

**City OF APACHE JUNCTION**  
**AGREEMENT FOR SMYTHE NEIGHBORHOOD**  
**SOLAR LIGHTING INSTALLATION**

**PROJECT PWC2015-04**

THIS AGREEMENT made and entered into by and between the CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City") and PIMMEX GENERAL CONTRACTING CORPORATION, an Arizona corporation ("Contractor"), both of which collectively shall be referred to as the "Parties" or individually as a "Party".

**RECITALS**

A. Through the State's Community Development Block Grant fund, money is available for installation of solar street lights and poles in qualified neighborhoods in the city.

B. In response to City's Notice Inviting Bid Proposals dated September 28, 2016, and any addendums applicable thereto, Contractor submitted a proposal dated, October 18, 2016, in which Contractor asserts its willingness, ability and qualifications to provide installation of solar street lights and poles (the "Work").

C. City has complied with the public bidding requirements under Arizona Revised Statute Title 34 and Apache Junction City Code, Vol. 1, Chapter 3, Article 3-7.

D. The Parties desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall perform the Work.

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

**AGREEMENT**

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 the Notice Inviting Bid Proposals for Project No. PWC2015-04, on file with the Public Works Department, which includes the following scope of work:

This federally funded Community Development Block Grant project known as the "Smythe Neighborhood Solar Lighting Installation", will include the following Work: the installation of solar street lights and poles.

All Work shall be completed in accordance with the following (hereinafter referred to as the "Contract Documents": 1) the construction plans entitled "City of Apache Junction Public Works Department Smythe Neighborhood Solar Lighting Installation, Project Number PWC2015-04"; 2) the latest "Uniform Standard Specifications and

Details for Public Works Construction" by the Maricopa Association of Governments; and 3) Engineering Standards and Details of the City of Apache Junction, all of which are hereinafter referred to as the Contract Documents.

2. **PAYMENTS & COMPLETION:** The contract sum shall be the total amount payable by City to the Contractor in the amount of Two Hundred Ninety Five Thousand Four Hundred Seventy Five Dollars and No Cents (\$295,475.00) for the performance of the Work under the Contract Documents except for changes authorized by properly executed change orders. Upon notice that the Work is ready for final inspection or acceptance, City representatives shall promptly cause to be made an inspection. When 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 their knowledge, information and belief and 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. No final payment shall become due until the Contractor submits to the 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 satisfactory to the City 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 TIME:** Contractor hereby fixes the time for beginning Work no later than December 12, 2016, with completion no later than February 28, 2017. Upon failure to complete Work within the time specified, the Contractor shall pay as liquidated damages for the loss of use of the benefit of this project the sum as indicated in Table 108 of M.A.G. Specifications per day for each day the Work remains unfinished. The Parties acknowledge this daily figure is the actual damages that will be sustained by the City should there be delayed performance in the Work.

4. **INDEPENDENT CONTRACTOR:** Contractor shall at all times during Contractor's performance of the Work 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 Work to be done 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, Subcontractor's and their agents and employees and other persons performing any of the Work under any contract document.

5. **LABOR AND MATERIALS:** Unless otherwise provided in the contract documents, Contractor shall provide, pay and insure under the requisite laws and regulations for all labor, materials, equipment, tools and machinery, 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.

6. **INSPECTIONS AND QUALITY OF WORK:** Contractor understands and specifically agrees that all Work is to be performed pursuant to Maricopa Association of Governments specifications and details, ("MAG" specifications and details") with City's additions. Contractor agrees that it will conduct at least one pre-construction meeting before any Work commences. While performing the services, Contractor shall exercise the reasonable professional care and skill customarily exercised by reputed members of Contractor's profession practicing in the Phoenix metropolitan area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. Contractor shall also be responsible for all errors and omissions Contractor commits in the performance of this Agreement. Contractor understands and agrees that inspection of the Work being 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, including MAG specifications and details. Contractor further agrees to make such corrections to the Work as may be directed by City to conform to said Contract Documents including MAG specifications and details, without requirement of Change Order or any additional charge or cost to City whatsoever. Contractor further agrees to make such corrections to the Work within the time for completion of Work as specified in Section 3 above and shall not be entitled to additional time for completion of Work for any correction Work needed to be performed hereunder. Failure to perform correction Work within the time to complete Work as provided in Section 3 shall subject Contractor to liquidated damages as provided therein in order for City to be compensated for its actual damages due to failure in performance.

7. **WARRANTY:** Contractor shall guarantee the Work against defective workmanship or materials for a period of one 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 year from the date of final acceptance due to faults in workmanship or materials, the 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, 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 of the contract documents 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.

If the Contractor fails within a reasonable time to replace or repair any portion of the Work deemed to be needed, the City may cause said Work to be done and the Contractor agrees to pay all costs incurred, or the City may use the Warranty Bond to pay for costs incurred.

8. **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.

9. **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 Article 8-2 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. If there are taxable activities, a business license shall be converted to a transaction privilege tax license by the Contractor and any subcontractors through the City Clerk's Office. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

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's contact information shall be provided to the Public Works Director or his designee in writing within five (5) working days after execution of this Agreement.

