Questions on the language used in this Request for Bid shall be directed to the City of Apache Junction Finance Department, Purchasing Administrator Kimberly Heldt, using Bid Inquiry Form (Exhibit K). If any specification in this Request for Bid cannot be met, the Bidder must explain why it cannot or should not be met in their return bid and shall use Exceptions – Additions – Corrections (Exhibit E) for this purpose. Contractor must include information on any exceptions, additions, and/or corrections in their quote. Any exception is grounds for rejection of the bid in its entirety.

**Submittal Content:** Written price quotes shall be communicated through the attached Cost Proposal (Exhibit C) and submitted to the address noted in the Notice Inviting Bid Proposals by the established deadline. The Bidders submittal shall contain the following documents:

- Scope of Work (Exhibit A)
- Surety Bid Bond (Exhibit B)
- Cost Proposal (Exhibit C)
- Similar Service History (Exhibit D)
- Exceptions-Additions-Corrections (Exhibit E) (if applicable)
- Understanding & Agreement (Exhibit F)

- **Payment Bond (Exhibit H)**
- **Performance Bond (Exhibit I)**

**Cost Proposal Evaluation:** Each written cost proposal will be evaluated on the basis of the information provided by the Bidder. The Bidder's failure to provide the above eight items of information will make the price quote evaluation difficult and may result in it being rejected.

**Equipment Evaluation:** As part of the evaluation process, City staff may request an inspection of all vehicles and equipment the Bidder proposes to use for this project. If the request for inspection is declined, or equipment is deemed insufficient by City staff to effectively and efficiently complete the said scope of work, the City reserves the right to reject the Bidder's bid.

**Approval of daily schedule of work will be up to the Parks Superintendent.**

**EXHIBIT B**

**SURETY BID BOND  
PROJECT NO. P&R SSP 2024-004**

**KNOW ALL MEN BY THESE PRESENT:**

That we, Scholz Contracting, LLC, as Principal, (hereinafter called the Principal), and the Merchants National Bonding, Inc., a company/corporation holding a certificate of authority to transact surety business in the State of Arizona as issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 as Surety, (hereafter called the Surety), are held and firmly bound unto the City of Apache Junction as Obligee, in the sum of ten percent (10%) of the total amount of the bid of Principal, submitted by him to the City of Apache Junction for the work described below, for the payment of which sum, will and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S.

WHEREAS, the said Principal is herewith submitting its proposal for: Construction Services for Drainage and ADA Crossing Improvements - Project No.: P&R SSP 2024-004

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

Signed and sealed this 23rd day of August A.D., 2024.

Merchants National Bonding, Inc.

**Principal**

\_\_\_\_\_  
**Title**

**Witness**

\_\_\_\_\_

Scholz Contracting, LLC

**Surety**

\_\_\_\_\_  
**Title** Scott Warming, Attorney-in-Fact

**Witness:**

Alex Poff

**MERCHANTS**  
**BONDING COMPANY, INC.**  
**POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Alexander Paffenbarger; Andrew J Paffenbarger; Brian R Sawyer; Ronald G Hecksel; Scott Wareing

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 8th day of December, 2022.



MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.  
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.

On this 8th day of December 2022, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



*Kim Lee*  
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 23rd day of August, 2024.



*William Warner Jr.*  
Secretary

**EXHIBIT C**  
**COST PROPOSAL**  
**PROJECT NO. P&R SSP 2024-004**

**FIRM:** Scholz Contracting, LLC

**ADDRESS:** P.O. Box 21418 Mesa AZ 85277

**TELEPHONE:** 602-320-1357 **Fax** \_\_\_\_\_

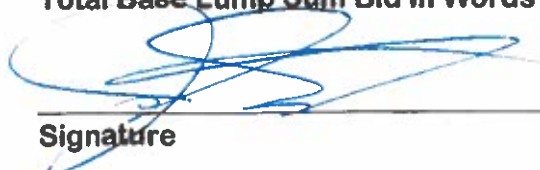
**BASE BID**

	DESCRIPTION OF SERVICES	QUANTITY	TOTAL COST
1	Mobilization	1 LS	\$10,000.00
2	Removals	1 LS	\$17,250.00
3	Modified Headwall- 501 6-24" Pipes	2 EA	\$35,000.00
4	Modified Headwall- 501 6-18" Pipes	2 EA	\$23,000.00
5	18" CLV RCP	300 LF	\$57,000.00
6	24" CLV RCP	132 LF	\$27,720.00
7	Grouted RIP RAP 6" D50	2280 SF	\$57,000.00
8	Sidewalk/ Rolled Curb	4250 SF	\$60,850.00
9	Restore Existing Landscape	1 LS	\$5,000.00

**TOTAL BASE LUMP SUM BID \$** 292,820.00

**Two Hundred Ninety Two Thousand Eight Hundred Twenty Dollars and Zero Cents**

**Total Base Lump Sum Bid in Words**



**Date** August 28th 2024

**Signature**

Jared Scholz

**Title** Vice President

**Printed Name**

**EXHIBIT D**  
**SIMILAR SERVICE HISTORY**  
**PROJECT NO. P&R SSP 2024-004**

Each Bidder shall submit a list of at least three (3) customers including name, address, contact person and telephone number for whom he or she has similar work has been completed in the last twelve (12) months and shall include a short description and location of work using this form.

1. Customer: Salt River Pima-Maricopa Indian Community

---

**Name of Agency or Firm**

---

10005 E Osborn Rd, Scottsdale, AZ 85256  
**Address**

---

480-362-3507 Michael S Jensen, P.E  
**Telephone** **Contact Person**

---

**Short Description of Work:** Apprx. 3000lf of 8" waterline including 28 home connections, new hydrants, water sample stations and commercial building connections. Project also included roadway removal and replacement within a neighborhood.

---

<u>Dobson Road and Pinochet</u>	<u>Jan 2023 - Aug-2023</u>	<u>\$1,398,068.09</u>
<b>Location</b>	<b>Start &amp; Complete Date</b>	<b>Cost</b>

2. Customer: Dallas Construction

---

**Name of Agency or Firm**

---

**Address**

---

(602) 909-5136 Stephanie Minyard  
**Telephone** **Contact Person**

---

**Short Description of Work:** Repair and replace canal linings and install new headwalls and gate valves for irrigation Canals

---

14301 N 87th Street, Ste. 103, Scottsdale, AZ 85260

---

<u>SRPMIC</u>	<u>Start April 1, 2024 end May 31, 2024</u>	<u>\$124,852.00</u>
<b>Location</b>	<b>Start &amp; Complete Date</b>	<b>Cost</b>

3. Customer: SRPMIC

**Name of Agency or Firm**

10005 E. Osborn Rd., Scottsdale, AZ 85256

**Address**

(480) 208-2404

Ashley Hanno, Drainage and Irrigation Engineer

**Telephone**

**Contact Person**

**Short Description of Work:** Redo drainage around SRP High School by installing channel  
Lining and culvers

SRPMIC	May 2024 to Sept 2024	\$738,676.00
<b>Location</b>	<b>Start &amp; Complete Date</b>	<b>Cost</b>



**EXHIBIT E**  
**EXCEPTIONS/ADDITIONS/CORRECTIONS**  
**PROJECT NO. P&R SSP 2024-004**

**For uniformity and bid comparison purposes, all previous documents shall be completed as received from the City of Apache Junction. Should the Bidder wish to propose or note any exceptions, additions, or corrections, they shall be included on this page and Bidder may attach additional pages. Please note that submittal of this exhibit does not constitute a protest and such submittal shall be completed timely with the bid in accordance with Section 7 of the General Conditions and Instructions to Bidders.**

Not Applicable

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

**EXHIBIT F**  
**UNDERSTANDING AND AGREEMENT**  
**PROJECT NO. P&R SSP 2024-004**

**PROPOSAL TO THE CITY OF APACHE JUNCTION, ARIZONA:**

In compliance with the advertisement for bids, and having examined these documents, and being familiar with the conditions, I/we hereby submit our acknowledgment of the terms and conditions for furnishing services for the City of Apache Junction. We further agree to execute the contract documents and furnish the required certificates of insurance if I am/we are selected to provide such services.

I/We shall perform the responsibilities set forth in the contract documents in compliance with all applicable state and federal statutes and regulations, and city codes and other requirements.

I/WE HEREBY ACKNOWLEDGE receipt of and confirm the terms and conditions.

This bid is submitted by Scholz Contracting, a corporation organized under the laws of the State of Arizona; a partnership consisting of \_\_\_\_\_; or an individual trading such as \_\_\_\_\_ and is the holder of Arizona State License No. 321138. Classification: Gen Eng A.

Respectfully submitted by: Scholz Contracting  
PO Box 21418  
Mesa, AZ 85277  
Mailing Address City State Phone  
Jeff Scholz President Officer/Title  
Firm (213) 216-3441

**ATTEST:**

Jared Scholz, Vice-President  
Officer and Title

\_\_\_\_\_  
Witness (if bidder is an individual)

IMPORTANT NOTICE  
YOU MUST:

- .) REPORT DISSOCIATION OF QUALIFYING PARTY **IN WRITING** WITHIN 15 DAYS. [SEE A.R.S. § 32-1154(A)(18)]
- .) REPORT A CHANGE OF ADDRESS **IN WRITING** WITHIN 30 DAYS. [SEE A.R.S. § 32-1122(B)(1)]
- .) REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY [SEE A.R.S. § 32-1151.01]
- .) REPORT ANY CHANGE IN LEGAL ENTITY, SUCH AS ANY CHANGE OF THE OWNERSHIP IN A SOLE PROPRIETORSHIP OR CHANGE OF A PARTNER IN A PARTNERSHIP OR THE CREATION OF A NEW CORPORATE ENTITY. [SEE A.R.S. § 32-1124(B)(F) § RULE R-4-9-110]

Scholz Contracting, LLC  
PO Box 21418  
Mesa, AZ 85277

**THIS IS YOUR IDENTIFICATION CARD  
DO NOT DESTROY**



LICENSE EFFECTIVE THROUGH: April 30, 2025  
STATE OF ARIZONA  
Registrar of Contractors CERTIFIES THAT



Scholz Contracting, LLC

CONTRACTORS LICENSE NO. ROC 344215 CLASS KB-2

General Dual  
Dual Residential and Small Commercial

THIS CARD MUST BE  
PRESENTED UPON DEMAND

  
Martin J. Quezada, Director

IMPORTANT NOTICE  
YOU MUST:

- .) REPORT DISSOCIATION OF QUALIFYING PARTY **IN WRITING** WITHIN 15 DAYS. [SEE A.R.S. § 32-1154(A)(18)]
- .) REPORT A CHANGE OF ADDRESS **IN WRITING** WITHIN 30 DAYS. [SEE A.R.S. § 32-1122(B)(1)]
- .) REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY [SEE A.R.S. § 32-1151.01]
- .) REPORT ANY CHANGE IN LEGAL ENTITY, SUCH AS ANY CHANGE OF THE OWNERSHIP IN A SOLE PROPRIETORSHIP OR CHANGE OF A PARTNER IN A PARTNERSHIP OR THE CREATION OF A NEW CORPORATE ENTITY. [SEE A.R.S. § 32-1124(B)(F) § RULE R-4-9-110]

Scholz Contracting, LLC  
PO Box 21418  
Mesa, AZ 85277

**THIS IS YOUR IDENTIFICATION CARD  
DO NOT DESTROY**



LICENSE EFFECTIVE THROUGH: April 30, 2025  
STATE OF ARIZONA  
Registrar of Contractors CERTIFIES THAT



Scholz Contracting, LLC

CONTRACTORS LICENSE NO. ROC 344215 CLASS KB-2

General Dual  
Dual Residential and Small Commercial

THIS CARD MUST BE  
PRESENTED UPON DEMAND

  
Martin J. Quezada, Director

IMPORTANT NOTICE  
YOU MUST:

- .) REPORT DISSOCIATION OF QUALIFYING PARTY **IN WRITING** WITHIN 15 DAYS. [SEE A.R.S. § 32-1154(A)(18)]
- .) REPORT A CHANGE OF ADDRESS **IN WRITING** WITHIN 30 DAYS. [SEE A.R.S. § 32-1122(B)(1)]
- .) REPORT ANY TRANSFER OF OWNERSHIP OF 50% OR MORE IMMEDIATELY [SEE A.R.S. § 32-1151.01]
- .) REPORT ANY CHANGE IN LEGAL ENTITY, SUCH AS ANY CHANGE OF THE OWNERSHIP IN A SOLE PROPRIETORSHIP OR CHANGE OF A PARTNER IN A PARTNERSHIP OR THE CREATION OF A NEW CORPORATE ENTITY. [SEE A.R.S. § 32-1124(B)(F) § RULE R-4-9-110]

Scholz Contracting, LLC  
PO Box 21418  
Mesa, AZ 85277

**THIS IS YOUR IDENTIFICATION CARD  
DO NOT DESTROY**



LICENSE EFFECTIVE THROUGH: April 30, 2025  
STATE OF ARIZONA  
Registrar of Contractors CERTIFIES THAT



Scholz Contracting, LLC

CONTRACTORS LICENSE NO. ROC 344215 CLASS KB-2

General Dual  
Dual Residential and Small Commercial

THIS CARD MUST BE  
PRESENTED UPON DEMAND

  
Martin J. Quezada, Director