11. **PROGRESS SCHEDULE:** Contractor shall, immediately after entering into this Agreement, reaffirm the estimated progress schedule as submitted with the bid proposal. Said progress schedule shall be maintained and updated during the project.

12. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the Arizona Department of Housing, 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 attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, 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.

Contractor's duty to defend, hold harmless and indemnify City, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious 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.

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. All subcontractors shall be licensed by the City and Contractor is responsible for this requirement.

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 attorneys' 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 in the State of Arizona, 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 the City constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respect to 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 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 services.

The insurance policies may provide coverage which contain 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-insured 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 mayor, council, appointees, agents, officers, officials and employees as additional insured parties.

### **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 Insurance Service Office, Inc. Policy Form CG 00011-03 or any replacement 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 CG 20101185, 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 the Contractor's Work, service or operations under this Contract. 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 general liability insurance.

#### **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.

In case any work is subcontracted, Contractor will require all subcontractors to provide workers compensation and employer's liability to at least the same extent as required of Contractor.

#### Professional Liability

If deemed applicable by the city attorney, Contractor will maintain professional liability insurance covering acts, errors, mistakes and omissions arising out of the Work or services performed by Contractor, or any person employed by Contractor, with a limit of not less than \$1,000,000 each claim.

#### CERTIFICATE OF INSURANCE

Prior to commencing work or services under this Agreement, Contractor shall furnish the City with certificates of insurance, or formal endorsements as required by 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.

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 the Contractor's work or services and as evidenced by annual certificates of insurance, to be filed with the City clerk of City.

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 and all required insurance shall not expire, be cancelled, or materially changed without a minimum thirty (30) calendar days written notice to City from Contractor. All certificates of insurance shall be identified with bid serial number and title.

At the close of the project when the work has been accepted by the City, the Contractor shall provide a warranty bond in the amount of ten percent (10%) of the performance bond. The warranty bond shall be held by the City during the warranty period.

16. **CHANGE ORDERS:** This is a lump sum Contract. However, change orders may be processed as delineated herein. A change order is a written order to Contractor, approved by the director of public works, issued after execution of the contract authorizing a change in the Work or an adjustment in the contract sum or the contract time. A change order signed by Contractor indicates its agreement therewith. City may, without invalidating the contract, order changes in the Work within the general scope of the contract consisting of additions, deletions or other revisions, the contract sum and the contract being adjusted accordingly. All such changes in the Work shall be authorized by change order and shall be performed under the applicable conditions of the contract documents. City's director of public works shall have authority to order minor changes in the Work not involving an adjustment in the contract sum or extension of contract time and not inconsistent with the intent of the contract documents. All such changes shall be in written form and shall be binding upon City and Contractor.

17. **SUCCESSORS & ASSIGNS:** 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 without the written consent of the other, nor shall the Contractor assign any monies due or to become due to 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. **PERFORMANCE BOND & LABOR & MATERIAL PAYMENT BOND:** 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 thereunder. Attached are standard bond forms which must be completed by Contractor, and Contractor agrees to conform to all provisions set forth in such forms.

21. **SAFETY:** Except as provided herein with respect to trench excavation and traffic regulations, 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 thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by 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 thereunder 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 material men 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:**

- A. **TERMINATION BY CITY:** City shall be permitted to terminate this Agreement if in the discretion of the Public Works Director 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 five (5) 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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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 is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages, including but not limited to, consequential and liquidated damages.

32. **SECTION 3 COMPLIANCE:**

- a. The Work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of

1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- b.** The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c.** The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the Work shall begin.
- d.** The contractor agrees to include this Section 3 clause in every sub-contract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the sub-contractor in this Section 3 clause, upon a finding that the sub- contractor is in violation of the regulations in 24 CFR part 135. The contractor will not sub- contract with any sub-contractor where the contractor has notice or knowledge that the sub- contractor has been found in violation of the regulations in 24 CFR part 135.
- e.** The contractor will certify that any vacant employment positions, including training positions, that are filled: 1) after the contractor is selected but before the contract is executed; and 2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f.** Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.
- g.** With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the Work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: 1) preference and opportunities for training and employment shall be given to Indians;

and 2) preference in the award of contracts and sub-contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible but not in derogation of compliance with Section 7(b).

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized representative as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF                    )  
                                  ) ss.  
COUNTY OF                )

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, who acknowledged that he signed the foregoing instrument.

Witness my hand and official seal.  
My Commission Expires:

\_\_\_\_\_  
Notary Public

CITY:

**City OF APACHE JUNCTION**  
an Arizona municipal corporation

\_\_\_\_\_  
By: JOHN S. INSALACO  
Its MAYOR

ATTEST:

\_\_\_\_\_  
Kathleen Connelly  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard J. Stern  
City Attorney

STATE OF ARIZONA     )  
                              ) ss.  
COUNTY OF PINAL     )

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Apache Junction, an Arizona municipal corporation, who acknowledged that he signed the foregoing instrument on behalf of the city.

Witness my hand and official seal.  
My Commission Expires:

\_\_\_\_\_  
Notary Public

**STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,  
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond MUST be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal), as Principal, and \_\_\_\_\_, 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, with its principal office in the City of \_\_\_\_\_ (hereinafter called the Surety) are held and firmly bound unto the City of Apache Junction (hereinafter called the Obligee), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated \_\_\_\_ day of \_\_\_\_\_, 2016 to \_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to Principal or Principal's Sub-Contractors in the prosecution of the work provided for in said contract, this obligation shall be void. Otherwise it remains in full force and effect:

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to the same extent as if they were copies at length herein.

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

Witness our hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
PRINCIPAL

SEAL

BY:

\_\_\_\_\_  
AGENCY OF RECORD  
AGENCY ADDRESS

\_\_\_\_\_  
SURETY

SEAL

BY:

**STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,  
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond MUST be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal), as Principal, and \_\_\_\_\_, 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 (hereinafter called the Surety) are held and firmly bound unto the City of Apache Junction (hereinafter called the Oblige), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated day of \_\_\_\_\_, 2016 to \_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extend as if they were copies at length in this agreement.

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

Witness our hand this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
PRINCIPAL

SEAL

BY: \_\_\_\_\_

\_\_\_\_\_  
AGENCY OF RECORD

\_\_\_\_\_  
AGENCY ADDRESS

\_\_\_\_\_  
SURETY

BY: \_\_\_\_\_

ATTORNEY IN FACT

**CITY OF APACHE JUNCTION  
WARRANTY BOND  
PROJECT NO. PWC2015-04**

BOND NO.  
PREMIUM NO.

WHEREAS, the City of Apache Junction (hereafter "City") and \_\_\_\_\_  
\_\_\_\_\_ (hereafter "Principal") have entered into  
an agreement ("Agreement") dated \_\_\_\_\_ -  
\_\_\_\_\_, 2016, whereby Principal agreed to install and complete  
certain designated public improvements as a condition of \_\_\_\_\_  
\_\_\_\_\_ relating to \_\_\_\_\_ ,  
\_\_\_\_\_ at Principal's own expense and which Agreement is  
hereby referred to and made a part hereof; and

WHEREAS, Principal is required under the terms of the Agreement to furnish warranty security for the work performed pursuant to the Agreement in the amount of ten percent (10%) of the original amount of the security deposit to guarantee replacement and repair of the improvements as described in the Agreement for a period of one year following final acceptance of said improvements.

NOW, THEREFORE, we, Principal, and \_\_\_\_\_  
\_\_\_\_\_ ("Surety"), are held and firmly bound unto  
City in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ (\$ \_\_\_\_\_ ) lawful money of the United States, for the payment of which we  
bind ourselves, our heirs, successors, executors, and administrators, jointly and severally.

The condition of this obligation is such that if Principal shall indemnify City for all loss that City may sustain by reason of any defective materials or workmanship which become apparent during the period of one year from and after acceptance of the improvements by the City, then this obligation shall be null and void; otherwise, this obligation shall remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

Surety shall provide City with thirty (30) days' written notice of Principal's default prior to Surety terminating, suspending or revoking the bond.

In witness whereof, this instrument has been duly executed by Principal's and Surety on  
\_\_\_\_\_, 2016.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_

\_\_\_\_\_  
Attorney-in-Fact

Address \_\_\_\_\_  
\_\_\_\_\_



**CITY OF APACHE JUNCTION**  
**PROJECT NO. PWC2015-04**  
**CERTIFICATE OF INSURANCE**

The \_\_\_\_\_ certifies that the following insurance policies have been issued on behalf of:

NAME OF INSURED: \_\_\_\_\_ ADDRESS  
OF INSURED: \_\_\_\_\_

	Type of Insurance	Policy Number	Effect. Date	Expire Date	Limits of Liability
1.	Workman's Compensation				\$100,000 Each Accident; \$100,000 Each Disease, \$500,000 Disease Policy Limit
2.	Commercial General Liability				\$1,000,000 Each Occurrence; \$2,000,000 Products /Completed Operations Aggregate; \$2,000,000 General Aggregate Limit
3.	Contractual Bodily Injury & Property Damage				\$1,000,000 Each Occurrence
4.	Professional Liability				\$1,000,000 Each Claim
5.	Automobile Bodily Injury & Property Damage				\$1,000,000 Each Occurrence

It is further agreed that these policies shall not expire, be canceled or changed until all work has been completed and the project has been accepted by the City. If a policy does expire during the life of the contract, a renewal Certificate of the required coverage must be sent to the City of Apache Junction not less than thirty (30) calendar days prior to expiration date. This Certificate is not valid unless countersigned by an authorized representative of the Insurance Company. The Certificate of Insurance must also provide that the City, its Mayor, Council, appointees, officers, employees and agents, are additional insured parties.

Date: \_\_\_\_\_ Countersigned by: \_\_\_\_\_

Title: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016

by \_\_\_\_\_ as Insurer.

\_\_\_\_\_  
Notary Public

My Commission Expires: