

**NOTICE OF JOINT MEETING OF THE BOARD OF DIRECTORS OF  
THE TOWN OF CAREFREE, AZ UTILITIES COMMUNITY FACILITIES DISTRICT  
AND THE BOARD OF DIRECTORS OF THE CAREFREE WATER COMPANY, INC.**

**WHEN:** TUESDAY, MARCH 29, 2022

**WHERE:** CAREFREE TOWN COUNCIL CHAMBERS  
33 EASY STREET, CAREFREE, AZ 85377

**LIVESTREAM:** [HTTPS://ZOOM.US/](https://zoom.us/j/3229729660)  
MEETING ID 322 972 9660  
PASSCODE 12345

**TIME:** 4:00 P.M.

Pursuant to A.R.S. § 10-822, notice is hereby given of the time, place and purposes of a meeting of the Board of Directors of the Town of Carefree Utilities Community Facilities District and the Board of Directors of the Carefree Water Company, Inc., an Arizona corporation.

*Members of the Board of Directors are participating by technological means or methods pursuant to A.R.S. §10-708.*

**CALL TO ORDER**

**SILENT ROLL CALL**

**AGENDA**

- ITEM #1** Approval of the September 7, 2021 UCFD/CWC meeting minutes.
- ITEM #2** Approval of the November 2, 2021 UCFD/CWC meeting minutes
- ITEM #3** Approval of the December 14, 2021 UCFD/CWC meeting minutes
- ITEM #4** Approval of the December 21, 2021 UCFD/CWC meeting minutes
- ITEM #5** Review, discussion and possible action to approve Resolution 2022-01 authorizing the Chairman of UCFD to enter into Construction Services Contract No. C2022-01 with Achen-Gardner Construction, LLC for Guaranteed Maximum Price (GMP) A2, Tom Darlington Water Storage Reservoir construction as part of the Carefree Water Consolidation Project.
- ITEM # 6** Adjournment.

DATED this 24<sup>th</sup> day of March, 2022.

TOWN OF CAREFREE

BY: Kandace French Contreras  
Kandace French Contreras, Town Clerk/Treasurer

Items may be taken out of sequence

**Council meeting will be broadcast via our Town of Carefree Zoom channel:**

LIVESTREAM: [HTTPS://ZOOM.US/](https://zoom.us/j/3229729660)  
MEETING ID 322 972 9660  
PASSCODE 12345

Or Join Zoom Meeting Direct Link  
<https://us02web.zoom.us/j/3229729660?pwd=aHBnS3N5L1JRRG8wRGNFT25lc2hGUT09>

Meeting ID: 322 972 9660  
Passcode: 12345

For telephone audio  
1.669.900.6833 or 1.253.215.8782



**FOR SPECIAL ACCOMMODATIONS**

Please contact the Carefree Town Clerk, 8 Sundial Circle (PO Box 740), Carefree, AZ 85377; (480) 488-3686, at least three working days prior to the meeting if you require special accommodations due to a disability.

**MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF  
THE TOWN OF CAREFREE, AZ UTILITIES COMMUNITY FACILITIES DISTRICT  
AND THE BOARD OF DIRECTORS OF THE CAREFREE WATER COMPANY, INC.**

**WHEN:** TUESDAY, SEPTEMBER 7, 2021

**WHERE:** ZOOM WEB

**TIME:** 4:00 P.M.

**UCFD/CWC**

**MAR 29 2022**

**# 1**

**Attending**

Chairman Les Peterson

**Absent**

None

**Board Members:**

John Crane

Vince D'Aliesio

Tony Geiger

Stephen Hatcher

Cheryl Kroyer

**Also Attending:**

Greg Crossman, District Manager and Water Company General Manager; Gary Neiss, Carefree Town Administrator; Michael Wright, District and Water Company Attorney; Tracy Grunden, CVL Consultants; Ken Kawamoto, Achen-Gardner; Kandace French Contreras, District Clerk and Water Company Secretary.

Chairman Peterson opened the meeting at 4:00 p.m. and explained that the meeting was originally scheduled to be an in-person meeting, but due to the rise in COVID cases in the area, was rescheduled as a Zoom meeting. He thanked everyone for their understanding.

**AGENDA**

**ITEM #1      Approval of the July 06, 2021 UCFD/CWC meeting minutes.**

Chairman Peterson announced the agenda item and asked if there were any questions or changes to the minutes. There were none.

Board Member Kroyer moved to approve the July 6th minutes as presented. There was a **second** by Vice Chairman Crane. The motion **carried** unanimously.

**ITEM #2      Approval of the July 27, 2021 UCFD/CWC meeting minutes.**

Chairman Peterson announced the agenda item and asked if there were any questions or changes to the July 27<sup>th</sup> minutes. There were none.

Board Member Kroyer moved to approve the minutes as presented. There was a **second** by Vice Chairman Crane. The motion **carried** unanimously.

**ITEM #3**     **Status Update: Carefree Water Consolidation Project. Information Only.**

Presentation and discussion only. No action taken.

Chairman Peterson announced the agenda item and introduced Greg Crossman.

Mr. Crossman presented a PowerPoint and provided a status update on the Carefree Water Consolidation Project. Using graphics, he reiterated the current Carefree Water Company service area as well as the acquisition areas of neighborhoods A, B and C. He outlined the primary milestones for the project and explained that three steps; the feasibility investigation, the condemnation/arbitration with Cave Creek, and the settlement agreement and full payment to the Town of Cave Creek, have been accomplished over the last 4 to 5 years. The remaining steps; the project funding, design, and construction, are next on the list and will be addressed further during the presentation.

Tax exempt water revenue bonds will be used to fund the project. Mr. Crossman announced that the final rating for the revenue bonds was set at A+ which is a significant accomplishment. The sale of the bonds took place on August 17<sup>th</sup> where about \$18.5 million in bonds were offered. The Bond Underwriter, Stifel, received orders totaling \$117,530,000. Funding generated \$21,871,160.60 at a coupon rate of 4% but a true "All-In" interest rate of 2.92% after factoring in costs, etc. Everything hit the market at just the right time and resulted in a very positive sale and interest rate. Bonds closed on September 2<sup>nd</sup> and the funds have been transferred into a UCFD account that is covered under the State Treasurer's Pooled-Collateral Program.

The next steps are to complete the project design and construction. The consulting team to accomplish this has been in place for some time though there is still one team member that is in the works. The project design firm is Coe and Van Loo II, LLC or "CVL" Tracy Grunden is available from CVL to answer questions. The Construction Manager at Risk or "CMAR" is Achen-Gardner. Ken Kawamoto is also present to answer questions. The independent cost estimator is appointed to the project, Innovative Contracting & Engineering Services, LLC. The one role needing to be filled is the Construction Administration and Inspection firm or "CA&I". Interviews of firms to fill this role take place this week and a selection will be made by the end of the month.

Mr. Crossman stated that the project final design has been ongoing since March and is expected to be completed by the end of 2021. Construction will begin in mid-October and last through the end of 2022. It is important to note that while the construction is expected to be completed at the end of 2022, the design and construction will be phased and sequences in a logical manner in order to get the neighborhoods moved over to the Carefree Water system. The design and construction will not be completed at one time. From a big picture perspective, construction will start in the far north end of Carefree in the Highlands area move into Neighborhood C, then move southwest through Neighborhood B and into Neighborhood A. From a construction contracting perspective the UCFD will be issuing contracts under a guaranteed maximum price (GMP) process. A GMP is a commitment by the CMAR to construct a portion of the work for a maximum price. The GMP will have a reasonable level of contingencies and will include allowances for items that lack clarity. Mr. Crossman used off-duty police officer time as an example of an allowance item. An estimated number of off-duty police hours are estimated in

the GMP; however, the exact cost will be reflective of the actual number of off-duty police hours utilized, which will not be known until the end of the project.

**ITEM #4**      **Review, discussion and possible action to approve Resolution 2021-15 authorizing the Chairman of UCFD to enter into Construction Services Contract No. C2021-04 with Achen-Gardner Construction, LLC for Guaranteed Maximum Price (GMP) #1, Early Procurement for the Carefree Water Consolidation Project.**  
Approved.

Chairman Peterson announced the agenda item and introduced Greg Crossman.

Mr. Crossman presented a PowerPoint that explained this Resolution and Contract. This first GMP is for the early procurement of just over \$2 million of pipeline materials that are needed for the Carefree Water Consolidation Project. The COVID-19 pandemic has resulted in supply chain issues which has in-turn created cost volatility and market availability issues. This GMP addresses these issues head-on by authorizing early procurement of pipeline materials which represents about 70% of the project. This pipe material will be ordered and supplied to Achen-Gardner by Ferguson Waterworks and will be available when construction starts.

Vice Chairman Crane **moved** to **approve** the District and Water Company Resolution as presented. There was a **second** by Board Member Hatcher. The motion **carried** unanimously.

**ITEM #5**      **Status Update: Water Supply Conditions and Colorado River Water Shortage Determination. Information Only.**  
Presentation and discussion only. No action taken.

Chairman Peterson announced the agenda item and introduced Greg Crossman.

Mr. Crossman presented a PowerPoint that discussed the implications of the pending Tier 1 Shortage Declaration on the Colorado River for 2022. Mr. Crossman explained that Tier 1 Shortage conditions impact lower priority users on the CAP, such as the Agricultural Pool and the reallocated "Non-Indian Agricultural" Pool and that water deliveries to Municipal and Industrial (M&I) Users will not be impacted. Mr. Crossman went on to further discuss the probability of deeper shortage conditions occurring on the Colorado River and that M&I water delivery cutbacks are anticipated to start at a Tier 2B Shortage Declaration. The potential of the "firming" of CAP deliveries by the Arizona Water Banking Authority (AWBA) was also discussed.

**ITEM #6**      **Adjournment**

Board Member Kroyer **moved** to **adjourn**. There was a **second** by Board Member D'Aliesio. The motion **carried** unanimously.

Meeting adjourned at 5:02 p.m.

DATED this 21<sup>st</sup> day of October, 2021.

UCFD/CWC

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Kandace French Contreras, Secretary/Treasurer

BOARD OF DIRECTORS

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Les Peterson, Chairman

Attest:

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Kandace French Contreras, Secretary/Treasurer  
CERTIFICATION

I certify that the foregoing minutes are a true and correct copy of the minutes of the meeting of the Carefree Water Company/Utilities Community Facilities District Board of Directors held on September 7, 2021. I further certify that the meeting was duly called and held and that a quorum was present.

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Kandace French Contreras, Secretary/Treasurer

**MEETING OF THE TOWN OF CAREFREE, AZ UTILITIES COMMUNITY  
FACILITIES DISTRICT BOARD OF DIRECTORS AND THE BOARD OF DIRECTORS  
OF THE CAREFREE WATER COMPANY, INC.**

**UCFD/CWC**

**WHEN:** TUESDAY, NOVEMBER 2, 2021  
**WHERE:** ZOOM ONLINE MEETING ID: 322 972 9660\*  
**TIME:** 4:00 P.M.

MAR 29 2022

# 2

**CALL TO ORDER**

**Attending:**  
Chairman Les Peterson

**Absent:**  
None

**Board Members:**  
John Crane  
Vince D'Aliesio  
Tony Geiger  
Stephen Hatcher  
Mike Johnson  
Cheryl Kroyer

**Also Attending:**  
Greg Crossman, District Manager and Water Company General Manager; Gary Neiss, Carefree Town Administrator; Michael Wright, District and Water Company Attorney; Tracy Grunden, CVL Consultants; Ken Kawamoto, Achen-Gardner; Kandace French Contreras, District Clerk and Water Company Secretary.

Chairman Peterson opened the meeting at 4:00 p.m.

**AGENDA**

**ITEM #1      Approval of the August 3, 2021, UCFD/CWC meeting minutes**

Board Member Kroyer **MOVED TO APPROVE** the August 3, 2021, UCFD/CWC meeting minutes. **SECONDED** by Vice Chairperson Crane. **CARRIED** 6-0.

**ITEM #2      Recognition of new Board Member, Michael Johnson.**

Chairperson Peterson and the Board welcomed new Board Member Mr. Michael Johnson.

**ITEM #3      Review, discussion, and possible action to approve Resolution 2021-16 authorizing the Chairman of the Board of Directors to enter into Engineering Services Contract No. C2021-05 with Coe and Van Loo II L.L.C. for**

## **Construction Administration and Inspection (CA&I) Services for the Carefree Water Consolidation Project.**

Greg Crossman, District Manager and Water Company General Manager presented via PowerPoint background and details of the Carefree Water Consolidation project. Displaying a map depicting the Town of Carefree water service area which highlighted neighborhoods A (Southwest Carefree), B (West Carefree), and C (Northwest Carefree). Mr. Crossman explained, the goal and thrust of the Carefree Water Consolidation project is to transition the areas within the Carefree service area, from Cave Creek water over to the Carefree Water Company system.

District Manager Crossman informed the group that a strong professional team has been built to support the implementation of this project. A representative from each respective entity was present:

- Carefree UCFD/CWC – Owner
- Coe & Van Loo – Design Engineer
- Achen – Gardner – Construction Mgr. at Risk
- Innovative Contracting & Engineering – Independent Cost Estimator
- Construction Administration and Inspection (Being Recommended Tonight)

Mr. Crossman provided a timeline and information regarding the selection process. The Request for Qualifications (RFQ) was sent out on July 06, 2021, resulting in 4 Statements of Qualifications (SOQ's) being received. Those SOQs were reviewed by the Carefree Water Company and Town of Carefree Staff. Oral interviews were held on September 09, 2021, resulting in a final recommendation of the most qualified firm to fill the role of Construction Administration and Inspection for the Carefree Water Consolidation project.

Acknowledging all 4 SOQs received as exceptionally qualified firms, Mr. Crossman provided the decision from the panel was to recommend Coe & Van Loo (CVL) as the most qualified firm. Some of the services that CVL will be providing include:

- Project Management During Construction
- Contractor review and coordination
- Review and responses to; shop drawings, request for information and O & M manuals
- Construction inspection
- QA materials testing
- Project close-out

District Manager, Crossman provided contract details and responded to questions and comments from the Board.

Referencing the slide which provided an overview of services provided, Mr. Crossman provided clarification for Board Member Hatcher, of what the scope and oversight of the work will entail. Informing, there will be formal weekly meetings with all contractors associated with the project.

Vice Chairman Crane commended Coe & Van Loo, stating that they have been a good contractor to work with. In addition, Vice Chairperson Crane recognized that the contract talked a lot about public outreach. Asking, will this be something that Coe & Van Loo is responsible for? Mr. Crossman responded, yes, public outreach is part of their contract and they do have a sub-contractor who will



be coordinating a lot of their public outreach along with himself (District Manager Mr. Crossman) to ensure that it is one cohesive effort. Additionally, the Town of Carefree website and social media will both be platforms that will be utilized for public outreach.

Board Member Johnson asked if the fee is based on cumulative staff hours and the number of people assigned to the project? Mr. Crossman responded, yes, there is a matrix of staff hours, that are presented at the end of the scope of work in the contract that details the amount of hours associated with the fee.

Board Member Hatcher **MOVED TO APPROVE** Resolution 2021-16. Authorizing the Chairman to enter an engineering services contract, with Coe Van Loo (CVL) for Construction Administration and Inspection services in an amount not to exceed \$708,146.00. **SECONDED** by Vice Chairperson Crane. **CARRIED**, 7-0.

**ITEM #4**      **Review, discussion, and possible action to approve Resolution 2021-17 authorizing the acquisition of properties necessary for the construction the Carefree Water Consolidation Project.**

Greg Crossman, District Manager and Water Company General Manager presented via PowerPoint, background and details pertaining to the property acquisition associated with the Carefree Water Consolidation project. Mr. Crossman explained, the Carefree Water Consolidation project is mainly a pipeline construction project. 90-95% of the pipelines will be constructed in roadways and within existing right of ways that the Town of Carefree already has and most of the facility construction will be at existing sites which includes, a new water storage reservoir and booster pump station upgrades.

District Manager Crossman outlined property acquisition needs associated with the project:

- New water storage reservoir site (Initiated and formalized through the courts)
- 2 pipeline alignments – Spanish Boot to Ocotillo Ridge, (2<sup>nd</sup> water feed into upper neighborhood C) & Black Mtn. Foothills to Carefree Foothills, (Primary water feed to upper neighborhood A).
  - Waterline easements
  - Temporary construction easements
- 1 booster pump station – Peaceful Place, (Booster pump needs to be upgraded to serve portions of neighborhood B)
  - Property exchange (corrects property boundary issues with Liberty Utilities)

Mr. Crossman displayed maps depicting the locations and details of the project areas.

District Manager Crossman outlined the property acquisition process for waterline easements and temporary waterline easements acquisition for pipeline construction:

- Formal property appraisal
- Independent appraisal review
- Offer development based on appraisal
- Submission to property owners
- Escrow closing

District Manager Crossman explained, Resolution 2021-17 is a mechanism to approve the acquisition of the properties associated with the Carefree Water Consolidation project. This allows them to:

- Complete the process and make offers to the affected property owners.
- Authorizes the expenditure of funds to complete transactions
- Does not authorize condemnation/eminent domain

Mr. Crossman responded to question from Board Member Hatcher who asked if the purchase of the small pieces of land is more cost-effective long term than acquiring a temporary 6-month easement to access the subject areas to complete the work that needs to be done, or is it cheaper to acquire the land in order to move forward? Mr. Crossman explained, legally the land needs to be acquired to have permanent rights to be on the land and the most cost-effective way to do that is to not buy the land fee title, it's to buy an easement associated with the property.

Board Member Kroyer **MOVED TO APPROVE** Resolution 2021-17, authorizing the Utilities Community Facilities District, District Manager, Greg Crossman to pursue the acquisition of properties necessary to support the Carefree Water Consolidation Project. **SECONDED** by Board Member Hatcher. **CARRIED**, 7-0.

**ITEM #5**      **Review, discussion and possible action to approve Resolution 2021-18 authorizing the Chairman of Board of Directors to enter into Construction Services Contract No. C2021-06 with Achen-Gardner Construction, LLC for Guaranteed Maximum Price (GMP) A1, Tom Darlington Water Storage Reservoir - Site Preparation Work associated with the Carefree Water Consolidation Project.**

Greg Crossman, District Manager and Water Company General Manager presented via PowerPoint, details of the construction services contract for the Carefree Water Consolidation Project associated with site preparation for the Tom Darlington water storage reservoir.

Mr. Crossman outlined for the Board the Guaranteed Maximum Price (GMP) nomenclature. Explaining, the GMP to be considered at this meeting is GMP A1 – Tom Darlington water service reservoir site preparation which includes:

- Native plant salvage
- Clearing and grubbing
- Excavating and hauling
- Miscellaneous site preparation work

Mr. Crossman provided details of the construction services contract with Achen-Gardner Construction, L.L.C. and benefits of the site preparation approval. Informing, the term of the contract is 60 days with an amount not to exceed \$823,901.06.

District Manager Crossman acknowledged that construction is a disruption and reminded that it is temporary. Adding, measures will be taken to minimize impact while being sensitive to concerns of the neighboring residents as well as the Boulders HOA. The goal is to get in and out of the site as

quickly as possible, approximately in 6-9 months. The contractor is aware of the sensitivity of the site. Adding, it is important to keep the end game in mind, not what the site looks like during construction but how it will look at the end of construction after site restoration.

Mr. Crossman provided elevations illustrating how the proposed underground water storage reservoir site will be vegetated at completion.

Mr. Crossman concluded that the Carefree Water Company is committed to being a good neighbor and here for the long haul. The goal is to expedite construction and get the site blending into the neighborhood.

Vice Mayor Crane asked if approved, when will the initial work commence? Initially, necessary steps need to be taken such as native plant salvage etc. Tentatively, the start of construction activity will begin mid-November. Achen- Gardner agreed with that tentative timeline.

Board Member D'Alesio asked how public outreach will be handled. Mr. Crossman informed that he will be available to have open dialog and communication with residents and reiterated, the Town of Carefree website and social media will both be platforms that will be utilized for public outreach.

Board Member Geiger **MOVED TO APPROVE** Resolution 2021-18 authorizing the Chairman of Board of Directors to enter into Construction Services Contract No. C2021-06 with Achen-Gardner Construction, LLC covering guaranteed maximum price A-1 for site preparations for the Tom Darlington water storage reservoir. This contract is in an amount not to exceed \$823,901.06. **SECONDED** by Board Member Hatcher. **CARRIED**, 7-0.

**ITEM #6      Adjournment.**

The meeting was adjourned by unanimous consent at 5:00 p.m.

DATED this 2<sup>nd</sup> day of November, 2021.

UCFD/CWC

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Kandace French Contreras, Secretary/Treasurer

BOARD OF DIRECTORS

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Les Peterson, Chairman

Attest:

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Kandace French Contreras, Secretary/Treasurer

## CERTIFICATION

I certify that the foregoing minutes are a true and correct copy of the minutes of the meeting of the Carefree Water Company/Utilities Community Facilities District Board of Directors held on November 02, 2021. I further certify that the meeting was duly called and held and that a quorum was present.

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Samantha Gesell, Planning Clerk

**MINUTES OF THE MEETING OF THE TOWN OF CAREFREE, AZ UTILITIES  
COMMUNITY FACILITIES DISTRICT BOARD OF DIRECTORS AND THE BOARD  
OF DIRECTORS OF THE CAREFREE WATER COMPANY, INC.**

**WHEN:** TUESDAY, DECEMBER 14, 2021  
**WHERE:** ZOOM ONLINE MEETING ID: 322 972 9660\*  
**TIME:** 4:00 P.M.

**UCFD/CWC**

**MAR 29 2022**

**# 3**

**CALL TO ORDER**

**Attending:**

Chairman Les Peterson

**Absent:**

Stephen Hatcher

**Board Members:**

John Crane  
Vince D'Aliesio – Joined the meeting at 4:10  
Tony Geiger  
Mike Johnson  
Cheryl Kroyer

**Also Attending:**

Greg Crossman, District Manager and Water Company General Manager; Megan Orem, Water Company Accountant; Jennifer Shields, CPA, Heinfeld Meech; Jarod Young, Heinfeld Meech; Gary Neiss, Carefree Town Administrator; Michael Wright, District and Water Company Attorney; Kandace French Contreras, District Clerk and Water Company Secretary.

Chairman Peterson opened the meeting at 4:00 p.m.

**AGENDA**

**ITEM #1      Approval of the September 7, 2021, UCFD/CWC meeting minutes.**

This item has been deferred.

**ITEM #2      Review, discussion, and possible action to accept the findings of the 2020-2021 Fiscal Year audit.**

Carefree Water Company District Manager, Greg Crossman presented via PowerPoint, details of the FY 2020-2021 Audit report for the Carefree Water Company/Carefree Utilities Community Facilities District (UCFD). Also representing the district was Carefree Water Company District Treasurer/Controller, Megan Orem. Mr. Crossman welcomed Heinfeld Meech Auditor Representatives, Jennifer Shields, CPA and Jared Young, CPA CGF. Extending a special thank you to them for their flexibility during the COVID-19 challenges.

Mr. Crossman presented a list of goals of the audit report:

- Assure our financial statements are free from material misstatements
- Verify observing good accounting practices & principals
- Confirm compliance with GASB requirements
- Guard against fraud and misuse of funds
- Provide transparency
- Assure series 2021 bond requirements are met

Mr. Crossman provided details of the Series 2021 Bond Requirements and an overview of the Carefree Water Company/UCFD audit results. To the credit of Megan Orem and her front office staff, Mr. Crossman was happy to report it was another clean audit. There were no financial misstatements, and all accounting practices were in order. In addition, the Carefree Water Company/UCFD have been able to cover all their liabilities, have met all Series 2021 bond requirements and based on audit results, in Mr. Crossman's words, the Carefree Water Company & UCFD are in good financial health.

District Manager Crossman updated the Board on the debt service status.

Heinfeld Meech Auditor Representative, Jennifer Shields commended Mr. Crossman and his team for all the hard work. Noting, although coming before the Board a little later in the year, there is still plenty of time to make any filing requirements. Concluding, that throughout the audit procedures that were performed, there were not any audit adjustments and no disagreements with management regarding accounting principles.

Ms. Shields responded to comments and questions from the Board.

Vice Chairman Crane **MOVED TO ACCEPT** the FY 2020-2021 audit report for the Carefree Water Company/UCFD as presented. **SECONDED** by Board Member D'Alesio. **CARRIED**, 6-0, with 1 absent.

**ITEM #3**     **Adjournment.**

The meeting adjourned by unanimous consent at 4:21 p.m.

DATED this 17th day of December 2021.

UCFD/CWC

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Samantha J. Gesell, Planning Clerk

BOARD OF DIRECTORS

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Les Peterson, Chairman

Attest:

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Kandace French Contreras, Secretary

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the Town of Carefree, AZ Utilities Community Facilities District Board of Directors and the Board of Directors of the Carefree Water, Inc. held December 14, 2021. I further certify that the meeting was duly called and held and that a quorum was present.

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Kandace French Contreras, Secretary

**TOWN OF CAREFREE, AZ UTILITIES COMMUNITY FACILITIES DISTRICT  
BOARD OF DIRECTORS AND THE BOARD OF DIRECTORS OF THE CAREFREE  
WATER COMPANY, INC. MEETING**

**WHEN:** TUESDAY, DECEMBER 21, 2021  
**WHERE:** ZOOM ONLINE MEETING ID: 322 972 9660\*  
**TIME:** 4:00 P.M.

**UCFD/CWC**

**MAR 29 2022**

**# 4**

**CALL TO ORDER**

**Attending:**  
Chairman Les Peterson

**Absent:**  
None

**Board Members:**

John Crane  
Vince D'Aliesio  
Tony Geiger  
Stephen Hatcher  
Mike Johnson  
Cheryl Kroyer

**Also Attending:**

Greg Crossman, District Manager and Water Company General Manager; Ken Kawamoto, Achen - Gardner Construction, LLC; Brian Froelich, Achen - Gardner Construction, LLC; Gary Neiss, Carefree Town Administrator; Michael Wright, District and Water Company Attorney; Kandace French Contreras, District Clerk and Water Company Secretary.

Chairman Peterson opened the meeting at 4:00 p.m.

**AGENDA**

**ITEM #1** Review, discussion and possible action to approve Resolution 2021-19 authorizing the Chairman of Board of Directors to enter into Construction Services Contract No. C2021-07 with Achen-Gardner Construction, LLC for Guaranteed Maximum Price (GMP) #2, Pipeline Construction associated with the Carefree Water Consolidation Project.

Greg Crossman, District Manager and Water Company General Manager presented via PowerPoint information pertaining to the guaranteed maximum price (GMP) #2, with Achen-Gardner Construction L.L.C., for the pipeline construction associated with the Carefree Water Consolidation project.



Mr. Crossman introduced Ken Kawamoto, Pre-Construction Manager and Brian Froelich, Project Manager both with Achen - Gardner Construction, LLC and Teresa Makinen, Public Outreach Coordinator and Principal with MakPro Services.

Mr Crossman provided background of the Carefree Consolidation Project displaying a map identifying the acquisition area that incorporate neighborhoods A (Southwest Carefree), B (West Carefree) and C (Northwest Carefree). These areas will be transitioned from the Cave Creek Water Company system over to the Carefree Water Company System.

District Manager Crossman listed the benefits of a single pipeline GMP:

- Allows the Construction Management at Risk, Achen-Gardner Construction L.L.C. to optimize utilization of pipeline crews.
- Allows the Utilities Community Facilities District (UCFD) to focus on high priority areas
- Guarantees timely transition of all customers in the Carefree Service Area, CSA, (Neighborhoods A, B and C)

Mr. Crossman explained Value Engineering is part of the Achen-Gardner Construction preconstruction services contract and helped to establish the best method of accomplishing project goals (transition of the entire Carefree Service Area) in the most cost-effective manner. The value engineering effort focused on pieces of the project that were most important, and either defer or delay portions of the project which weren't that critical and added cost to the project.

District Manger Crossman outlined specifics of GMP #2:

- Contractor, Construction Manager at Risk, Achen-Gardner Construction
- Cost for bulk of the work under the Carefree Consolidation project, is \$9,419,012.99
- Time to completion, 9 months from Notice to Proceed (NTP). The notice to proceed should be issued no earlier than February 01, 2022. This puts the start of construction around the February 15, 2022, timeframe.
- Neighborhood A – 3855 lineal feet (LF) of pipeline will be constructed
- Neighborhood B – 5492 LF
- Neighborhood C – 5029 LF
- Tom Darlington & Carefree Highway – 9610 LF
- Total = approximately 24,000 LF
- Additional work in 26 dispersed locations
- Important to note about GMP #2, there are no contingencies. Mr. Crossman further explained, here will be contingencies in a contingency fund that will be needed for the project. This will be held by the UCFD in a separate fund as opposed to being included in the contract.

Vice Mayor Crane questioned if contingencies come back to the UCFD Board for approval? Mr. Crossman stated he would discuss how to communicate the use of contingencies back to the Board with Chairman Peterson. Explaining, the small use of contingencies, up to a certain dollar limit, typically, don't come back to the Board. Adding, processes, procedures and notifications will have to be implemented that the Board and Chairman Peterson would like to see to communicate the use of those contingencies. Chairman Peterson agreed, let's not hamstring ourselves that construction would have to be held back as it is important that construction move smoothly and quickly.

Board Member Geiger acknowledged the team for their hard work and great job working through what have been difficult circumstances. Having a Construction Manager at Risk has really lent itself through what they have faced and will face going forward. Concluding, there is still a lot of work to be done but this is a big step forward.

Board Member Hatcher **MOVED TO APPROVE** Resolution 2021-19 authorizing the UCFD to enter into Construction Services Contract No. C2021-07 with Achen-Gardner Construction, LLC. **SECONDED** by Board Member Kroyer. **CARRIED**, 7-0.

**ITEM #2      Adjournment.**

Meeting was adjourned by unanimous consent at 4:28 p.m.

DATED this 21<sup>st</sup> day of December 2021.

UCFD/CWC

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Kandace French Contreras, Secretary/Treasurer

BOARD OF DIRECTORS

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Les Peterson, Chairman

Attest:

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Kandace French Contreras, Secretary/Treasurer  
CERTIFICATION

I certify that the foregoing minutes are a true and correct copy of the minutes of the meeting of the Carefree Water Company/Utilities Community Facilities District Board of Directors held on December 21, 2021. I further certify that the meeting was duly called and held and that a quorum was present.

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Kandace French Contreras, Secretary/Treasurer

CAREFREE WATER COMPANY AND  
CAREFREE UTILITIES COMMUNITY FACILITIES DISTRICT

**BOARD COMMUNICATION**

TO: CHAIRMAN AND BOARD MEMBERS  
FROM: GREG CROSSMAN, DISTRICT MANAGER GC  
DATE: MARCH 23, 2022  
SUBJECT: MARCH 29, 2022, BOARD AGENDA ITEM NO. 5

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Attached for your review prior to the March 29, 2022, Board meeting are the following documents covered under Agenda Item No. 5:

- 1) Resolution No. 2022-01 authorizing the Chairman of the Board to enter into the following contract;
- 2) Carefree Water Consolidation Project Construction Contract No. C2022-01 with Achen-Gardner Construction, LLC covering Guaranteed Maximum Price (GMP) A2 for Concrete Water Storage Reservoir Construction at the Tom Darlington Site in an amount not to exceed \$1,821,104.23.

**BACKGROUND**

The Carefree Water Consolidation Project has moved quickly into the construction phase. A critical piece of infrastructure needed to serve Neighborhood A is the new Tom Darlington Water Storage Reservoir (WSR). This new reservoir will provide the Carefree Water Company system with 300,000 gallons of potable water storage for meeting peak water demands and fire protection requirements. The addition of this new reservoir to Carefree's water system will increase our total potable water storage capabilities to over 2 million gallons.

Issues that have caused delays in the water storage reservoir construction process have recently been resolved and site preparation work, including excavation for the new underground water storage reservoir, has been completed and is well ahead of schedule.

The project team is working hard on starting the next phase of construction which is the construction of the concrete water storage reservoir structure. As discussed in previous Board communications, the installation of a buried concrete water storage reservoir such as this one requires specialized contracting and construction crews. These crews, which typically are headed north as spring weather approaches, have been made available to start work in Carefree on April 4<sup>th</sup>. In order to take full advantage of this opportunity, Carefree's Construction Manager at Risk (CMAR) Achen-Gardner has begun work on items required to be completed before the pouring the water storage reservoir's concrete foundation.

Under consideration by the Board at the March 29<sup>th</sup> meeting, is GMP A2 for the completion of the concrete water storage reservoir construction at the Tom Darlington site. Approval by the Board will allow these specialized concrete construction crews to start work on April 4<sup>th</sup> and maintain our ambitious work schedule.

Following the consideration of GMP A2 for the concrete water storage reservoir construction, the Board will consider GMP A3, which is anticipated to be the final GMP for the Tom Darlington WSR. GMP A3 will cover all items needed to finalize the water storage reservoir construction, including installation of the utility area and access driveway, full burying of the water storage reservoir and site grade restoration, native plant landscaping, and installation of all other aesthetic features. GMP A3 is expected to be considered by the Board in May.

**RECOMMENDATION**

Staff recommends the approval of Resolution 2022-01 which authorizes the Chairman of the Board to enter into Construction Contract No. C2022-01 with Achen-Gardner Construction, LLC covering Guaranteed Maximum Price (GMP) A2 for the Concrete Construction of the Tom Darlington Water Storage Reservoir. This contract is in an amount not to exceed \$1,821,104.23. Approval of this Resolution and Contract will allow a critical piece of this project to move forward in an expeditious manner.

Please contact Greg Crossman (480-488-9100; [greg@carefreewaterco.com](mailto:greg@carefreewaterco.com)) with any questions.

**UTILITIES COMMUNITY FACILITIES DISTRICT**

**RESOLUTION 2022-01**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TOWN OF CAREFREE, ARIZONA UTILITIES COMMUNITY FACILITIES DISTRICT (UCFD), AUTHORIZING THE CHAIRMAN OF THE BOARD OF DIRECTORS TO EXECUTE CONSTRUCTION MANAGER AT RISK (CMAR) CONSTRUCTION SERVICES CONTRACT NO. C2022-01 WITH ACHEN-GARDNER CONSTRUCTION, LLC, FOR GUARANTEED MAXIMUM PRICE (GMP) A2, TOM DARLINGTON WATER STORAGE RESERVOIR – CONCRETE WATER STORAGE RESERVOIR CONSTRUCTION**

**WHEREAS**, providing adequate water service to the public is an important, proper, and necessary public purpose; and

**WHEREAS**, the UCFD has acquired the right to serve those portions of Carefree currently served potable water by the Town of Cave Creek, also known as the Carefree Service Area (CSA) and Neighborhoods A, B, and C; and

**WHEREAS**, the acquisition of the CSA requires a significant construction effort to disconnect, reconnect, and reintegrate portions of the Town of Cave Creek and Carefree Water Company potable water systems to be performed under the Carefree Water Consolidation Project; and

**WHEREAS**, the UCFD and the Town of Carefree have determined that the delivery method best suited for the Carefree Water Consolidation Project is the CMAR process; and

**WHEREAS**, Achen-Gardner Construction, LLC, has been selected as the CMAR for the Carefree Water Consolidation Project; and

**WHEREAS**, Achen-Gardner Construction, LLC, has provided to the UCFD GMP A2 for the construction of a concrete water storage reservoir at the Tom Darlington site; and

**WHEREAS**, the Tom Darlington Water Storage Reservoir is an essential component required to provide adequate water service to Neighborhood A of the CSA and to supplement fire protection capabilities for the entire Carefree Water Company system.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the UCFD that the Chairman of the Board is hereby authorized to execute Construction Services Contract No. C2022-01 with Achen-Gardner, LLC for GMP A2, Tom Darlington Water Storage Reservoir – Concrete Water Storage Reservoir Construction; and further authorizing the disbursement of funds for these purposes.

**PASSED AND ADOPTED BY** the Board of Directors of the Town of Carefree, Arizona Utilities Community Facilities District this 29<sup>th</sup> day of March, 2022.

AYES \_\_\_ NAYS\_\_\_ ABSTENTIONS\_\_\_ ABSENT\_\_\_

TOWN OF CAREFREE, ARIZONA  
UTILITIES COMMUNITY FACILITIES  
DISTRICT

ATTESTED TO:

\_\_\_\_\_  
Les Peterson, Chairman of the  
Board of Directors

\_\_\_\_\_  
Kandace French Contreras  
District Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Wright  
Attorney for the District

**TOWN OF CAREFREE, ARIZONA UTILITIES  
COMMUNITY FACILITIES DISTRICT**

**CONSTRUCTION MANAGER AT RISK  
CONSTRUCTION SERVICES**

**CAREFREE WATER CONSOLIDATION PROJECT**

**PROJECT NO. 2021-W01**

**CONTRACT NO. C2022-01  
GMP A2 – TOM DARLINGTON WATER STORAGE RESERVOIR  
CONCRETE WATER STORAGE RESERVOIR CONSTRUCTION**

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**TOWN OF CAREFREE, ARIZONA UTILITIES  
COMMUNITY FACILITIES DISTRICT**

**CONSTRUCTION MANAGER AT RISK  
CONSTRUCTION SERVICES**

**PROJECT NO. 2021-W01  
CONTRACT NO. C2022-01  
GMP A2 – TOM DARLINGTON WATER STORAGE RESERVOIR  
CONCRETE WATER STORAGE RESERVOIR CONSTRUCTION**

**THIS CONTRACT**, entered into this 29th day of March, 2022, between the Town of Carefree, Arizona Utilities Community Facilities District, a special purpose tax-levying district and municipal corporation and political subdivision of the State of Arizona (the "UCFD") and Achen-Gardner Construction, LLC, an Arizona Limited Liability Company, (the "CONSTRUCTION MANAGER AT RISK" or "CMAR").

**RECITALS**

- A.** The UCFD is authorized by provisions of ARS 48-709 to execute contracts for construction services.
- B.** The UCFD intends to construct the Carefree Water Consolidation Project and other water system improvements, referred to in this Contract as the "Project," located within the current and future service area of the Carefree Water Company (the "Water Company").
- C.** The CMAR has represented to the UCFD the ability to provide construction management services and to construct the Project. Based on this representation the UCFD desires to engage Achen-Gardner Contractors, LLC, to provide these services and construct the Project.
- D.** Contract No. C2021-01 has been executed previously between the UCFD and CMAR for Preconstruction Design services. Those services may continue during the duration of this Contract.



**FOR AND IN CONSIDERATION** of the parties' mutual covenants and conditions, the UCFD and the CMAR agree as follows:

## **ARTICLE 1 – CMAR'S SERVICES AND RESPONSIBILITIES**

**1.0** The CMAR shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project. The Work must be to the satisfaction of the UCFD and strictly in accordance with all legal requirements and Project Contract Documents as modified. The services may not be required to be performed in the sequence in which they are described. Generally, this project requires the installation of approximately 34,000 lineal feet of 4" to 12" potable water pipe, a 300,000 gallon potable water storage reservoir, and improvements to multiple booster pump stations. The services to be provided under this Contract generally include the construction of a concrete water storage reservoir at the Tom Darlington site as prescribed in Exhibit C attached hereto and by reference made part of this contract.

### **1.1. GENERAL SERVICES**

**1.1.1.** The CMAR's Representative must be reasonably available to the UCFD and must have the necessary expertise and experience required to supervise the Work. CMAR's Representative must communicate regularly with the UCFD but not less than once a week and must be vested with the authority to act on behalf of the CMAR. The CMAR's Representative may be replaced only with the written consent of the UCFD.

### **1.2. GOVERNMENT APPROVALS AND PERMITS**

**1.2.1.** Unless otherwise provided, the CMAR shall make application for and obtain or assist the UCFD and the Design Team in obtaining all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The CMAR is specifically required to obtain the necessary environmental permits or file the necessary environmental notices. Any environmental permits and licenses will be paid by the UCFD in accordance with the provisions of Article 2.4.

**1.2.2.** Copies of all necessary permits and notices must be provided to the Construction Admin Supervisor and Contract Administrator before starting the permitted activity. This provision is not an assumption by the UCFD of an obligation of any kind for violation of the permit or notice requirements.

**1.2.3.** The CMAR is responsible for making application for and obtaining permit(s) for building and demolition, but the fees will be paid by the UCFD in accordance with Article 2.4. The CMAR will also obtain any necessary regulatory or permitting, reviews for grading and drainage, water, sewer and landscaping, but the fees for the permitting will be paid by the UCFD in accordance with Article 2.4.

- 1.2.4. The CMAR shall be responsible for all other review and permit fees not specifically listed in Article 2.4 below or as qualified in Exhibit B.
- 1.2.5. The CMAR shall be responsible for only metering all construction-related water use from the Carefree Water Company system through Final Acceptance of the Project. The CMAR shall be responsible for the installation cost for all temporary construction water taps, sewer taps, fire lines, and fire line taps. Arrangement for construction water is the CMAR's responsibility. Construction water includes "test water" required to complete new water line pressure tests. Construction water obtained from sources other than the Carefree Water Company shall be the responsibility of the CMAR, the full cost of which shall be paid by the CMAR.
- 1.2.6. For purposes of this Contract, the Maricopa Association of Governments (M.A.G.) Standard Specification 107.12 is modified to read as follows: The CMAR, at its own expense, shall be responsible for the acquisition of any necessary temporary easements for construction purposes, storage, maintenance, and refuge haul-off as indicated upon the plans, which are required in addition to existing easements and right-of-way secured by the UCFD.

### **1.3. PRECONSTRUCTION CONFERENCE**

- 1.3.1. Before beginning any Work, the Contract Administrator will schedule a Preconstruction Conference. The UCFD and the CMAR have entered into a separate written contract for Design Phase services establishing the fee the UCFD will pay the CMAR for all Preconstruction services
- 1.3.2. The purpose of this conference is to establish a working relationship between the CMAR, utility firms, and various affected agencies and staff. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, CMAR Payment Requests and processing, coordination with the involved utility firms and/or utility companies (i.e. APS, SRP, SW Gas, etc.), and emergency telephone numbers for all representatives involved in the construction.
- 1.3.3. The construction Notice to Proceed (NTP) date will be established at the Preconstruction conference.
- 1.3.4. The CMAR will provide a Baseline Project Schedule indicating duration for all work items and activities included. The UCFD and Design Team will review and comment on the Baseline Project Schedule. The CMAR will revise the Baseline Project Schedule to the satisfaction of the Construction Admin Supervisor and Contract Administrator. No Work will begin until the UCFD accepts the Baseline Project Schedule.
- 1.3.5. The CMAR will submit a Schedule of Values based on the work and bids accepted from selected Subcontractors. These Values must reflect the actual labor time, materials, profit and overhead for the Work.
- 1.3.6. At a minimum, CMAR attendees must include CMAR's Representative, who is authorized to sign documents on behalf of the firm, the job superintendent, and the CMAR's safety officer.

#### **1.4. CONTROL OF THE WORK**

- 1.4.1.** The CMAR must properly secure and protect all finished or partially finished Work and is responsible for the Work until the entire contract is completed and accepted by the UCFD. Any payment for completed portions of the Work will not release the CMAR from this responsibility; however, it must turn over the entire Work in full accordance with these specifications before final settlement will be made. In case of suspension of the Work for any cause, the CMAR is responsible for the Project and will take all precautions as necessary to prevent damage to the Project and will erect any necessary temporary structures, signs, or other facilities at no cost to the UCFD.
- 1.4.2.** After all Work under the Contract is completed, the CMAR will remove all loose concrete, lumber, wire, reinforcing, debris and other materials not included in the final Work from the Work site.
- 1.4.3.** The CMAR must provide, through itself or Subcontractors, the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit the CMAR to complete the Work consistent with the Contract Documents, unless otherwise provided in the Contract Documents to be the responsibility of the UCFD or a separate contractor.
- 1.4.4.** The CMAR must perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The CMAR will at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 1.4.5.** Survey stakes and marks required for the completion of the construction shown on the plans and as described in the specifications will be furnished by the CMAR.
- 1.4.6.** The CMAR or the CMAR's Superintendent must be present at the Work at all times that construction activities are taking place.
  1. All elements of the Work, such as concrete work, pipe work, etc., are under the direct supervision of a foreman or his designated representative on the Site who must have the authority to take actions required to properly carry out that particular element of the Work.
  2. In the event of noncompliance with this Contract as defined in Article 8 the UCFD may require the CMAR to stop or suspend the Work in whole or in part.
- 1.4.7.** Where the Contract Documents require that a particular product be installed and applied by an applicator approved by the manufacturer, the CMAR shall ensure the Subcontractor employed for this work is approved.
- 1.4.8.** The CMAR shall take field measurements and verify field conditions and will carefully compare all field measurements and conditions and other information known to the CMAR with the Contract Documents before

commencing activities. Errors, inconsistencies or omissions discovered will be immediately reported to the UCFD.

- 1.4.9.** Before ordering materials or conducting work, the CMAR and each Subcontractor must verify measurements at the Site and are responsible for the correctness and accuracy of these measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, will be submitted to the UCFD for resolution before proceeding with the Work.
- 1.4.10.** The CMAR must establish and maintain all building and construction grades, lines, levels, and benchmarks, and is responsible for their accuracy and protection. This work will be performed or supervised by an Arizona licensed Surveyor.
- 1.4.11.** Any person employed by the CMAR or any Subcontractor who, in the opinion of the UCFD, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the UCFD, be removed from the Work by the CMAR or the Subcontractor employing the person, and shall not be employed again in any portion of Work without the written approval of the UCFD. The CMAR or Subcontractor shall hold the UCFD harmless from damages or claims that may occur in the enforcement of this Article.
- 1.4.12.** The CMAR assumes responsibility for the proper performance of the Work of Subcontractors and any acts and omissions in connection with this performance. Nothing in the Contract Documents creates any legal or contractual relationship between the UCFD and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 1.4.13.** The CMAR must coordinate the activities of all Subcontractors. If the UCFD performs other work on the Project or at the Site with separate contractors under the UCFD's control, the CMAR agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 1.4.14.** On a daily basis, the CMAR shall prepare a Contractor's Daily Report. The UCFD's Construction Admin Supervisor or its authorized Inspector will provide a sample report format to the CMAR. The report must detail the activities that occurred during the course of the day, all equipment utilized and the number of hours operated and all personnel on the site inclusive of Subcontractors. The Daily Reports must be submitted to the Construction Inspector and the Contract Administrator on a daily basis, unless otherwise arranged. Failure to provide Daily Reports as arranged or requested above may result in the retention of monthly progress payments until the Reports are brought up to date.
- 1.4.15.** In the event of noncompliance with this Article 1.4, the UCFD may require the CMAR to stop or suspend the construction in whole or in part. Any suspension, due to the CMAR's noncompliance will not be considered a

basis for an increase in the Contract Price or extension of the Contract Time.

## **1.5. CONTROL OF THE WORK SITE**

**1.5.1.** Throughout all phases of construction, including suspension of the Work, the CMAR must keep the Site reasonably free from debris, trash and construction wastes to permit the CMAR to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, the CMAR will remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work to permit the UCFD to occupy the Project or a portion of the Project for its intended use.

**1.5.2. Dust Control.** The CMAR will take appropriate steps, procedures or means required to prevent abnormal dust conditions due to its construction operations in connection with this Contract. The dust control measures shall be maintained at all times during construction of the Project to the satisfaction of the UCFD, in accordance with the requirements of the Maricopa County Health Department Air Pollution Control Regulations and UCFD of Scottsdale Supplement to M.A.G. Standard Specifications together with applicable provisions of Federal and State Law.

**1.5.3. Dust Control Coordinator.** At any UCFD construction site of 5 acres or more of disturbed surface area, subject to a permit issued by a Control Officer requiring control of PM-10 emissions from dust generating operations, the CMAR must have at all times at the Site, at least one Dust Control Coordinator trained in accordance with the requirements of A.R.S. §49-474.05 during primary dust generating operations that is related to the purposes for which the Dust Control Permit was issued. The Dust Control Coordinator must have full authority to ensure that dust control measures are implemented at the Site, including authority to conduct inspections, deploy dust suppression resources, and modify or shutdown activities as needed to control dust. The Dust Control Coordinator must be responsible for managing dust prevention and dust control on the Site, including the use of leaf blowers and street sweeping equipment. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator.

The requirements described in the above paragraph do not apply if all of the following circumstances are present:

1. The area of disturbed surface area is less than 5 acres.
2. The previously disturbed areas are stabilized in accordance with the requirements of any applicable County rules.
3. The CMAR with the Dust Control Permit provides notice of the acreage stabilized to the County Control Officer.

On sites with greater than 1 acre of disturbed surface area, any CMAR holding a Dust Control permit issued by a County Control Officer, who is required to obtain a single permit for multiple noncontiguous sites that is required to control PM-10 emissions from dust generating operations must have, at least 1 individual who is designated as a Dust Control Coordinator. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator. The Dust Control Coordinator must be present on Site at all times during primary dust generating activities that are related to the purposes for which the permit was issued.

A Subcontractor who is engaged in dust generating operations at a Site that is subject to a Dust Control Permit issued by a County Control Officer and that requires the control of PM-10 emissions from dust generating operations must register with the County Control Officer. The Subcontractor must have its registration number readily accessible on the Site while conducting any dust generating operations.

- 1.5.4.** If applicable, the CMAR shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements must include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. The CMAR is responsible for the coordination of all Work to minimize disruption to building occupants and facilities.
- 1.5.5.** Only materials and equipment used directly in the Work may be brought to and stored on the Site by the CMAR. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the CMAR.
- 1.5.6.** The CMAR is responsible for the cost to dispose of all waste products including excess earth material that will not be incorporated into the Work under this Contract. The waste product will become the property of the CMAR. The CMAR shall provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and shall make necessary arrangements for its disposal. Any disposal/dumping of waste products or unused materials will conform to applicable Federal, State and Local Regulations.
- 1.5.7.** The CMAR shall supervise and direct the Work. The CMAR is solely responsible for the means, methods, techniques, sequences and procedures of construction. The CMAR shall employ and maintain on the Work a qualified supervisor or superintendent who has been designated in writing by the CMAR as the CMAR's representative at the Site. The representative must have full authority to act on behalf of the CMAR and all communications given to the representative will be as binding as if given to the CMAR. The representative must be present on the Site at all times as required to perform adequate supervision and coordination of the Work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.

- 1.5.8.** In the event of abnormal weather conditions, such as windstorms, rainstorms, etc., the CMAR shall immediately inspect the Work Site and take all necessary actions to ensure public access and safety are maintained.
- 1.5.9. Damage to Property at the Site.** The CMAR is responsible for any damage or loss to property at the Site, except to the extent caused by the acts or omissions of the UCFD or its representatives, employees or agents and not covered by insurance. The costs and expenses incurred by the CMAR under this Article shall be paid as a Cost of the Work to the extent that the costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, but will not increase the GMP.
- 1.5.10. Damage to Property of Others.** The CMAR shall avoid damage, as a result of the CMAR's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the UCFD. The CMAR shall repair any damage caused by the operations of the CMAR, which costs will be paid as a Cost of the Work to the extent that these costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible, but shall not increase the GMP.
- 1.5.11. Failure of CMAR to Repair Damage.** If the CMAR fails to begin the repair of damage to property as required in Articles 1.5.9, and 1.5.10 and diligently pursue the repair, the UCFD will give the CMAR 10-days written notice to begin repairs. If the CMAR fails to begin the repairs within the 10-day notice period, the UCFD may elect to repair the damages with its own forces and to deduct from payments due or to become due to the CMAR amounts paid or incurred by the UCFD in correcting the damage.
- 1.5.12.** If applicable, the CMAR shall maintain American with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements must include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. The CMAR is responsible for the coordination of all Work to minimize disruption to building occupants and facilities.

## **1.6. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 1.6.1.** Shop Drawings, Product Data, Samples and similar submittals are to be forwarded to the Construction Admin Supervisor and the Contract Administrator for review. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required, the way in which the CMAR proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 1.6.2.** The CMAR shall review, approve, and verify that all submittals meet the intent of the Contract documents. Six (6) copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents will be delivered to the Construction Admin Supervisor for

review. Submittals made by the CMAR, which are not required by the Contract Documents, may be returned without action.

- 1.6.3. The CMAR shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the necessary submittal has been approved by the UCFD. All Work shall be in accordance with approved submittals. The CMAR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the UCFD's approval.
- 1.6.4. By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the CMAR represents that the CMAR has determined and verified materials, field measurements and related field construction criteria, or will do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Contract Documents.
- 1.6.5. The CMAR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by UCFD approval of Shop Drawings, Product Data, Samples or similar submittals unless the CMAR has specifically informed the UCFD in writing of the deviation at the time of submittal and the UCFD has given written approval to the specific deviation.
- 1.6.6. Informational submittals upon which the UCFD is not expected to take responsive action may be identified as informational submittals in the Contract Documents.
- 1.6.7. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the UCFD shall be entitled to rely upon the accuracy and completeness of the calculations and certifications.

## 1.7. QUALITY CONTROL, TESTING AND INSPECTION

- 1.7.1. **Inspection.** The UCFD's authorized Inspectors may be stationed on the Work Site and report to the Construction Admin Supervisors the progress of the Work, the manner in which Work is being performed, and also to report whenever it appears that material furnished or Work performed by the CMAR fails to fulfill the requirements of the specifications and this Contract. The Construction Inspector may direct the attention of the CMAR to any such failure as described above, but the inspection will not relieve the CMAR from any obligation to furnish acceptable materials or to provide completed construction that is in compliance with the Contract Documents in every particular. The Construction Inspector's purpose is to assist the UCFD's Representative and should not be confused with an inspector associated with any regulatory agency or with an inspector from a Laboratory identified under Article 1.8.
- 1.7.2. In case of any dispute arising between the Construction Admin Supervisor or Construction Inspector and the CMAR as to material furnished or the manner of performing the Work, the Construction Inspector will have the authority to reject materials or suspend the Work until the question and issue can be referred to and decided by the UCFD.



CPM Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Construction Inspectors will in no case act as foremen or perform other duties for the CMAR or interfere with the management of the Work by the CMAR.

- 1.7.3. Inspection or supervision by the Construction Admin Supervisor or Construction Inspector shall not be considered as direct control of the individual workman and his work. Direct control is solely the responsibility of the CMAR.
- 1.7.4. The furnishing of any services for the UCFD shall not make the UCFD responsible for or give the UCFD control over construction means, methods, techniques, sequenced procedures or for safety precautions or programs or responsibility for the CMAR's failure to perform the Work in accordance with Contract Documents.

## **1.8. MATERIALS TESTING**

- 1.8.1. All materials used in the Work must be new and unused, unless otherwise noted, and must meet all quality requirements of the Contract Documents.
- 1.8.2. All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection of the UCFD. Any material rejected by the UCFD will be removed immediately and replaced in a manner acceptable to the UCFD.
- 1.8.3. The procedures and methods used to sample and test material will be determined by the UCFD. Unless otherwise specified, samples and tests will be made in accordance with the following: The City of Scottsdale Material Testing Manual and the standard methods of American Association of State and Highway Transportation Officials (AASHTO) or American Society for Testing and Materials (ASTM), and Maricopa Association of Governments (MAG) supplements.
- 1.8.4. The CMAR shall be responsible for and shall pay for Quality Control testing, unless specifically exempted by the UCFD from certain testing requirements. The goal of Quality Control testing is to ensure that the Work meets the requirements of the Construction Documents as well as standard and customary construction industry practices within Maricopa County. The CMAR's Quality Control testing program shall be responsible for, but shall not be limited to, all testing required and detailed in the Construction Documents and testing that is standard and customary industry practice within Maricopa County.

The CMAR shall submit to the UCFD for approval a qualified Independent Testing Laboratory to be utilized on the Project. All costs associated with Quality Control testing, both initial and subsequent re-testing, shall be paid by the CMAR. Construction contingency cannot be utilized for the cost of re-testing. All re-testing shall be performed by the same testing laboratory. The results from all Quality Control testing shall be provided to the UCFD at the same time they are provided to the CMAR.

- 1.8.5.** The UCFD shall perform independent Quality Assurance testing throughout the project. The UCFD's Quality Assurance testing will be coordinated and paid for by the UCFD, likely through the firm providing Construction Administration and Inspection (CA&I) services. Quality Assurance testing will be less structured testing intended to validate the results of the Quality Control program and ensure that the goal of the Quality Control program is being met.

The CMAR shall provide the UCFD's Quality Assurance tester(s) access to the Work at all times upon reasonable notice. The cost associated with resolving a noncompliant Quality Assurance test results shall be paid by the CMAR. Construction contingency cannot be utilized for the work necessary to resolve a noncompliant test.

- 1.8.6.** The UCFD shall be responsible for paying for all fees associated with permit issuance including the cost for any initial code compliance testing and inspections. The CMAR shall be responsible for all Work being in compliance with applicable codes and for passing all code compliance testing and inspections. The CMAR shall pay the cost, if any, for code compliance re-testing and re-inspections. Construction contingency cannot be utilized for the cost of code compliance re-testing or re-inspections.

- 1.8.7.** At the option of the UCFD, materials may be approved at the source of supply before delivery is started.

## **1.9 PROJECT RECORD DOCUMENTS/AS-BUILTS**

- 1.9.1** During the construction period, the CMAR shall maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.

1. The CMAR shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. The CMAR will give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits
- Revisions to electrical circuitry
- Actual equipment locations
- Duct size and routing
- Locations of concealed internal utilities
- Changes made by Contract Amendments
- Details not on original Contract Drawings

2. The CMAR shall mark completely and accurately Project Record Drawing prints of Construction Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference locations on the Construction Documents.
3. The CMAR will mark Project Record Drawing sets with red erasable colored pencil.
4. The CMAR will note Requests for Information (RFI) Numbers, Architects' Supplemental Information (ASI) Numbers and Contract Amendment Proposal Numbers, etc., as required to identify the source of the change to the Construction Documents.
5. The CMAR will at the time of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the UCFD or its representative for review and comment.

**1.9.2** Immediately upon receipt of the reviewed Project Record Drawings from the UCFD, the CMAR will correct any deficiencies or omissions to the drawings and prepare the following for resubmission to the UCFD:

1. A complete set of PDF electronic files of all Project Record Drawings will be prepared by the CMAR in electronic format. Each drawing will be clearly marked with "As-Built Document." Files will be named consistent with the Plan Set Index
2. The PDF files will be converted from the CADD files of the Construction Documents provided by the UCFD under Article 2.0 accurately bearing the CMAR's As-Built information from the Project Record Drawings in red and delivered to the UCFD as part of the Project closeout.
3. The CMAR's original redlined mark-up prints of the Project Record Drawings.

## **1.10 PROJECT SAFETY**

**1.10.1 CMAR Safety Program.** The site environment in which the CMAR operates may on occasion present a potential safety and health hazard to any who may be on the job site. All Work will be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including Arizona Division of Occupational Safety and Health (ADOSH) policies and procedures. The CMAR is required to attend a UCFD safety briefing session at the Preconstruction meeting. The Contract Administrator, the designated Risk Management staff and a CMAR's representative will attend the session.

The CMAR will provide a safe jobsite and work environment for the safety and health of employees and members of the general public and will comply with all legal requirements including but not limited to the following:

Occupational Safety and Health Act (OSHA)  
Electrical Safe Work Practices Standards  
OSHA Personal Protective Equipment Standards  
National Fire Protection Association (NFPA) 70E Standard for  
Electrical Safety in the Workplace  
OSHA Fall Protection Standards  
OSHA Confined Space Entry

All other applicable requirements of OSHA and local codes and agencies having jurisdiction.

Contractors that violate these rules and regulations may be subject to job shutdown or removal from UCFD facilities.

**1.10.2 Contractor Safety Tailgate Meetings.** The CMAR will conduct tailgate safety meetings regularly to ensure that safety on the job is given priority. The Sign-in sheet of the tailgate meeting must be given to the UCFD Inspector within 48 hours after the meeting.

**1.10.3 Accident/Injury Procedure.** The CMAR will contact the Contract Administrator and Risk Management Department within 24 hours of the occurrence of an accident or injury arising out of the CMAR's work under this Contract.

**1.10.4 Unsafe Acts.** The CMAR employees are encouraged to abate or remedy any unsafe act or condition which may arise in the course of CMAR's work under this Contract.

**1.10.5 Safety Audits.** The UCFD reserves the right to conduct safety audits at the job site and stop unsafe acts at any time. In addition, the Construction Admin Supervisor or CPM Inspector must be notified should any OSHA inspections occur at a UCFD job site.

**1.10.6** The CMAR recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-site or off-site, and (iii) all other property at the Site or adjacent to the Site.

**1.10.7** The CMAR assumes responsibility for implementing, monitoring, and documenting all safety precautions and programs related to the performance of the Work.

**1.10.8** The CMAR will, before beginning construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, the CMAR's Safety Representative will be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.

- 1.10.9** The CMAR must provide OSHA 300A Summary log information including total recordable cases, total case rates, and lost workday incident rates for the past 2 calendar years. This information can be compared to Bureau of Labor Statistics (BLS) rates to determine whether a contractor has below average or above average accident/injury rates. Bureau of Labor Statistics information can be obtained through Risk Management. The Safety Representative will make routine daily inspections of the Site and will hold weekly safety meetings with CMAR's personnel, Subcontractors and others as applicable.
- 1.10.10** The CMAR and Subcontractors will comply with all Legal Requirements relating to safety, as well as any UCFD-specific safety requirements found in the Contract Documents, provided that the UCFD-specific requirements do not violate any applicable Legal Requirement.
- 1.10.11** The CMAR will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to the Contract Administrator and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 1.10.12** The CMAR's responsibility for safety under this Article 1.10 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
- 1.10.13** The CMAR and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the UCFD, that come under the OSHA Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200, Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

The CMAR and all Subcontractors using chemicals on UCFD property must use only the safest chemicals, with the least harmful ingredients. These chemicals must be approved for use by a UCFD representative before bringing them on the property.

The CMAR and all Subcontractors will make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation must be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, the CMAR and

Subcontractors are informed of the presence of (or possible presence of) chemicals in the area where the work requested will be performed. It is the responsibility of all selected Contractors to contact the UCFD for specific information relative to the type of chemicals present and location of appropriate Material Safety Data Sheets.

Unless included in the Work, if the CMAR encounters on-site material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, he will immediately stop work and report the condition to the UCFD.

If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, the CMAR will not resume work in the affected area until the material has been abated or rendered harmless. The CMAR and the UCFD may agree, in writing, to continue work in non-affected areas on-site. An extension of Contract Time may be granted in accordance with Article 5.

Upon discovery of hazardous materials the CMAR will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

## **1.11 WARRANTY**

**1.11.1** The provisions of M.A.G. Section 108.8 apply with the following additional requirements:

1. Should the CMAR fail to begin repairs or corrective work within 14 calendar days after receipt of written notice from the UCFD, the UCFD may perform the necessary work and the CMAR agrees to reimburse the UCFD for the actual cost.
2. The warranty period on any part of the work repaired or replaced is extended for a period of 1 year from the date of the repair or replacement.
3. This warranty does not apply to damage caused by normal wear and tear or by acts beyond the CMAR's control.

**1.11.2** The CMAR's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than the CMAR or anyone for whose acts the CMAR may be liable.

**1.11.3** Nothing in this warranty is intended to limit any manufacturer's warranty which provides the UCFD with greater warranty rights than provided in this Article 1.11 or the Contract Documents. The CMAR will provide the UCFD with all manufacturers' warranties upon Substantial Completion.

**1.11.4** The CMAR's warranty obligation will be the maximum allowed by the Arizona Registrar of Contractors

## **1.12 CORRECTION OF DEFECTIVE WORK**

- 1.12.1** The CMAR agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Article 1.11 above within a period of 1 year from the date of Substantial Completion of the Work or any portion of the Work, or within any longer period, to the extent required by the Contract Documents. A Progress Payment, or partial or entire use or occupancy of the Project by the UCFD will not constitute acceptance of the Work if not in accordance with the Contract Documents.
- 1.12.2** The CMAR will take meaningful steps to begin correction of nonconforming Work subject to this Article 1.12. These measures include but are not limited to timely correction of the Work. If the CMAR fails to initiate necessary measures for this Work within 7 days of receipt of written notice from the UCFD, the UCFD, in addition to any other remedies provided under the Contract Documents, may provide CMAR with written notice that the UCFD will commence correction of the nonconforming Work with its own forces.
- 1.12.3** If the UCFD does perform this corrective Work, the CMAR will be responsible for all reasonable costs incurred by the UCFD in performing this correction.
- 1.12.4** The CMAR will immediately respond to any nonconforming Work that creates an emergency.
- 1.12.5** The 1 year period referenced in this Article 1.12 applies only to the CMAR's obligation to correct nonconforming Work and is not intended to be a period of limitations for any other rights or remedies the UCFD may have regarding the CMAR's other obligations under the Contract Documents.

## **1.13 SUBCONTRACTOR AND MAJOR SUPPLIER SELECTION**

The Parties have entered into a Preconstruction Agreement that contains Subcontractor and Major Supplier provisions. In selecting Subcontractors and Major Suppliers, the CMAR will comply with the provisions in the Preconstruction Agreement. [For horizontal construction, as defined in A.R.S. §34-101(15), the CMAR must self-perform not less than 45% of the Work as required by A.R.S. §34-605(G).]

## **ARTICLE 2 – UCFD’S SERVICES AND RESPONSIBILITIES**

**2.0 DUTY TO COOPERATE.** The UCFD will, throughout the performance of the Work, cooperate with the CMAR and perform its responsibilities, obligations and services in a timely manner to facilitate the CMAR’s timely and efficient performance of the Work and so as not to delay or interfere with the CMAR’s performance of its obligations under the Contract Documents. The UCFD will furnish the CMAR a CADD file of the Construction Documents acceptable to the UCFD, at no cost to the CMAR.

### **2.1 CONTRACT ADMINISTRATOR/CONSTRUCTION ADMIN SUPERVISOR**

**2.1.1** The Construction Admin Supervisor is responsible for providing UCFD-supplied information and approvals in a timely manner to permit the CMAR to fulfill its obligations under the Contract Documents.

**2.1.2** The Construction Admin Supervisor will also provide the CMAR with prompt notice if the Construction Admin Supervisor observes any failure on the part of the CMAR to fulfill its contractual obligations, including any default or defect in the Project or non-conformance with the drawings and specifications.

**2.1.3** The UCFD may contract separately with the Design Team and may include partial construction administration services for the Project. A copy of the Design Team's contract will be furnished to the CMAR.

**2.1.4** Both the Contract Administrator and Construction Admin Supervisor are responsible for construction administration of the Work. The Design Team, if authorized by the UCFD, will review, approve or take other appropriate action upon the CMAR's submittals such as Shop Drawings, Product Data and Samples in accordance with Article 1.6. Communications by and with the Design Team will be through the Contract Administrator and Construction Admin Supervisor.

**2.1.5** The Contract Administrator or Construction Admin Supervisor and the Design Professional will interpret and decide matters concerning performance under the requirements of the Contract Documents. The Design Professional's response to these requests will be made to the UCFD with reasonable promptness. The UCFD will forward response to the CMAR and within the time limits agreed upon.

**2.1.6** The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the Procurement Code.

**2.2 UCFD’S SEPARATE CONTRACTORS.** The UCFD is responsible for all Work performed on the Project or at the Site by separate contractors under the UCFD’s control. The UCFD will contractually require its separate contractors to cooperate with, and coordinate their activities, so as not to interfere with the CMAR, in order to enable timely completion of Work consistent with the Contract Documents. The CMAR agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.



**2.3 PERMIT REVIEW AND INSPECTIONS.** Issuance of Right-of-Way and/or Building Permit is the responsibility of the UCFD's Design Engineer. The Town of Carefree issues Certificates of Occupancy.

**2.4 FURNISHING OF SERVICES AND INFORMATION**

**2.4.1** The UCFD will be responsible for the payment or waiver of the following:

1. Town of Carefree, City of Scottsdale, or Town of Cave Creek review and permit(s) fees for building, encroachment, right-of-way, and demolition permits.
2. Town of Carefree, City of Scottsdale, or Town of Cave Creek review fees for grading and drainage, water, sewer and landscaping.
3. Utility design fees for permanent services.
4. Obtaining Clean Water Act Nationwide 404 Permits.
5. UCFD/Carefree Water Company Development Fees.
6. Environmental Permits and Licenses.

**2.4.2** Unless expressly stated to the contrary in the Contract Documents, the UCFD will provide (at its own cost and expense) to the CMAR, the following information:

1. To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
2. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable the CMAR to perform the Work;
3. A legal description and Street or Physical address of the Site;
4. To the extent available, as-built record and historical drawings of any existing structures at the Site;
5. To the extent available, environmental studies, environmental impact statements, reports and impact statements describing the environmental conditions (including hazardous materials) known to exist at the site;
6. The UCFD will provide all UCFD standards and guidelines, supplementary conditions and special provisions that will be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality control testing and termite treatment requirements.

The UCFD is responsible for securing and executing all necessary Contracts with adjacent land or property owners that are necessary to enable the CMAR to perform the construction. The UCFD is further

responsible for all costs, including attorneys' fees, incurred in securing these necessary Contracts.

## **2.5 PROJECT MANAGEMENT SERVICES**

- 2.5.1** The UCFD may contract separately with one or more Technical Consultants to provide project management assistance to the Project. The Technical Consultant's contract as well as the contracts of other firms hired by the UCFD will be furnished to the CMAR. The CMAR will not have any right however, to limit or restrict any contract modifications that are mutually acceptable to the UCFD and Technical Consultant.
- 2.5.2** The Technical Consultant services will augment the UCFD staffing resources to effectively manage the objectives of the UCFD and this Project with the goal of managing the key project communication, cost and time parameters.
- 2.5.3** The Technical Consultant may provide preprogramming and design standards.
- 2.5.4** The UCFD may contract with the Technical Consultant to provide some or all of the following services during the performance of the construction:
1. Oversight of the Construction. The UCFD may hire Technical Consultants to assist it in oversight of the Construction Project. The Technical Consultants will:
  2. Conduct Site visits at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed construction and to determine in general if the construction is being performed in accordance with the Construction Documents. The Technical Consultant will keep the UCFD informed of progress of the construction and will endeavor to guard the UCFD against defects and deficiencies in the construction. The Technical Consultant may have authority to reject construction which does not conform to the Construction Documents and to require additional inspection or testing of the construction in accordance with Articles 1.7 and 1.8;
  3. Review and recommend approval of the CMAR's Payment Requests;
  4. Interpret matters concerning performance under and requirements of the Contract Documents on written request of the UCFD. The Technical Consultant's response to these requests will be made with reasonable promptness and within any time limits agreed upon;
  5. Analyze, recommend and assist in negotiations of Change Orders;
  6. Conduct inspections to determine Substantial Completion and Final Acceptance;
  7. Receive and forward to the UCFD for the UCFD's review and records, written warranties and related documents required by the Contract Documents and assembled by the CMAR.

## ARTICLE 3 – CONTRACT TIME

### 3.0 CONTRACT TIME

**3.1** Contract Time will be 126 calendar days as indicated in the Notice to Proceed (NTP).

**3.1.1** Contract Time will start with the Notice to Proceed (NTP) and end with Substantial Completion. The UCFD will issue a NTP letter establishing the mutually agreed upon NTP date for this Contract.

**3.1.2** Failure on the part of the CMAR to adhere to the Project Schedule may be the basis for termination of this Contract by the UCFD.

**3.1.3** Each GMP amendment to this Contract will establish a separate construction NTP date, Performance Period and Substantial Completion date for the entire Project. The Performance Period(s) may be sequential or may run concurrently.

**3.1.4** The CMAR agrees to commence performance of the Work and achieve Performance Periods and the Contract Time.

**3.1.5** All the times stated in this Article 3 are subject to adjustment in accordance with Article 5.

**3.2 CONSTRUCTION SCHEDULE.** Each approved GMP proposal will include a Project Schedule as prescribed in Article 3.7 with a Critical Path Method diagram construction schedule that will indicate the path of critical activities and establish the Performance Period encompassed by the GMP. The CMAR will maintain the construction schedule throughout the construction.

### 3.3 PUNCH LIST PREPARATION

A minimum of 30 days before Substantial Completion the CMAR, in conjunction with the UCFD, will prepare a comprehensive list of Punch List items, which the UCFD may edit and supplement. The CMAR will proceed promptly to complete and correct the Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents will not commence until the date of Final Acceptance unless otherwise provided in the Contract Documents. Seven (7) days before the UCFD issues its Final Acceptance Letter, the CMAR will deliver to the UCFD all Operation and Maintenance Manuals necessary for the UCFD to assume responsibility for the operation and maintenance of that portion of the Work.

### 3.4 LIQUIDATED DAMAGES

The CMAR understands that if Substantial Completion is not attained within the Contract Time as adjusted, the UCFD will suffer damages, which are difficult to determine and accurately specify. The CMAR agrees that if Substantial Completion is not attained within the Contract Time as adjusted, the CMAR will pay as liquidated damages the amounts specified in Section 108.9 of the M.A.G. Standard Specifications, incorporated in this Contract by reference. These

amounts may be adjusted depending on the anticipated or actual loss caused by the delay and the difficulty of proof of loss.

### **3.5 PROJECT SCHEDULE**

**3.5.1** The Project Schedule will be initially submitted at the start of this Contract as required by Article 1 and updated and maintained throughout the Contract Services. An updated Project Schedule will be part of the GMP amendment.

**3.5.2** The Project Schedule will be revised as required by conditions and progress of the Contract Services, but any revisions will not relieve the CMAR of its obligations to complete the Contract Services within the Contract Time(s), as these dates may be adjusted in accordance with the Contract Documents.

**3.5.3** An Updated Project Schedule will be submitted monthly to the UCFD, 5 days before the CMAR's monthly Payment Request.

1. The CMAR will provide the UCFD with a monthly status report with each Project Schedule detailing the progress of Construction, including whether (i) the construction is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, and (iii) other items that require resolution so as not to jeopardize the ability to complete the construction as presented in the GMP and within the Contract Time(s). The monthly status report and Project schedule shall be provided electronically to the Contract Administrator and Construction Admin Supervisor no later than the 25<sup>th</sup> of each month.
2. With each Project Schedule submitted, the CMAR will include a transmittal letter including the following:
  - Description of problem tasks (referenced to field instructions, Requests for Information (RFIs), Change Order or claim numbers) as appropriate.
  - Current and anticipated delays not resolved by approved change orders, including:
    - Cause of the delay.
    - Corrective action and schedule adjustments to correct the delay.
    - Known or potential impact of the delay on other activities, milestones, and the date of Substantial Completion.
    - Changes in construction sequence.
  - Pending items and status including but not limited to:
    - Pending Change Orders.
    - Time extension requests.
    - Other items.
  - Substantial Completion date status:
    - If ahead of schedule, the number of days ahead.

- If behind schedule, the number of days behind.
- Other project or scheduling concerns.

**3.5.4** The UCFD's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review will not relieve the CMAR from compliance with the requirements of the Contract Documents or be construed as relieving the CMAR of its complete and exclusive control over the means, methods, sequences and techniques for executing the Contract Services.

**3.5.5** The Project Schedule will include a Critical Path Method diagram schedule that will show the sequence of activities, the interdependence of each activity and indicate the path of critical activities.

The Critical Path Method diagram schedule will be in days and indicate duration, earliest and latest start and finish dates, and will be presented in a time scaled graphical format for the Project as a whole.

1. The activities making up the schedule will be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and provide an appropriate basis for monitoring and evaluating the progress of the Work.
2. The Critical Path Method diagram construction schedule will be based upon activities which would coincide with the Schedule of Values.
3. The Critical Path Method diagram schedule will show all submittals associated with each Work activity and the review time for each submittal.
4. The schedule will show milestones, including milestones for UCFD-furnished information, and will include activities for UCFD-furnished equipment and furniture, if any, when those activities are interrelated with the CMAR's activities.
5. The schedule will include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration will reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data will be based on information provided by the National Weather Service or other approved source.

### **3.6 COST ESTIMATES**

Provisions pertaining to cost estimates may be found in the GMP Proposal, attached as Exhibit C.

### **3.7 CONSTRUCTION MANAGEMENT PLAN**

As a part of the Preconstruction Agreement, the UCFD has required the CMAR to prepare a Construction Management Plan.

## ARTICLE 4 – CONTRACT PRICE

**4.0** The CMAR agrees to do all Work for each phase of the construction of the improvements and to completely construct the improvements and install the material, as applicable and called for by this Contract, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the GMP, as may be amended from time to time, as set forth in the GMP Proposal, attached as Exhibit C, and by reference made a part of this Contract.

### 4.1 CONTRACT PRICE

**4.1.1** The Contract Price is a not to exceed price of \$1,821,104.23 as stated in detail in the GMP A2 Proposal, attached as Exhibit C.

**4.1.2** The Contract Price is the sum of the GMP plus the UCFD's Project Contingency defined in Article 12 plus an allowance and is subject to adjustments made in accordance with Article 5.

**4.1.3** The CMAR is responsible for payment of all transaction privilege (sales) taxes due on construction income, whether or not these taxes are specifically separated in the bid amount, including amounts owed to the State of Arizona, County of Maricopa, Town of Carefree, or other municipalities and agencies as applicable.

**4.1.4** Unless otherwise provided in the Contract Documents, the Contract Price is to include all sales, use, consumer and other taxes throughout the term of this Contract, whether or not yet effective or merely scheduled to go into effect.

**4.1.5** Any Contingencies and Allowances as agreed upon between the UCFD and the CMAR will be in the GMP.

**4.2 CMAR CONSTRUCTION FEE FOR CHANGES.** If the GMP requires an adjustment due to changes in the Work, the cost of any changes will be determined under Article 5.

### 4.3 GUARANTEED MAXIMUM PRICE (GMP)

**4.3.1** At the end of the design phase or at a time determined by the UCFD, and as a part of the Work done under the Preconstruction Agreement, the UCFD will request the CMAR to provide a GMP, or series of GMP's if the CMAR determines phased construction would be in the UCFD's best interest. The approved GMP(s) is set forth in Exhibit C, attached to this Contract.

**4.3.2** The CMAR guarantees to bring the completion of the construction of the Project within the GMP or the CMAR alone will be required to pay the difference between the actual cost and the GMP.

1. Buy out savings are any savings of the CMAR's GMP at the conclusion of the selection of Subcontractors. Buy out savings may be

used during construction by the UCFD as a UCFD Project contingency. Unused savings will be returned to the UCFD.

2. Any savings realized during construction may be incorporated into the construction of the Project to fund additional scope items. Unused savings will be returned to the UCFD.

**4.3.3** The GMP is composed of the Total Cost of the Work (Direct Costs) plus the CMAR's Indirect Costs which are not-to-exceed cost reimbursable, actual costs or fixed fee amounts defined as:

1. The Total Cost of the Work (Direct Costs) is a negotiated and not-to-exceed amount defined by the individual work items and their associated negotiated unit prices as part of the hard construction work as defined in Article I as performed by the CMAR through self-performed work, Sub-Contractors' work and any other third party as set forth in Article 1.13 requirements for selection of subcontractors and major suppliers. It includes the costs for all direct labor, materials and equipment incorporated in the completed construction, materials testing prescribed in Article 1.8 and warranty of the work.
2. The CMAR's Indirect Costs include the costs for General Conditions, Payment and Performance Bonds, Insurance, the CMAR Construction Fee and Taxes.
  - a. The General Conditions are costs for the negotiated amount of Project supervision and other indirect costs according to construction terms as defined in Article 12. These costs are not reflected in other GMP items. Costs may include, but are not limited to, the following: Project Manager, Superintendent, Full-time General Foremen and administrative office personnel. Other costs may include: temporary office, fees not specifically listed in Articles 1.2 and 2.4 or as qualified in Exhibit B, fencing and other facilities, office supplies, office equipment, minor expenses, utilities, vehicles, fuel, sanitary facilities, and telephone services at the site.
  - b. Payment Bonds, Performance Bonds and Insurance are actual costs applied to Cost of Work and General Conditions Costs as detailed in the GMP Proposal.
  - c. The CMAR Construction Fee is a negotiated fixed fee that is proposed by the CMAR for management and related services of the CMAR Project. The fee includes the CMAR's profit and home office overhead, whether at the CMAR's principal or branch offices, including the administrative costs, home office costs and any limitations or exclusions that may be included in the General Conditions.
  - d. Taxes include all sales, use, consumer and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

**4.3.4** The GMP is cumulative. The amount of any GMP amendment will be negotiated separately and will reflect the CMAR's risk from that point forward in the Project.

**4.4 GMP PROPOSAL.** The GMP Proposal will be that as provided in the Preconstruction Agreement, and the GMP Proposal is attached as Exhibit C.

**4.5 GMP APPROVAL.** The approval of the GMP will be in accordance with the provisions of the Preconstruction Agreement, attached to this Contract as Exhibit B.

#### **4.6 TAX/LICENSE**

The CMAR must secure and maintain, during the life of the Contract, State of Arizona and Town of Carefree Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, fill out the JT-1 Form that can be obtained at the following web address and then submitted to the Arizona Department of Revenue:

<https://azdor.gov/forms/tpt-forms/joint-tax-application-tpt-license>

or apply online at the following web address:

<https://azdor.gov/transaction-privilege-tax/tpt-license/applying-tpt-license>

The Town of Carefree imposes a 3% Transaction Privilege (Sales) Tax and a 4% Construction Transaction Privilege (Sales) Tax. These taxes are collected by the Arizona Department of Revenue. More information on Carefree's Transaction Privilege Tax can be obtained on the Town's website at the following address: <http://www.carefree.org/197/Privilege-Tax>.

#### **4.7 RESPONSIBILITY FOR PRIVILEGE (SALES) TAXES**

The CMAR is responsible for payment of all applicable State of Arizona, Town of Carefree, or any other transaction privilege (sales) taxes due on construction income whether or not these taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

Privilege (sales) tax exemptions/deductions may be applicable to certain projects. The CMAR is advised to consider this as it prepares its bid. Please reference A.R.S. Title 42 at the following website: <https://www.azleg.gov/arsDetail/?title=42>

For further questions regarding tax treatment, please contact the Arizona Department of Revenue at (602) 255-2060 and the Town of Carefree Accounting Dept. at (480) 488-3686.



## **ARTICLE 5 – CHANGES TO THE CONTRACT PRICE AND TIME**

### **5.0 DELAYS TO THE WORK**

#### **5.1 DELAYS TO THE WORK**

- 5.1.1** Delays may be compensable, concurrent, excusable or non-excusable as defined in Article 12.
- 5.1.2** If the CMAR is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom CMAR is responsible, the Contract Times for performance may be reasonably extended by Change Order.
- 5.1.3** The CMAR must request an increase in the Contract Time by written notice including an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary.
1. Written notice will be received within 14 days of the commencement of the cause of the delay.
  2. If written notice is received more than 14 days after commencement of the cause of the delay, the period of delay will be considered to commence 14 days before the giving of the notice.
- 5.1.4** By way of example and subject to Article 11.7, events that may entitle the CMAR to an extension of the Contract Time include acts or omissions of the UCFD or anyone under the UCFD's control (including separate contractors), Acts of God or public enemy, changes in the Work, Differing Site Conditions, Hazardous Conditions, unusual delay in transportation, and excessive inclement weather conditions not reasonably anticipated, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes not brought about by any act or omission of the CMAR.
- 5.1.5** If excessive inclement weather conditions are the basis for a request for additional Contract Time, these requests will be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
- 5.1.6** It is understood, however, that permitting the CMAR to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the UCFD of any of its legal rights under this Contract.
- 5.1.7** In the event that the CMAR sustains damages as a result of expenses incurred by a delay for which the UCFD is responsible, the CMAR and the UCFD will negotiate to determine the amount of these damages. This provision is made in compliance with Arizona Revised Statutes Section

34-609 (E) and is effective only if the delay caused by the UCFD is unreasonable under the circumstances and was not within the contemplation of the parties. This provision will not be construed to void any provision of this Contract pertaining to notice of delays, arbitration or other settlement provisions applicable to disputes, or provisions relating to liquidated damages.

1. In addition to the CMAR's right to a time extension for those events stated in this Article 5.0, the CMAR may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price will not be adjusted for those events described in this Article that are beyond the control of both the CMAR and the UCFD, including the events of war, acts of terrorism, floods, labor disputes (but not including CMAR's own work force and those of its subcontractors), earthquakes, epidemics, excessive inclement weather conditions not reasonably anticipated, and other acts of God.

## **5.2 DIFFERING SITE CONDITIONS**

- 5.2.1** If the CMAR encounters a Differing Site Condition(s), the CMAR may be entitled to an adjustment in the Contract Price or Contract Time(s) to the extent the CMAR's cost or time of performance are the direct result of a Differing Site Condition(s).
- 5.2.2** Upon encountering a Differing Site Condition, the CMAR will provide prompt written notice to the UCFD of the condition, which notice will not be later than 7 days after the condition has been encountered. The CMAR must give the UCFD's Contract Administrator written notice of and an opportunity to observe, such condition before disturbing or altering the Differing Site conditions. The failure of the CMAR to give written notice and make the Claim as required by this Article and Article 7.1.5 shall constitute a waiver by the CMAR of any rights arising out of or relating to such Differing Site Conditions. The CMAR will, to the extent reasonably possible, provide notice before the Differing Site Condition has been substantially disturbed or altered. (Final costs must be submitted within thirty (30) days after notice is received by the UCFD, unless extended by written agreement of the parties.)
- 5.2.3** In order for the CMAR to obtain any additional compensation or time extensions for Differing Site Conditions, the CMAR must demonstrate that it encountered a material difference at the Site, as defined in Article 12, that required it to expend additional cost or time. The CMAR will also establish that it actually and reasonably relied upon the representations found in the Contract Documents concerning the Site conditions.

## **5.3 APPLICATION FOR EXTENSION OF TIME**

- 5.3.1** If performance by the CMAR is delayed for a reason set forth in Article 5, the CMAR may be allowed a reasonable extension of time in conformance with this Article. Before the CMAR's time extension request may be considered, the CMAR shall notify the UCFD of the condition which allegedly has caused or is

causing the delay, and shall submit a written application to the UCFD identifying:

1. Liquidated damage assessment rate, as specified in the Contract;
2. Original total GMP;
3. The original Contract start date and completion date;
4. Any previous time extensions granted (number and duration);
5. The extension of time requested.

**5.3.2** In addition, the application for extension of time shall set forth in detail;

1. The nature of each alleged cause of delay in completing the Work; and
2. The date upon which each such cause of delay began and ended and the number of dates attributable to each such cause; and
3. A statement that the CMAR waives all claims except for those delineated in the application, and the particulars of any claims which the CMAR does not agree to waive. For time extensions for Substantial Completion and final completion payments, the application shall include a detailed statement of the dollar amounts of each claim item reserved; and
4. A statement indicating the CMAR's understanding that the time extension is granted only for purposes of permitting continuation of Contract performance and payment for Work performed and that the UCFD retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

## **5.4 ERRORS, DISCREPANCIES AND OMISSIONS**

**5.4.1** If the CMAR observes errors, discrepancies or omissions in the Contract Documents, it will promptly notify the UCFD and request clarification. The CMAR will provide a copy of any notice to the UCFD Contract Administrator.

**5.4.2** If the CMAR proceeds with the Work affected by any errors, discrepancies or omissions, without receiving clarifications, it does so at its own risk. Adjustments involving these circumstances made by the CMAR before clarification by the Design Professional are at the CMAR's risk.

**5.5 UCFD REQUESTED CHANGE IN WORK.** The UCFD reserves the right to make, at any time during the progress of the Work, any alterations as may be found necessary or desirable.

**5.5.1** Any alterations and changes will not invalidate this Contract nor release the surety, and the CMAR agrees to perform the Work as altered, the same as if it had been a part of the original Contract Documents. The CMAR will notify the

surety of the changes and will assure that the alterations and changes are adequately covered by the surety bond.

- 5.5.2** Upon receipt of a request for Change in Work, the CMAR will prepare a proposal in significant detail according to Article 5.11. The CMAR's proposal will include a detailed description of any schedule impact.
- 5.5.3** Legal Requirements. The Contract Price or Contract Times will be adjusted to compensate the CMAR for the effects of any changes in the Legal Requirements enacted after the date of the Contract or the date of the GMP, affecting the performance of the Work.

## **5.6 CHANGE ORDERS**

- 5.6.1** The UCFD and the CMAR will negotiate Change Orders in good faith and as expeditiously as possible in order to arrive at appropriate adjustments for a Change Order. Upon reaching an agreement, the parties will prepare and execute an appropriate Change Order reflecting the terms of the adjustment. The change in the Work may or may not include an adjustment in the Contract Price or Contract Time.
- 5.6.2** All changes in the Work authorized by Change Orders will be performed under the conditions of the Contract Documents. The decision to issue Change Orders rests solely with the UCFD and any decision to issue a Change Order must be promptly complied with by the CMAR, subject to the provisions of Article 5.4. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the UCFD's Board of Directors.
- 5.6.3** The execution of a Change Order by the CMAR shall constitute conclusive evidence of the CMAR's agreement to the ordered changes in work, this Contract as thus amended, the Contract Price, and the time for performance by the CMAR. The CMAR, by executing the Change Order, waives and forever releases any claim against the UCFD for any additional time or compensation for matters relating to, arising out of, or resulting from the work included within or affected by the executed Change Order of which the CMAR knew or should have known.
- 5.6.4** The UCFD may direct the CMAR to perform additional work under the contract by issuing a Construction Change Directive when time and/or cost of the work is not in agreement between the UCFD and the CMAR. During the pendency of a resolution of the price and/or time adjustments between the UCFD and the CMAR, the CMAR may not suspend work and will comply with the Construction Change Directive.

## **5.7 UNILATERAL DETERMINATION OF CHANGE ORDER VALUE**

If no mutual agreement occurs between the UCFD and the CMAR, the change in Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions to the Work. Such reasonable actual costs or savings shall include a component for direct job site overhead and profit, but shall not include home-office overhead or other indirect

costs and components. The calculation of actual costs shall conform to Article 5.11.2. Any such costs or savings shall be documented in the format and with such content and detail as the UCFD requires. The CMAR shall promptly submit such documentation and other backup as the UCFD may require in evaluating the actual costs incurred.

## **5.8 ADDITIONAL CHANGE ORDER COST REQUIREMENTS**

The cost of all items listed in the CMAR's proposal shall be directly related to the Change Order. Indirect costs not specifically related to the Change Order shall not be considered. The CMAR's or Subcontractor's submittals shall include the cost of materials, sales tax, cost of all transport, equipment costs and any direct Project expenses. CMAR's or Subcontractor's Direct Labor Costs shall be limited to the hourly rate of directly involved workmen, employer contributions toward CMAR standard benefits, pensions, unemployment or social security (if any), and employer costs for paid sick and annual leave. CMAR's or Subcontractor's Indirect Costs may include license fees, bond premiums, supervision, and vehicle expense directly related to the Change order.

## **5.9 LIMITATION OF COMPENSABLE ITEMS**

**5.9.1** For Change Orders, the total cost or credit to the UCFD shall be based on the following schedule:

1. CMAR's Materials Costs.
2. CMAR's Direct Labor Costs.
3. CMAR's Equipment Costs (includes owned/rented equipment).
4. Applicable Subcontractor Costs.
5. Subtotal of Costs to the CMAR.
6. CMAR's Overhead and Profit.
7. Total Cost or Credit to the UCFD.

## **5.10 FIELD ORDERS**

**5.10.1** The UCFD has authority to initiate Field Orders that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Field Orders will be imposed by written order and will be binding on the UCFD and the CMAR. The CMAR will carry out any written orders promptly.

**5.10.2** Field Orders will not involve an adjustment in the Contract Price or Contract Times unless or until an adjustment becomes a Change Order.

**5.10.3** The CMAR may make minor changes in the Work, but the CMAR will promptly inform the UCFD, in writing, of any changes and record the changes, if appropriate, on the Project Record Documents maintained by the CMAR.

## **5.11 CONTRACT PRICE ADJUSTMENTS**

**5.11.1** The increase or decrease in Contract Price resulting from a Change in the Work will be determined by one of the following methods stated in order of preference:

1. Using direct cost labor and material rates established in the contract documents as a basis of the Contract Price adjustment;
2. Using unit prices found in the Contract or as subsequently agreed between the parties;
3. A mutually agreed upon accepted, allowance, properly itemized and supported by sufficient substantiating data to permit evaluation by the UCFD; and
4. A negotiated CMAR Construction Fee for the Change in Work equal to additional Indirect Costs resulting from the Change in the Work plus any negotiated profit.

**5.11.2** If an increase or decrease cannot be agreed to as provided in Articles 5.7 and 5.8, the cost of the Change of the Work will be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable CMAR Construction Fee, according to the methodology used to establish the contract GMP. The CMAR will maintain a documented, itemized accounting evidencing the expenses and savings associated with the changes.

**5.11.3** If unit prices are included in the Contract Documents or are subsequently agreed to by the parties, but application of the unit prices will cause substantial inequity to the UCFD or the CMAR because of differences in the character or quantity of the unit items as originally contemplated, the unit prices will be equitably adjusted.

**5.11.4** If the UCFD and the CMAR disagree upon the amount to be paid, whether the CMAR is entitled to be paid for any services required by the UCFD or if there other disagreements over the Scope of Work, proposed changes to the Work, or the time required to complete the Work, the UCFD and the CMAR will resolve the dispute in accordance with Article 7.

1. As part of the negotiation process, the CMAR will furnish the UCFD with a good faith estimate of the costs to perform the disputed services or the additional time required in accordance with the UCFD's interpretations.
2. If the parties are unable to agree and the UCFD expects the CMAR to perform the services in accordance with the UCFD's interpretations, the CMAR will proceed to perform the disputed services, conditioned

upon the UCFD issuing a written order to the CMAR (i) directing the CMAR to proceed and (ii) specifying the UCFD's interpretation of the services that are to be performed.

**5.11.5 Emergencies.** In any emergency affecting the safety of persons or property, or both, the CMAR will act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price or Contract Time(s), or both, resulting from emergency work will be determined as provided in this Article 5.

## **ARTICLE 6 – PROCEDURE FOR PAYMENT**

**6.0** For and in consideration of the faithful performance of the Work required to be done by the Contract Documents, and in accordance with the directions of the UCFD and to its satisfaction, the UCFD agrees to pay the CMAR the Cost of the Work performed and any applicable costs for general conditions, insurance, bonding, and taxes, but no more than the GMP as adjusted by any Change Orders and provisions of Article 5. Payment for the specific Work under this Contract will be made in accordance with payment provisions of this Article 6.0.

### **6.1 GMP PAYMENT REQUEST**

**6.1.1** At the Preconstruction conference described in Article 1.3, the CMAR will submit for the UCFD's review and approval a Schedule of Values. The Schedule of Values will (i) be based on the bids accepted from the successful Subcontractors (ii) include values for all items comprising the GMP including any UCFD allowances, and (iii) serve as the basis for monthly progress payments made to the CMAR throughout the Work.

**6.1.2** At least 5 working days before the date established for a Payment Request, the CMAR will meet with the Contract Administrator to review the progress of the Work, as it will be reflected on the CMAR Payment Request. The CMAR Payment Request will constitute the CMAR's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the CMAR Payment Request, and that title to all the Work will pass to the UCFD free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

**6.1.3** The CMAR's Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.

1. For equipment and materials properly stored at the Site, the equipment and materials will be protected by suitable insurance and the UCFD will receive the equipment and materials free and clear of all liens and encumbrances.
2. For materials and equipment stored off the Site, the UCFD must approve the storage. The material and equipment must be stored within Maricopa County and be accessible for the UCFD's inspection. Title to the materials and equipment will protect the UCFD's interest and will include applicable insurance, bonding, storage and transportation to the Site.
3. The UCFD will be named as an Additional Insured on all insurance required for all stored materials or equipment.

**6.1.4** The CMAR will submit a Payment Request in a format acceptable to the UCFD on a date established by the UCFD and the CMAR. The Payment Request will be submitted to the Contract Administrator as identified in Article 7.3. This submittal will include, at a minimum, a narrative



description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and the Subcontractors' actual request for payment plus similar narrative and listing of their work.

- 6.1.5** Payments for these services negotiated as a fixed unit price will be made in accordance with actual measured quantities completed during the preceding month as itemized on the Schedule of Values and stated in Exhibit C.2. Payment for services negotiated as a lump sum will be made in accordance with the percentage of the services completed during the preceding month as itemized on the Schedule of Values in Exhibit C. Those services negotiated, as a not-to-exceed reimbursable sum will be paid in accordance with the actual costs of the service expended during the preceding month. The UCFD will review Payment Requests and make recommendations for approval or denial within 7 days after the UCFD's receipt of each properly submitted and accurate Construction Payment Request, but in each case less the total of payments previously made, and less amounts properly withheld as retention under Article 6.3. Payment Requests will be considered approved and certified for payment after 7 days unless before that time, the Contract Administrator issues a specific finding setting forth in detail those items in the Request for Payment that are not approved for payment.
- 6.1.6** The CMAR agrees at its own cost and expense, to perform all construction, as called for by this Contract free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in this Contract.
- 6.1.7** Each Schedule of Values will be submitted as prescribed in this Contract and others, and subject to adjustment in accordance to this Contract and will serve as the basis for monthly progress payments made to the CMAR throughout the construction. It is understood that the Work under this Project will be accomplished under multiple GMPs.
- 6.1.8** The CMAR will submit to the UCFD on the monthly anniversary of the construction NTP date beginning with the first month after the construction NTP date the "Construction Payment Request".

## **6.2 PAYMENT OF GMP**

- 6.2.1** The UCFD will make payment in accordance with A.R.S. §34-609. Payment will be made no later than 14 days after the CMAR Payment Request is certified and approved by the UCFD's Contract Administrator, less amounts properly retained under Article 6.3. The CMAR will pay all sums due to the subcontractors and suppliers for services and materials within 7 days after the CMAR has received payment from the UCFD.
- 6.2.2** The UCFD will pay the CMAR all amounts properly due. If the UCFD determines that the CMAR is not entitled to all or part of a CMAR Payment Request, it will notify the CMAR in writing within 7 days after the date the CMAR Payment Request is received by the UCFD. The notice will indicate the specific amounts the UCFD intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the CMAR must take to rectify the UCFD's concerns. The

CMAR and the UCFD will attempt to resolve the UCFD's concerns. If the parties cannot resolve these concerns, the CMAR may pursue its rights under the Contract Documents, including those under Article 7.

### **6.3 RETENTION OF GMP**

**6.3.1** The UCFD will retain 10% of each CMAR Payment Request amount, provided, however, that when 50% of the Work has been completed by the CMAR, on CMAR's request one-half of the amount retained, including any substituted securities, will be paid to the CMAR if the CMAR is making satisfactory progress on the Contract, and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is 50% completed, no more than 5% of the amount of any subsequent progress payments may be retained if the CMAR is making satisfactory progress on the Contract. If, however, the UCFD determines that satisfactory progress is not being made on the Contract, the UCFD may reinstate the 10% retention for all remaining progress payments.

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

1. Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the Town of Carefree or neighboring community.
2. CDs and Securities will be assigned exclusively for the benefit of the UCFD in accordance with the UCFD's requirements.

### **6.4 SUBSTANTIAL COMPLETION**

**6.4.1** It is acknowledged and understood that the Carefree Water Consolidation Project will be completed under multiple GMP's, with the work under each GMP identified as a "Project" for purposes of this and subsequent Contracts. Substantial Completion will be for the entire "Project" (as defined in each GMP) unless a partial Substantial Completion is identified in the approved GMP schedule and stated in the Notice to Proceed letter. Substantial Completion will be in accordance with its definition in Article 12, and with the criteria in the Notice to Proceed.

**6.4.2** Before notifying the UCFD as required in Article 6.4.3 below, the CMAR must inspect the Work and prepare and submit to the UCFD a comprehensive list of items to be completed or corrected. The CMAR will proceed promptly to complete and correct items on the list. Failure to include an item on the list does not alter the responsibility of the CMAR to complete all Work in accordance with the Contract Documents.

**6.4.3** The CMAR will notify the UCFD when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete.

- 6.4.4** Within 5 days of the UCFD's receipt of the CMAR's notice, the UCFD and the CMAR will jointly inspect the Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- 6.4.5** If the Work is substantially complete, the UCFD will prepare and issue a Certificate of Substantial Completion that will establish (i) the date of Substantial Completion of the Work or portion of the Work, (ii) the remaining items of Work that have to be completed within 30 calendar days before Final Acceptance, (iii) provisions (to the extent not already provided in the Contract Documents) establishing the UCFD's and the CMAR's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 6.4.6** The UCFD, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items in Article 6.4.5 above, (ii) the CMAR and the UCFD have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) the UCFD and the CMAR agree that the UCFD's use or occupancy will not interfere with the CMAR's completion of the remaining Work.
- 6.4.7 Substantial Completion.** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, the UCFD may release to the CMAR all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, not to exceed two and one half times (2.5) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

## **6.5 FINAL ACCEPTANCE**

Upon receipt of written notice that the Work or identified portions of the Work are ready for final inspection and acceptance, the UCFD and the CMAR will jointly inspect to verify that the remaining items of Work have been completed as described in Article 6.4. Upon verification that the items have been satisfactorily completed, the UCFD will issue a Final Acceptance Letter.

## **6.6 FINAL PAYMENT**

- 6.6.1** After receipt of a final CMAR Payment Request, and provided that the CMAR has completed all of the Work in conformance with the Contract Documents, the UCFD will make final payment 14 days after the UCFD has issued its Final Acceptance Letter.
- 6.6.2** At the time of submission of its final CMAR Payment Request, the CMAR will provide the following information:
1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other

items performed, furnished or incurred for or in connection with the Work which will in any way affect the UCFD's interests;

2. An affidavit regarding settlement of claims executed by the CMAR waiving, upon receipt of final payment by the CMAR, all claims, except those claims previously made in writing to the UCFD and remaining unsettled at the time of final payment; and
3. Consent of the CMAR's surety, if any, to final payment.

## **6.7 EXTENSION OF TIME FOR FINAL PERFORMANCE**

In the event the CMAR is delayed in performing any task, which at the time of the delay is then critical, or which during the delay becomes critical, as the sole and exclusive result of any act or omission by the UCFD, or someone acting on the UCFD's behalf, or by UCFD authorized Change Orders, unusually severe weather not reasonably anticipatable, fire, or other Acts of God, occurring without the fault or negligence of the CMAR, the date for achieving Substantial Completion, or, as applicable, final completion, will be appropriately adjusted by the UCFD upon the written claim of the CMAR to the UCFD filed in full compliance with the Contract Documents. A task is critical within the meaning of this Article if the task is on the critical path of the most recently approved Progress Schedule so that a Delay in performing the task will Delay the ultimate completion of the Project. ANY CLAIM FOR AN EXTENSION OF TIME BY THE CMAR MUST STRICTLY COMPLY WITH THE REQUIREMENTS OF ARTICLE 7 BELOW. IF THE CMAR FAILS TO MAKE SUCH CLAIM AS REQUIRED IN THIS ARTICLE, ANY CLAIM FOR AN EXTENSION WILL BE WAIVED AND SHALL BE DISMISSED.

## **6.8 PAYMENTS TO SUBCONTRACTORS OR SUPPLIER**

**6.8.1** The CMAR will pay its Subcontractors or suppliers within 7 calendar days after receipt of each progress payment from the UCFD, unless otherwise agreed in writing by the CMAR and Subcontractor or supplier. The CMAR will pay for the amount of the Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the UCFD with each progress payment. In addition, any reduction of retention by the UCFD to the CMAR will result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. The CMAR will pay Subcontractors or suppliers the reduced retention within 7 calendar days of the payment of the reduction of the retention to the CMAR. No Contract between the CMAR and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided in this Contract.

**6.8.2** If the CMAR fails to make payments in accordance with these provisions, the UCFD may take any of one or more of the following actions and the CMAR agrees that the UCFD may take these actions:

1. To hold the CMAR in default under this Contract;

2. Withhold future payments including retention until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
3. Reject all future offers to perform work for the UCFD from the CMAR for a period not to exceed one year from Substantial Completion date of this project; or
4. Terminate this Contract.

**6.8.3** If the CMAR's payment to a Subcontractor or supplier is in dispute, the CMAR and Subcontractor or supplier agree to submit the dispute to any one of the following dispute resolution processes within 14 calendar days from the date any party gives notice to the other: (a) binding arbitration; (b) a form of alternative dispute resolution (ADR) agreeable to all parties, or (c) a UCFD facilitated mediation. When a disputed claim is resolved through ADR or otherwise, the CMAR and Subcontractor or supplier agrees to implement the resolution within 7 calendar days after the resolution date.

**6.8.4** Should the UCFD fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Article, this failure or delay will not be considered a waiver, release or modification of the requirements of this Article or of any of the terms or provisions of this Contract.

**6.8.5** The CMAR will include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

## **6.9 RECORD KEEPING AND FINANCE CONTROLS**

**6.9.1** Records of the CMAR's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the UCFD and the CMAR will be kept on a generally recognized accounting basis.

From the effective date of this Contract and until 3 years after the date of final payment by the UCFD to the CMAR, the UCFD, its authorized representative, and the appropriate federal or state agencies, reserve the right to audit the CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders or Contract Modifications. The UCFD or its authorized representative will have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and will be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Article. The UCFD will give the Contractor or Subcontractor reasonable advance notice of intended audits.

The UCFD reserves the right to decrease the Contract Price or payments made on this Contract if, upon audit of the CMAR's records, the audit discloses the CMAR has provided false, misleading, or inaccurate cost and pricing data.

- 6.9.2** The CMAR will include similar provisions in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the UCFD, its authorized representative, and the appropriate Federal and State agencies, have access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- 6.9.3** The UCFD reserves the right to decrease Contract Price or payments, or both, made on this Contract if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants or Subcontractors, or both, do not allow the UCFD to audit their records to verify the accuracy and appropriateness of pricing data.
- 6.9.4** If an audit discloses overcharges, of any nature, by the CMAR to the UCFD in excess of 1% of the total contract billings, the actual cost of the UCFD's audit will be reimbursed to the UCFD by the CMAR. Any adjustments or payments, or both, which must be made as a result of any audit or inspection of the CMAR's invoices and records will be made within a reasonable amount of time (not to exceed 90 days) after presentation of the UCFD's findings to the CMAR.
- 6.9.5** This audit provision includes the right to inspect personnel records as required by Section 11.35.

## **ARTICLE 7 – CLAIMS AND DISPUTES**

### **7.0 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF**

#### **7.1 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF**

- 7.1.1** If either the CMAR or the UCFD believes that it is entitled to relief against the other for any event arising out of or related to the Work, that party will provide written notice to the other party of the basis for its claim for relief. The claims shall set forth in detail all known facts and circumstances supporting the claim; final costs associated with any claim upon which notice has been given must be submitted in writing to the UCFD within thirty (30) days after notice has been received.
- 7.1.2** That notice will, if possible, be made before incurring any cost or expense and in accordance with any specific notice requirements contained in applicable Articles of the Contract.
- 7.1.3** Written notice will be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 7.1.4** Notice must include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of the request. ANY NOTICE OF CLAIM NOT FILED WITH THE UCFD WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEEDING PROVISIONS SHALL BE CONSIDERED TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.
- 7.1.5** In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the UCFD therefore, unless emergency conditions exist, the CMAR shall strictly comply with the requirements of this section and such claim shall be made by the CMAR before proceeding to execute any work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by the CMAR of any claims for compensation.
- 7.1.6** The CMAR must continue its performance under this contract regardless of the existence of any claims by the CMAR.
- 7.1.7** In a claim by the CMAR against the UCFD for compensation in excess of the Contract sum, any liability of the UCFD to the CMAR shall be strictly limited and computed in accordance with the Contract documents and shall in no event include indirect costs (such as home office overheads or consequential damages of the CMAR or any estimated costs or damages.

#### **7.2 DISPUTE AVOIDANCE AND RESOLUTION**

- 7.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or

disagreements do arise, the CMAR and the UCFD each commit to resolving any disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

- 7.2.2** The CMAR and the UCFD will first attempt to resolve disputes or disagreements at the field level through discussions between the CMAR's Representative, the Project Manager and the Construction Admin Supervisor.
- 7.2.3** If a dispute or disagreement cannot be resolved through the CMAR's Representative, and the UCFD's Contract Administrator, the CMAR's Senior Representative and the UCFD's Senior Representative, upon the request of either party, will meet as soon as conveniently possible, but in no case later than 30 days after the request is made, to attempt to resolve the dispute or disagreements.
- 7.2.4** Before any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreements. Should the Parties' Senior Representatives be unable to resolve the dispute or disagreement, the parties shall submit the matter to binding private arbitration. Any settlement agreement signed by the parties pursuant to the arbitration shall be binding.
- 7.2.5** Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, the CMAR will continue to perform the Work and the UCFD will continue to satisfy its payment obligations to the CMAR pending the final resolution of any dispute or disagreement between the CMAR and the UCFD.

### **7.3 REPRESENTATIVES OF THE PARTIES**

#### **7.3.1 Contract Administrators**

The UCFD designates the individual listed below as its Senior Representative ("UCFD's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2:

Greg Crossman, PE  
District Manager  
7181 Ed Everett Way, P.O. Box 702, Carefree, AZ 85377  
(480) 488-9100  
greg@carefreewaterco.com

The UCFD designates the individual listed below as its Contract Administrator:

Greg Crossman, PE  
District Manager  
7181 Ed Everett Way, P.O. Box 702, Carefree, AZ 85377  
(480) 488-9100  
greg@carefreewaterco.com



The UCFD designates the individual listed below as its Construction Admin Supervisor:

Greg Crossman, PE  
District Manager  
7181 Ed Everett Way, P.O. Box 702, Carefree, AZ 85377  
(480) 488-9100  
greg@carefreewaterco.com

### **7.3.2 CMAR's Representatives**

The CMAR designates the individual listed below as its Senior Representative ("CMAR's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2:

Daniel J. Spitz, P.E., President  
Achen-Gardner Construction, LLC  
550 South 79<sup>th</sup> Street  
Chandler, AZ 85266  
(480) 940-1300  
dspitza@achen.com

The CMAR designates the individual listed below as its Project Manager:

Brian Froelich, Project Manager  
Achen-Gardner Construction, LLC  
550 South 79<sup>th</sup> Street  
Chandler, AZ 85266  
(480) 940-1300  
bfroelich@achen.com

## **ARTICLE 8 – SUSPENSION AND TERMINATION**

### **8.0 UCFD’S RIGHT TO STOP WORK**

The UCFD may, at its discretion and without cause, order the CMAR in writing to stop and suspend the Work. Immediately after receiving this notice, the CMAR must discontinue advancing the Work specified in this Contract. The suspension may not exceed 180 consecutive days. If the UCFD suspends the Work for 181 consecutive Days or more, the suspension will be a Contract termination for convenience.

The CMAR may seek an adjustment of the Contract Price or Contract Time, or both, if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by the UCFD.

### **8.1 TERMINATION FOR CONVENIENCE**

**8.1.1** Upon receipt of written notice to the CMAR, the UCFD has the right to terminate this Contract or abandon any portion of the Project for which services have not been performed by the CMAR.

1. The CMAR will estimate the value of the Work it has completed and submit its appraisal to the UCFD for evaluation. The UCFD will have the right to inspect the Work to appraise the Work completed.
2. The CMAR will receive compensation for services performed to the date of termination as provided in Article 6.5 of this Contract and the fee will be paid in accordance with Article 6.5.2 and will be an amount mutually agreed upon by the CMAR and the UCFD. If there is no mutual agreement, the final determination will be made in accordance with Article 7.
3. The CMAR will not be entitled to anticipated profit or anticipated overhead but is entitled to recover apportioned profit and overhead proportional to the amount of the Work completed. In no event will the fee exceed that stated in Article 8.1.4 of this Contract or as may be subsequently amended.
4. The UCFD will make the final payment within 60 days after the CMAR has delivered the last of the partially completed items and the final fee has been agreed upon.
5. If the UCFD terminates this Contract in accordance with the provisions of this Article and proceeds to construct the Project through its employees, agents or third parties, the UCFD’s rights to use the work product will be as provided in Article 8.3.

**8.1.2** Upon any termination during construction services, the CMAR will proceed with the following obligations:

1. Stop Work as specified in the notice.
2. Place no further subcontracts or orders.

3. Terminate all subcontracts to the extent they relate to the Work terminated.
4. Assign to the UCFD all right, title and interest of the CMAR under the subcontracts terminated, in which case the UCFD will have the right to settle or to pay any termination settlement proposal arising out of those terminations.
5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of the CMAR and to which the UCFD has or may acquire an interest.
6. Comply with the requirements of Article 6.6.2 (1), (2) and (3).

**8.1.3** The CMAR will submit complete termination inventory schedules no later than 60 days from the date of the notice of termination.

**8.1.4** The UCFD will pay CMAR the following:

1. The direct value of its completed Work and materials supplied as of the date of termination;
2. The reasonable costs and expenses attributable to any termination; and
3. The CMAR will be entitled to profit and overhead on completed Work only, but will not be entitled to anticipated profit or anticipated overhead. If it appears the CMAR would have sustained a loss on the entire Work had the Project been completed, the CMAR will not be allowed profit and the UCFD will reduce the settlement to reflect the indicated rate of loss.

**8.1.5** The CMAR will maintain all records and documents for 3 years after final settlement. These records will be maintained and subject to auditing as prescribed in Article 6.8.

## **8.2 CANCELLATION FOR CAUSE**

The UCFD may also cancel this Contract or any part of this Contract with 7 days' notice for cause in the event of any default by the CMAR, or if the CMAR fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance despite a reasonable opportunity to cure as judged by the Contract Administrator, and failure to provide the UCFD, upon request, with adequate assurances of future performance will all be causes allowing the UCFD to cancel this Contract for cause. In the event of cancellation for cause, the CMAR will be entitled to amounts due and owing to the CMAR under this Contract for work performed, but will also be liable to the UCFD for any and all damages available under the Contract sustained by reason of the default that gave rise to the cancellation.

### **8.3 UCFD’S RIGHT TO PERFORM AND CANCEL FOR CAUSE**

- 8.3.1** If the CMAR persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subconsultants or Subcontractors, or both, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time, as these times may be adjusted, or (vi) perform material obligations under the Contract Documents, then the UCFD, in addition to any other rights and remedies provided in the Contract Documents or by law, has the rights stated in Articles 8.3.3, 8.3.4 and 8.3.5.
- 8.3.2** In the event the CMAR is in violation of any applicable Federal, State, County or UCFD law, regulation or ordinance, the UCFD may cancel this Contract immediately upon giving notice and a reasonable opportunity to cure to the CMAR. In the event the UCFD cancels this Contract or any part of the services, the UCFD will notify the CMAR in writing, and immediately upon receiving notice, the CMAR will discontinue advancing the Work under this Contract and proceed to close all operations.
- 8.3.3** If the UCFD provides the CMAR with a written order to correct deficiencies, to provide adequate maintenance of traffic, adequate cleanup, adequate dust control, or to repair damage resulting from abnormal weather conditions, and the CMAR fails to comply within the time frame specified, the UCFD may have work accomplished by other sources at the CMAR’s expense.
- 8.3.4** Upon the occurrence of an event as stated in Article 8.3, the UCFD may provide written notice to the CMAR that it intends to cancel the Contract unless the problem cited is cured, or commenced to be cured, within 7 days of the CMAR’s receipt of notice.
- 8.3.5** If the CMAR fails to cure, or undertake reasonable efforts to cure the problem, then the UCFD may give a second written notice to the CMAR of its intent to cancel within an additional 7 day period.
- 8.3.6** If the CMAR, within this second 7 day period, fails to cure, or undertake reasonable efforts to cure the problem, then the UCFD may declare the Contract canceled for cause by providing written notice to the CMAR of this declaration.
- 8.3.7** Upon declaring the Contract canceled in accordance with Article 8.3.6, the UCFD may enter upon the premises and take possession of all materials and equipment, for the purposes of completing the Work.
- 8.3.8** Upon cancellation or abandonment, the CMAR will deliver to the UCFD all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the UCFD. Use of incomplete data will be the UCFD’s sole responsibility.
- 8.3.9** The CMAR will appraise the Work it has completed and submit its appraisal to the UCFD for evaluation.

- 8.3.10** If through any cause, the CMAR fails to fulfill in a timely and proper manner its obligations under this Contract, or if the CMAR violates any of the covenants, agreements, or stipulations of this Contract, the UCFD may withhold any payments to the CMAR for the purpose of setoff until such time as the exact amount of damages due the UCFD from the CMAR is determined by a court of competent jurisdiction.
- 8.3.11** In the event of cancellation for cause, the CMAR will not be entitled to receive any further payments under the Contract Documents until the Work is finally completed in accordance with the Contract Documents. At that time, the CMAR will only be entitled to be paid for Work performed and accepted by the UCFD before its default.
- 8.3.12** If the UCFD's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then the CMAR will be obligated to pay the difference to the UCFD. These costs and expense will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the UCFD in connection with the eProcurement and defense of claims arising from the CMAR's default.
- 8.3.13** If the UCFD improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of Article 8.1.

## ARTICLE 9 – INSURANCE AND BONDS

### 9.0 INSURANCE REQUIREMENTS

#### 9.1 INSURANCE REQUIREMENTS

- 9.1.1** At the same time as execution of this Contract, the CMAR shall furnish the UCFD a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona.
- 9.1.2** The CMAR, Subcontractors and Subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by the CMAR, his agents, representatives, employees, or Subcontractors.
- 9.1.3** The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- 9.1.4** The UCFD in no way warrants that the minimum limits contained in this Contract are sufficient to protect the CMAR from liabilities that might arise out of the performance of the Contract services under this Contract by the CMAR, his agents, representatives, employees, Subcontractors or Subconsultants and the CMAR is free to purchase any additional insurance as may be determined necessary.
- 9.1.5** Claims Made. In the event any insurance policies required by this Contract are written on a “claims made” basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all “claims made” policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract, and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the “claims made” coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.

- 9.2 MINIMUM SCOPE AND LIMITS OF INSURANCE.** The CMAR will provide coverage and with limits of liability not less than those stated below.

#### 9.2.1 Commercial General Liability - Occurrence Form

**Commercial General Liability:** CMAR must maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed

Operations Annual Aggregate, and a \$2,000,000 operations, independent contractors, products completed operations, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

#### **9.2.2 Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles**

**Vehicle Liability:** CMAR must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on CMAR owned, hired, and non-owned vehicles assigned to or used in the performance of the CMAR’s work or services under this Contract. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be “follow form” equal or broader in coverage scope than underlying insurance.

#### **9.2.3 Workers Compensation and Employers Liability Insurance**

**Workers Compensation and Employers Liability Insurance:** CMAR must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CMAR employees engaged in the performance of work or services under this Contract and must also maintain Employers’ Liability insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

#### **9.2.4 Professional Liability**

**Professional Liability:** If the Contract is the subject of any professional services or work performed by the CMAR, or if the CMAR engages in any professional services or work adjunct or residual to performing the work under this Contract, the CMAR must maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed by the CMAR, or anyone employed by the CMAR, or anyone whose acts, mistakes, errors and omissions the CMAR is legally liable, with a liability limit of \$1,000,000 each claim and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage will extend for 3 years past completion and acceptance of the work or services, and the CMAR, or its selected Design Professional will submit Certificates of Insurance as evidence the required coverage is in effect. The Design Professional must annually submit Certificates of Insurance citing that the applicable coverage is in force and contains the required provisions for a 3 year period.

If there is no Professional Liability work or service as a part of this Contract, the UCFD will waive the Professional Liability insurance requirement in writing.

#### **9.3 SELF-INSURED RETENTIONS.** Any self-insured retentions and deductibles must be declared and approved by the UCFD. If not approved, the UCFD may

require that the insurer reduce or eliminate any self-insured retentions with respect to the UCFD, its officers, officials, agents, employees, and volunteers.

**9.4 OTHER INSURANCE REQUIREMENTS.** The policies are to contain, or be endorsed to contain, the following provisions:

**9.4.1 Coverage Terms and Required Endorsements.**

1. The Commercial General Liability, and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The Town of Carefree, Arizona Utilities Community Facilities District (UCFD), the Carefree Water Company (Water Company), and the Town of Carefree (Town), its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CMAR including the UCFD's, Water Company's, and Town's general supervision of the CMAR; Products and Completed operations of the CMAR; and automobiles owned, leased, hired, or borrowed by the CMAR.
2. The UCFD, Water Company, and Town, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CMAR even if those limits of liability are in excess of those required by this Contract.
3. The CMAR's insurance coverage must be primary insurance with respect to the UCFD, Water Company, and Town, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the UCFD, Water Company, and Town, its officers, officials, agents, and employees must be in excess of the coverage provided by the CMAR and must not contribute to it.
4. The CMAR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage provided by the CMAR must not be limited to the liability assumed under the indemnification provisions of this Contract.
6. The policies must contain a waiver of subrogation against the UCFD, Water Company, and Town, its officers, officials, agents, and employees, for losses arising from Work performed by the CMAR for the UCFD.
7. The CMAR, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. The CMAR must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Contract insurance requirements, including naming the UCFD, Water Company, and Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.



**9.4.2 Workers' Compensation and Employers Liability Coverage:** The insurer must agree to waive all rights of subrogation against the UCFD, Water Company, and Town, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by the CMAR for the UCFD, Water Company, or Town.

**9.5 SUBCONSULTANT'S AND SUBCONTRACTOR'S INSURANCE.** Unless the CMAR's Subconsultants and Subcontractors can provide the same level of coverage as detailed in Article 9.2 and name the UCFD, Water Company, and Town and the CMAR as Additional Insureds, the CMAR's certificates must include all Subcontractors and Subconsultants as insureds under its policies or the CMAR must maintain separate certificates and endorsements for each Subcontractor and Sub consultant. All coverages for Subcontractors and Subconsultants must be in the amounts shown in Article 9.2. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the UCFD. The UCFD, Water Company, and Town must also be named as a Loss Payee under the Builders' Risk-Installation coverage, if applicable.

**9.6 NOTICE OF CANCELLATION.** If the CMAR receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be the CMAR's responsibility to provide prompt notice to the Contract Administrator of same to the UCFD, unless such coverage is immediately replaced with similar policies. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits except until after 30 days written notice has first been given, by certified mail, return receipt requested to:

Town of Carefree, Arizona Utilities Community Facilities District  
7181 Ed Everett Way  
P.O. Box 702  
Carefree, Arizona 85377

**9.7 ACCEPTABILITY OF INSURERS.** Without limiting any obligations or liabilities of the CMAR, the CMAR must purchase and maintain, at its own expense, the required minimum insurance with duly licensed or approved non-admitted insurers in the State of Arizona with an A.M. Best rating of not less than B++6 with policies and forms satisfactory to UCFD. Failure to maintain insurance as required may result in termination of this Contract at the UCFD's option.

**9.8 VERIFICATION OF COVERAGE**

**9.8.1** The CMAR must furnish the UCFD Certificates of Insurance (ACORD form or equivalent approved by the UCFD) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

**9.8.2** All certificates and endorsements are to be received and approved by the UCFD before Work commences except for Builders' Risk Insurance, which must be received and approved as provided in Article 9.2.5. Each insurance policy required by this Contract must be in effect at or before

the earlier of commencement of Work under the Contract Documents or the signing of this Contract except for Builders' Risk Insurance which must be in effect before commencement of Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

**9.8.3** All certificates of insurance required by this Contract must be sent directly to the UCFD. **The project number and project description must be included on the Certificates of Insurance.** The UCFD reserves the right to require complete certified copies of all insurance policies required by this Contract, at any time.

**9.9 APPROVAL.** Any modification or variation from the insurance requirements in this Contract must be approved by the Risk Management Division, whose decision is final. This action will not require a formal contract amendment but may be made by administrative action.

**9.10 BONDS AND OTHER PERFORMANCE SECURITY**

**9.10.1** Before execution of this Contract, the CMAR must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the GMP. Bonds must be submitted in accordance with Title 34, Chapter 6 of the Arizona Revised Statutes and will be in substantially the same form as Exhibits C and D attached to this Contract. Ken looking into.

**9.10.2** Each bond must be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority must accompany the bonds. The Certificate must have been issued or updated within 2 years before the execution of this Contract.

**9.10.3** The bonds must be made payable and acceptable to the UCFD.

**9.10.4** The bonds must be written or countersigned by an authorized representative of the surety and the bonds must have attached a certified copy of the Power of Attorney of the signing official.

1. If one Power of Attorney is submitted, it must be for twice the total GMP amount.

2. If two Powers of Attorney are submitted; each must be for the total GMP amount. Personal or individual bonds are not acceptable.

**9.10.5** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, the CMAR must promptly furnish a copy of the bonds or permit a copy to be made.

**9.10.6** All bonds submitted for this Project must be provided by a company which has been rated "A- or better" by the A.M. Best Company.

## ARTICLE 10 – INDEMNIFICATION

**10.0 CMAR’S GENERAL INDEMNIFICATION.** To the fullest extent permitted by law, upon the assertion of a claim, the CMAR, its successors, assigns and guarantors, must defend, indemnify and hold harmless the UCFD, the Water Company, and the Town, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any negligence, recklessness, or intentional wrongful conduct to the extent caused by the CMAR or any of its owners, officers, directors, agents, or employees performing work or services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of the CMAR employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker’s Compensation Law or arising out of the failure of the CMAR to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the UCFD, Water Company, and Town shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the UCFD, Water Company, or Town, be indemnified by the CMAR from and against any and all claims. It is agreed that the CMAR will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the CMAR agrees to waive all rights of subrogation against the UCFD, Water Company, or Town its officers, agents, representatives, directors, officials, and employees for losses arising from the work performed by the CMAR for the UCFD, Water Company, or Town.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

### 10.1 INTELLECTUAL PROPERTY

**10.1.1** The CMAR must pay all royalties and license fees associated with its performance of services.

**10.1.2** The CMAR must defend any action or proceeding brought against the UCFD, Water Company, or Town based on any claim that the Work, or any part of it, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, now or subsequently issued. The UCFD, Water Company, or Town will give prompt written notice to the CMAR of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. The CMAR will indemnify and hold harmless the UCFD from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys’ fees and expenses awarded against the UCFD, Water Company, or Town or the CMAR in any action or

proceeding. The CMAR agrees to keep the UCFD, Water Company, and Town informed of all developments in the defense of these actions. The UCFD, Water Company, or Town may be represented by and actively participate through its own counsel in any suit or proceedings if it so desires.

- 10.1.3** If the UCFD, Water Company, or Town are enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, the CMAR must at its sole expense take reasonable steps to procure the right to operate or use the Work. If the CMAR cannot procure the right within a reasonable time, the CMAR must promptly, at the CMAR's option and at the CMAR's expense, (i) modify the Work so as to avoid infringement of any patent or copyright or (ii) replace the Work with Work that does not infringe or violate any patent or copyright.
- 10.1.4** Articles 10.1.2 and 10.1.3 above will not be applicable to the extent any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by the UCFD, Water Company, or Town and not offered or recommended by the CMAR to the UCFD, Water Company, or Town or (ii) arising from modifications to the Work by the UCFD, Water Company, or Town or its agents after acceptance of the Work, or (iii) relating to the copyrights of any specification, drawings, or any Design Documents provided by the UCFD, Water Company, or Town, the Design Professional, any consultant retained by the UCFD, Water Company, or Town, or by a Subcontractor or Supplier.
- 10.1.5** The obligations contained in this Article 10.1 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

## **ARTICLE 11 – GENERAL PROVISIONS**

**11.0** The CMAR is advised to contact the UCFD and the Town of Carefree to determine the requirements for obtaining a permit for marshaling areas it proposes to use. Marshaling areas must be fenced. The CMAR must obtain written approval from the property owner for marshaling area use. This approval must contain any requirements which are a condition of this approval. Marshaling yard requirements according to M.A.G. Subsection 107.6.1 and UCFD and Town of Carefree requirements will apply.

### **11.1 CONTRACT DOCUMENTS**

**11.1.1** Contract Documents are as defined in Article 12.

**11.1.2** The Contract Documents form the entire Contract between the UCFD and the CMAR. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents.

**11.1.3** In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence in the order in which they are listed in the definition of Contract Documents in Article 12. As to drawings and plans, given dimensions will take precedence over scaled measurements, and large scale plans over small-scale plans. Contract specifications will take precedence over Contract plans.

**11.1.4** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

**11.1.5** This Contract, the Plans, Standard Specifications and Details, Special Provisions, Performance Bond, Payment Bond, Certificates of Insurance, and Change Orders (if any) are by reference made a part of this Contract.

**11.1.6** Work Product

1. All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared or procured in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the UCFD and are to be delivered to the UCFD before the final payment is made to the CMAR. In the event these documents are altered, modified or adapted without the written consent of the CMAR or the Subconsultants, which consent the CMAR or the Subconsultants will not unreasonably withhold, the UCFD agrees to hold the CMAR and the Subconsultants harmless to the extent permitted by law from the legal liability arising

out of the UCFD's alteration, modification or adoption of the documents.

2. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed, created by the CMAR, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CMAR.

- 11.2 AMENDMENTS.** The Contract Documents may not be changed, altered, modified, or amended in any way except in writing signed by a duly authorized representative of each party.
- 11.3 TIME IS OF THE ESSENCE.** The UCFD and the CMAR mutually agree that time is of the essence with respect to the dates and times contained in the Contract Documents.
- 11.4 MUTUAL OBLIGATIONS.** The UCFD and the CMAR commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.
- 11.5 COOPERATION AND FURTHER DOCUMENTATION.** The CMAR agrees to provide the documents, as the UCFD will reasonably request to implement the intent of the Contract Documents.
- 11.6 ASSIGNMENT.** Neither the CMAR nor the UCFD will, without the written consent of the other assign, transfer or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents.
- 11.7 FORCE MAJEURE.** Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts will include, but not be limited to, riots, acts of war, acts of terrorism, epidemics, labor disputes not arising out of the actions of the CMAR, governmental regulations imposed after the fact, fire, communication line failures, or power failures.
- 11.8 FUNDS APPROPRIATION.** If the UCFD Council does not appropriate funds to continue this Contract and pay for required charges, the UCFD may terminate this Contract at the end of the current fiscal period. The UCFD agrees to give written notice to the CMAR at least 30 days before the end of its current fiscal period and will pay the CMAR for all approved charges incurred through the end of this period.
- 11.9 CONSTRUCTION METHODS.** If the UCFD provides the CMAR with a written order to provide adequate maintenance of traffic, clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the CMAR fails to comply in the time frame specified, the UCFD may have work accomplished by other sources at the CMAR's expense.
- 11.10 UTILITY RELOCATIONS FOR CONSTRUCTION METHODS.** If any utility is relocated or rebuilt to accommodate the CMAR's construction methods and available equipment, the expense will be borne by the CMAR.

- 11.11 DAMAGED UTILITIES DURING CONSTRUCTION.** Any utilities damaged during construction will be replaced at the CMAR's expense as required by the M.A.G. Standard Specifications.
- 11.12 THIRD PARTY BENEFICIARY.** The Contract Documents will not be construed to give any rights or benefits to anyone other than the UCFD and the CMAR, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the UCFD and the CMAR and not for the benefit of any other party.
- 11.13 GOVERNING LAW.** The Contract and all Contract Documents are considered to be made under and will be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy under this Contract will be brought in the Superior Court, Maricopa County, Arizona. Such action must be filed, tried and remain in this Court for any and all proceedings. For this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of this Court, and the CMAR hereby waives the right to have such action removed to Federal District Court.
- 11.14 SEVERABILITY.** If any provision of the Contract Documents or the application of them to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and their application will not be affected and are enforceable to the fullest extent permitted by law. In accordance with the provisions of ARS § 41-194.01, should the Attorney General give notice to the UCFD that any provisions of the Contract violates state law or the Arizona Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Contract and the UCFD and the CMAR shall, within 10 days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s). If the parties are unable to negotiate a resolution to any issues related to the severed provision(s), the UCFD may terminate this Contract in accordance with the provisions of Article 8 hereof.
- 11.15 LEGAL REQUIREMENTS.** The CMAR will perform all Work in accordance with all Legal Requirements and will provide all notices applicable to the Work as required by the Legal Requirements.
- 11.16 INDEPENDENT CONTRACTOR.** The CMAR is and will be an independent contractor and not an employee or agent of the UCFD.
- 11.17 UCFD'S RIGHT OF CANCELLATION.** All parties to this Contract acknowledge that it is subject to cancellation by the UCFD as provided by Section 38-511, Arizona Revised Statutes.
- 11.18 SURVIVAL.** All warranties, representations and indemnifications by the CMAR will survive the completion or termination of this Contract.
- 11.19 COVENANTS AGAINST CONTINGENT FEES.** The CMAR warrants that no person other than a bona fide employee working solely for the CMAR has been employed or retained to solicit or secure this Contract or any Contract or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this covenant, the UCFD will have the right to annul this

Contract without liability or at its discretion to deduct from the Contract Price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, together with costs and attorney's fees.

- 11.20 SUCCESSORSHIP.** The CMAR and the UCFD agree that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs and assigns. This Contract extends to and is binding upon the CMAR, its successors and assigns, including any individual, company, partnership or other entity with or into which the CMAR merges, consolidates or is liquidated, or any person, corporation, partnership or other entity to which the CMAR sells its assets.
- 11.21 ATTORNEY'S FEES.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and is enforceable whether or not the action is prosecuted to judgment.
- 11.22 HEADINGS.** The headings used in this Contract, or any other Contract Documents, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.
- 11.23 NO WAIVER.** The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of the provisions of this Contract will not be construed to be a waiver of those provisions, nor will it affect the validity of the Contract Documents, or the right of either party to enforce each and every provision.
- 11.24 NOTICE.** All notices or demands required to be given, in accordance with the terms of this Contract, will be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses stated below, or to any other address the parties may substitute by written notice given in the manner prescribed in this paragraph. Notice given by facsimile or electronic mail (email) will not be considered adequate notice.

<b>To UCFD:</b>	Greg Crossman, PE UCFD Manager 7181 Ed Everett Way P.O. Box 702 Carefree, AZ 85377 (480) 488-9100 <a href="mailto:greg@carefreewaterco.com">greg@carefreewaterco.com</a>
<b>To CMAR:</b>	Brian Froelich, Project Manager Achen-Gardner Construction, LLC 550 South 79 <sup>th</sup> Street Chandler, AZ 85266 (480) 940-1300 <a href="mailto:bfroelich@achen.com">bfroelich@achen.com</a>

- 11.25 EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract the CMAR will comply with all provisions of Executive Order 11246 of



September 24, 1965, and the rules, regulations and relevant orders of the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sexual orientation, gender identity, or national origin. The CMAR must include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight. The CMAR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CMAR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

**11.26 NO PREFERENTIAL TREATMENT OR DISCRIMINATION:** In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the UCFD will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin. **Additional UCFD Rights Regarding Security Inquiries.** In addition to the foregoing, the UCFD reserves the right to: (1) have an employee/prospective employee of the CMAR be required to provide fingerprints and execute other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. §41-1750(G)(4); (2) act on newly acquired information whether or not the information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of the CMAR's employees or prospective employees, or both; and, (4) object, at any time and for any reason, to an employee of the CMAR performing Work (including supervision and oversight) under this Contract.

**11.26.1** Terms of this Provision Applicable to all of CMAR's Contracts and Subcontracts. The CMAR will include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

**11.26.2 Materiality of Security Inquiry Provisions.** The Security Inquiry provisions of this Contract are material to the UCFD's entry into this Contract and any breach by the CMAR may, at the UCFD's sole option and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Contract. Termination will subject the CMAR to liability for its breach of contract.

**11.27 HAZARDOUS MATERIALS.** Upon discovery of hazardous materials, the CMAR will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

**11.27.1** Unless included in the Work, if the CMAR encounters onsite or as material to be incorporated in the Work, any material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, he will immediately stop work and report the condition to the UCFD.

- 11.27.2** If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, the CMAR will not resume work in the affected area until the material has been abated or rendered harmless. The CMAR and the UCFD may agree, in writing, to continue Work in non-affected areas onsite.
- 11.27.3** An extension of Contract Time may be granted in accordance with Article 6.
- 11.27.4** The CMAR will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- 11.27.5** Despite the provisions of this Article 11.27, the UCFD is not responsible for Hazardous Conditions introduced to the Site by the CMAR, Subcontractors or anyone for whose acts they may be liable. The CMAR will indemnify, defend and hold harmless the UCFD, Water Company, and Town and their officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by the CMAR, Subcontractors or anyone for whose acts they may be liable.

## **11.28 TRAFFIC CONTROL**

- 11.28.1** The Town Engineer or designee must approve the timing and sequence of complete street closures at least 2 weeks before the closure. This approval is necessary to provide coordination with other roadway projects and special events.
- 11.28.2** Adequate barricades and lighted warning signs must be installed and maintained by the CMAR throughout the duration of the Project. All traffic control must be in accordance with the City of Phoenix Traffic Control Manual or the approved barricade plan unless otherwise specified in the Special Provisions.
- 11.28.3** The CMAR must submit a construction schedule and a barricade plan to the Construction Admin Supervisor for approval or modification at least 72 hours before construction is initiated. After review, the Construction Admin Supervisor will forward the construction schedule and barricade plan to the Town Engineer. The Construction Admin Supervisor will return the approved barricade plan to the Contractor or ask for additional information.
- 11.28.4** The CMAR will comply with all provisions of the City of Phoenix Traffic Barricade Manual and any other traffic control provisions as may be provided in the technical specifications or in the approved barricade plan.

**11.29 MATERIAL SOURCE.** No material source has been designated by the UCFD for use on this Project. MAG Specification, Section 106 will apply as will 2008 ADOT Standard Specifications, Section 106.1, 106.2, 106.7 & 106.8, which outline controls and Section 1001-1, -2, & -4, concerning approval of Contractor

furnished material source and supplemental Contracts in regards to environmental analysis and the liability for materials testing costs.

- 11.29.1** A CMAR and Subcontractor furnished source will be defined as a material source, which is neither an ADOT furnished source nor a commercial source, as defined in this Contract.
- 11.29.2** A commercial source will be defined as a material source in which the owner or producer has been for at least one year regularly engaged during regular business hours on a continuous basis in the processing and selling of sand, rock, ready mixed Portland cement concrete, asphaltic concrete and other similar products normally produced and sold to all parties. The company will have an Arizona retail sales tax license.
- 11.29.3** The CMAR and Subcontractor furnished material sources situated in the 100-year flood plain of any stream or watercourse, and located within 1.0 mile upstream and 2.0 miles downstream of any highway structure or surfaced roadway crossing will not be allowed.
- 11.29.4** The location of any new material source or existing non-commercial material source proposed for use on this Project will be reviewed by the appropriate agency having flood plain management jurisdiction over the area of proposed source location. The CMAR and Subcontractor will obtain a letter from the agency addressed to the Contract Administrator certifying that the proposed source location conforms to the requirements of this Contract and applicable Standard Specifications as referenced.
- 11.30** The CMAR will familiarize itself with the nature and extent of the Contract documents, work to be performed, all local conditions, and Federal, State and Local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the work.
- 11.31** The CMAR will take whatever steps, procedures or means necessary to remove, move, displace and save all native plants within the contract work area in accordance with the Town of Carefree Zoning Ordinance, Section 9.13, Landscaping, and all applicable state and county statutes, ordinances, codes and other policy requirements and recognized methods, procedures, techniques and equipment for protection, salvage, and handling of all plants to be moved from the construction area. This is not a pay item unless specified upon the Schedule of Bid Items.
- 11.32 ENDANGERED HARDWOODS.** Any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions will not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration.
- 11.33 HOURS OF WORK**
  - 11.33.1** All construction activity and associated work will be restricted to the following hours:

Monday thru Saturday	6:00 a.m. to 7:00 p.m.
Sunday and Holidays	10:00 a.m. to 7:00 p.m.

Construction activity will include any work requiring the use of manually operated or power assisted tools or equipment and vehicles used to excavate, erect or deliver materials associated with construction.

**11.33.2** The UCFD may establish other times of work as necessary based on the geographical location of the jobsite in relation to surrounding occupancies, buildings and structures.

**11.33.3** The CMAR must submit a written request to the UCFD for a variance from the required work hours at least 7 days before the date for which the variance is desired. Variances will not be granted for more than 30 days at a time. A new application must be made for each additional variance. The CMAR must notify adjacent property owners of the intended work and the duration of the requested variance. Proof of notification must be presented to the UCFD before the variance can be granted.

1. The application for the variance must demonstrate justifiable cause why the work must be done outside the prescribed time period (e.g. pouring concrete during “summer hours”). A variance will not be granted based solely on convenience or for work that can be completed during daytime construction hours.
2. The application for a variance must state the construction permit number, the address of the work, type of work, time period of the work, and the duration of the variance.

**11.34 COMPLIANCE WITH FEDERAL AND STATE LAWS.** The CMAR understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The CMAR agrees that the performance of this Work will be in accordance with these laws and to permit the UCFD to verify compliance. The CMAR will also comply with A.R.S. §34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. §34-302, as amended, “Residence Requirements for Employees”. The CMAR will include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

**Under the provisions of A.R.S. §41-4401, the CMAR warrants to the UCFD that the CMAR and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the CMAR and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).**

A breach of this warranty by the CMAR or any of its subcontractors will be considered a material breach of this Contract and may subject the CMAR or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The UCFD retains the legal right to inspect the papers of any employee of the CMAR or any subcontractor who works on this Contract to ensure that the CMAR or any subcontractor is complying with the warranty given above.

The UCFD may conduct random verification of the employment records of the CMAR and any of its subcontractors to ensure compliance with this warranty. The CMAR agrees to indemnify, defend and hold the UCFD harmless for, from and against all losses and liabilities arising from any and all violations of these statutes related to the performance of this Work.

The UCFD will not consider the CMAR or any of its subcontractors in material breach of this Contract if the CMAR and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The “E-Verify Program” means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the CMAR enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The CMAR will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The CMAR’s failure to assure compliance by all its’ subcontractors with the E-Verify Program may be considered a material breach of this Contract by the UCFD.

#### **11.34.1 Compliance with Americans with Disabilities Act**

The CMAR acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The CMAR will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation; provided, however, that the CMAR shall not be responsible for violations that occur based on compliance with the drawings, specifications, or other Design Documents provided by UCFD, the UCFD’s consultants, or the Design Professional. The CMAR agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of the CMAR, its employees, agents or assigns will constitute a material breach of this Contract.

### **11.35 DATA CONFIDENTIALITY**

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

- 11.35.2** The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the CMAR's performance of this Contract is confidential and proprietary information belonging to the UCFD.
- 11.35.3** Except for Subcontractors, Material and Equipment Suppliers, Consultants or other like parties necessary to complete the Work or as required by the UCFD, the CMAR will not divulge data to any third party without first obtaining the written consent of the UCFD. The CMAR will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided the CMAR has first given the required notice to the UCFD:
1. Data, which is or becomes publicly available other than as a result of a violation of this Contract;
  2. Data, which was in the CMAR's possession legally and without restrictions before its performance under this Contract. unless the data was acquired in connection with the Work performed for the UCFD;
  3. Data, which was acquired by the CMAR in its performance under this Contract and which was disclosed to the CMAR by a third party, who to the best of the CMAR's knowledge and belief, had the legal right to make any disclosure and the CMAR is not otherwise required to hold the data in confidence; or
  4. Data, which is required to be disclosed by virtue of law, regulation, or court order to which the CMAR is subject.
- 11.35.4** In the event the CMAR is required or requested to disclose data to a third party, or any other information to which the CMAR became privy as a result of any other contract with the UCFD, the CMAR will first notify the UCFD as required in this Article of the request or demand for the data. The CMAR will give the UCFD sufficient facts so that the UCFD can be given an opportunity to first give its consent or take the action that the UCFD may consider appropriate to protect the data or other information from disclosure.
- 11.35.5** The CMAR, unless prohibited by law, shall promptly deliver, as stated in this Article, a copy of all data in its possession and control to the UCFD. All data will continue to be subject to the confidentiality requirements of this Contract.
- 11.35.6** The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the UCFD if any of the provisions of this Article are violated by the CMAR, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will cause irreparable harm that justifies injunctive relief in court.

### **11.36 TAXES AND INDEMNIFICATION**

The fee listed in this Contract includes any and all taxes applicable to the activities authorized by this Contract. The UCFD will have no obligation to pay additional amounts for taxes of any type. CMAR and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the CMAR. CMAR shall, and require all subcontractors to hold the UCFD harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

### **11.37 CONFLICT OF INTEREST**

**11.37.1** To evaluate and avoid potential conflicts of interest, the CMAR will provide written notice to the UCFD, as stated in this Article, of any work or services performed by the CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the UCFD. The notice will be given 7 business days before commencement of the Project by the CMAR for a third party, or 7 business days before an adverse action as defined below. Written notice and disclosure will be sent to the UCFD's Senior Representative identified in Article 7.3.

**11.37.2** Actions that are considered to be adverse to the UCFD under this Contract include but are not limited to:

1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the UCFD;
2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the UCFD; and
3. Using data to produce income for the CMAR or its employees independently of performing the services under this Contract, without first obtaining the written consent of the UCFD.

**11.37.3** The CMAR represents that except for those persons, entities and projects identified to the UCFD, the services to be performed by the CMAR under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the UCFD.

**11.37.4** The CMAR's failure to provide a written notice and disclosure of the information as required in this Article on Conflicts of Interest will constitute a material breach of this Contract.

### **11.38 COMMENCEMENT OF STATUTORY LIMITATION PERIOD AND STATUTE OF REPOSE**

**11.38.1 Before Final Completion.** As to acts or failures to act occurring before the relevant date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will have accrued in any and all events not later than the date of Final Completion.

**11.38.2 Between Punch List Preparation and Final Completion.** As to acts or failures to act occurring between the relevant date of Punch List Preparation and before Final Completion, any applicable statute of limitation will begin to run and any alleged cause of action will have accrued in any events not later than the date of Final Completion.

**11.38.3 After Completion.** As to acts or failures to act occurring after the date of Final Completion, any applicable statute of limitations will commence to run and any alleged cause of action will have accrued in any and all events not later than the date of any correction of the Work or failure to correct the Work by the CMAR, or the date of actual commission of any other act or failure to perform any duty or obligation by the CMAR or the UCFD, whichever occurs last.

**11.38.4 Statute of Repose.** The time period for the applicable Statute of Repose will begin to run at the time specified in A.R.S §12-552 as it is amended or renumbered from time to time.

### **11.39 NO BOYCOTT OF ISRAEL**

Unless preempted by applicable law, by entering into a contract with the UCFD, the CMAR certifies that it is not currently engaged in and agrees for the duration of the Contract to not engage in a boycott of Israel as defined in A.R.S. § 35-393.

### **11.40 EXISTING WORK OCCURRING NEAR TRAFFIC SIGNAL EQUIPMENT**

The CMAR will use due care when excavating at or near intersections where traffic signal underground conduit is located. The CMAR will notify the authorized Inspector, 48 hours in advance, of any work at the intersections. The CMAR will be responsible for the installation and maintenance of temporary overhead traffic signal cable as specified by the Public Works Department when underground conduit is to be severed by excavations at the intersection. The Town Engineer will have all underground traffic conduit located and will provide the necessary Traffic Signal Technicians to assist the CMAR in identifying wiring phases and direction of conduit runs upon 24 hours notice from the CMAR and at least 1 day before the CMAR's scheduled wiring and installation of temporary cables. The CMAR will be responsible for the wiring and connection of all temporary cable within the pull boxes and terminal compartments. The Town Engineer will provide a Traffic Signal Technician to assist the CMAR with connecting field wiring within the traffic signal control cabinet. The CMAR will provide, at CMAR's expense, 2 off-duty uniformed Police Officers to direct traffic while the traffic signal is turned off and the wiring is transferred. The CMAR will be responsible as specified by the Public Works Department for the repair and restoration of all traffic signal overhead and underground items that have been



damaged or modified. Intersections with communications or CCTV cameras will be restored to full functionality within 24 hours, if they are disturbed during construction. The authorized Inspector will contact the Public Works Department, 24 hours in advance, to coordinate the outage. The Town of Carefree does not allow the splicing of Magnetic Detector Loops.

#### **11.41 TEMPORARY TRAFFIC SIGNALS**

The CMAR will provide and install temporary traffic signals if at any time during construction the alignment of the traffic lanes is such that two traffic signal indications for any movement are not within a 20 degree cone of vision from the driver's eye located ten feet behind the stop bar position as specified in Section 4D.15 of the MUTCD. The CMAR will submit a temporary traffic signal plan to the Construction Admin Supervisor for approval at least 14 days in advance of installation of the temporary traffic signal equipment. For short durations, the CMAR may obtain approval from the Construction Admin Supervisor to utilize a uniformed Police Officer to direct traffic through the intersection when the above criteria are not met. The CMAR shall be responsible for notifying the Town of Carefree of all changes that will have an effect on the normal flow of traffic operation. (See TMC note above)

#### **11.42 TEMPORARY VEHICLE DETECTION**

For all construction projects in the Town of Carefree within duration of 15 days or more, temporary vehicle detection will be required for all approaches at signalized intersections that currently have loop detection which will be disturbed by the construction. In addition, traffic signal communications (telephone or other) to the central signal computer and CCTV (if present) will be maintained continuously during the course of the project. Work under this item will consist of furnishing all labor, equipment and materials necessary to install temporary traffic signal detection, and maintain signal communications. The CMAR or sub-contractor through the life of the project will maintain the detection zones and communications by ensuring full functionality 24 hours a day, 7 days a week. The CMAR will be responsible for the ongoing operation of the detection equipment, which may require redeployment of detection zones as traffic barricading and lane use changes require.

The work will be performed as specified in Sections 11.38 – 11.40, herein and as directed by the Construction Admin Supervisor and Public Works Department.

## ARTICLE 12 – DEFINITIONS

“Addenda” – Written or graphic instruments issued before the submittal of the GMP Proposal(s), which clarify, correct, or change the GMP Proposal(s) requirements.

“Allowance Items” - The work items that have been designated "Allowance" are a best estimate of the cost of work for which a scope has yet to be confirmed, determined, or a unit price finalized. The allowance quantity and unit price values are not guaranteed, and are subject to adjustment by mutual agreement between the UCFD and the CMAR as the scope and/or price is confirmed. Associated increases/decreases in cost will be funded/credited with a Change Order to the project. All Allowance items, when involved, are to include Contractor Fee for Overhead and Profit, Insurance, Bonds, and Sales Tax. Parties realize invoices from material suppliers and subcontractors may take in excess of 30 days to receive.

“Alternate Systems Evaluations” - Alternatives for design, means, and methods or other scope of work considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets UCFD requirements.

“As-built Document” – “As-built in construction is equivalent to “as-is.” Drawings deemed “as-built” are final drawings that include all changes made during the actual construction process. These drawings represent the actual existing constructed conditions as opposed to designs or a proposed condition. The As-built Documents should be per Arizona Revised Statute 32-152.

“Blueline or Blackline Prints” – Prints that allows comparison of document versions to show what has been revised.

“Change Order” – means a written order to the CMAR executed by the UCFD after execution of this Contract, directing a change in the Work. A Change Order may include a change in the Contract Price (other than a change attributable to damages to the CMAR for delay as provided in Article 5 hereof) or the time for the CMAR’s performance, or any combination thereof. Where there is a lack of total agreement on the terms of a Change Order or insufficient time to execute a bilateral change, the UCFD may also direct a change in the Work in the form of a Construction Change Directive, which will set forth the change in the Work and the change, if any, in the contract amount or time for performance, for subsequent inclusion in a Change Order; Construction Change Directives shall include a not-to-exceed preliminary price, against which the CMAR may begin billing (subject to the requirements for pay applications provided elsewhere herein) as the work is performed.

“CMAR Construction Fee” is a negotiated fixed fee that is proposed by the CMAR for the project as defined in Article 4.3.

“Claim” means a written request for either payment of additional monies or extension of contract time, submitted in accordance with the terms of this Contract or applicable law.

“Clarifications and Assumptions List” means a list prepared by the CMAR and accepted by the Contract Administrator. Generally, the List identifies the CMAR’s means and methods used in developing the GMP and identifies unresolved construction or site issues that may

impact construction progress. The List of Clarifications and Assumptions may need additional confirmation or study by the project design team to avoid cost impact to the GMP.

“Construction Change Directive” means an alternate mechanism for directing the CMAR to perform additional work under the Contract when time and/or cost of the work is not in agreement between the UCFD and the CMAR.

“Construction Admin Supervisor” means a UCFD employee who coordinates the daily construction activities with the contractor, and with their inspection staff that performs quality control inspections, enforces project plans and specifications and adopted UCFD codes and ordinances.

“Construction Documents” means the plans; specifications and drawings prepared by the Design Professional after correcting for permit review requirements and incorporating addenda and approved change orders.

“Contingency, UCFD’s” - means a construction fund to cover cost growth during the Project used at the discretion of the UCFD usually for costs that result from the UCFD’s direct changes or unforeseen site conditions. The amount of the UCFD’s Project Contingency may be set solely by the UCFD and will be in addition to the project costs included in the CMAR’s GMP package. The UCFD’s Project Contingency is an amount to cover changes initiated by the UCFD, which may be incorporated into the GMP as an allowance at the UCFD’s discretion.

“Contingency, CMAR’s (or Contractor’s)” – means a construction fund to cover increases in the Cost of Work of the Project due to unforeseen circumstances. The CMAR’s Contingency shall be negotiated between the Parties and shall be reflective of the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted. Funding of the CMAR’s Contingency shall be at the sole discretion of the UCFD. Use by the Contractor of the CMAR’s Contingency shall be subject to the review and approval of the UCFD’s Contract Administrator, which shall not be unreasonably withheld.

“Contract Administrator” means the person designated in Article 7.3.

“CMAR’s Representative” means the person designated in Article 7.3.2.

“CMAR’s Senior Representative” means the person designated in Article 7.3.2.

“Contract Documents” means the following items and documents in descending order of precedence executed by the UCFD and the CMAR: (i) all written modifications, addenda and Change Orders; (ii) this Contract, including all exhibits and attachments; (iii) written Supplementary Conditions; (iv) Construction Documents; (v) GMP Plans and Specifications; and (vi) the Preconstruction Agreement.

“Contract Time(s)” means the Day(s) set forth in Article 3 subject to adjustment in accordance with this Contract.

“Cost of the Work” means the direct costs necessarily incurred by the CMAR in the proper performance of the Work as defined in Article 4.3.

“Day(s)” mean calendar days unless otherwise specifically noted in the Contract Documents.

“Delay” means an unanticipated event or interference with the progress of a critical path work activity being performed at the time that causes the completion date of the Project to be extended. Delays may be caused by the UCFD, the CMAR, third parties or Force Majeure events. Delays may be excusable, compensable, non-compensable or concurrent.

“Delay, Compensable” means delay that results from the UCFD’s actions or inactions that entitle the CMAR to both a time extension and delay damages.

“Delay, Concurrent” means two or more delays, within the same timeframe, both of which would independently impact the Project’s critical path. If one delay is caused by the UCFD and the other by the CMAR, the CMAR will generally be entitled to an excusable, non-compensable time extension, to the degree the delays may “overlap.”

“Delay, Excusable” means an unforeseeable delay caused by an event beyond the control and without the fault or negligence of the CMAR (including its suppliers and subcontractors). Excusable delays may be compensable or non-compensable, depending upon whether the terms of the Contract or the law allows recovery of delay costs. Unless otherwise shown, it will generally be presumed that these delays are non-compensable.

“Delay, Non-Excusable” means a delay within the control of the CMAR, its suppliers and subcontractors, or a delay resulting from a risk taken by the CMAR under the terms of the Contract. The CMAR will not be due any time extension or delay damages, and may be responsible for paying to the UCFD, actual or liquidated damages for the delay.

“Deliverables” means the work products prepared by the CMAR in performing the scope of work described in this Contract or required by the Project Team.

“Design Team” refers to licensed design professionals that have been selected to work on the Project by the UCFD.

“Design Phase Services Agreement” means the Preconstruction Agreement entered into between the CMAR and the UCFD as referenced in this Contract. This Agreement will contain the provisions associated with the development of the GMP Proposal by the CMAR. Wherever a conflict exists between this Contract and the Preconstruction Agreement, the terms of this Contract will control.

“Differing Site Conditions” - Comply with M.A.G Standard Specifications Subsection 102.4.

“Drawings” (“Plans”) - Documents which visually represent the scope, extent, and character of the Work to be furnished and performed by the CMAR during the construction phase and which have been prepared or approved by the Design Professional and the UCFD. Drawings include documents that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review or use in performing constructability or biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%), but “*not for construction*”. Drawings do not include shop drawings.

“Effective Date of this Contract” - The date specified in this Contract on which the Contract becomes effective, but if no date is specified, the date on which the UCFD executes this Contract.

“Field Order” means a written field directive prepared and signed by the UCFD, directing a change in work that may or may not include an adjustment in contract price or contract time.

“Final Acceptance” means the completion of all the Work as prescribed in Article 6.5.

“General Conditions” are negotiated indirect costs of the Work necessarily incurred by the CMAR as defined in Article 4.3.

“Guaranteed Maximum Price (GMP) Plans and Specifications” means the documents used to establish the GMP and made part of this Contract by reference.

“Guaranteed Maximum Price” or “GMP” means the sum of the maximum cost of the Work as given in the GMP proposal including the CMAR’s direct costs, indirect costs as defined in Article 4.3.

“Guaranteed Maximum Price (GMP) Proposal” - The offer or proposal of the CMAR submitted on the prescribed form stating the GMP prices for the entire Work or portions of the Work to be performed during the construction phase.

“Hazardous Substance” - means:

- (a) Any substance designated pursuant to sections 311(b) (2) (A) and 307(a) of the clean water act.
- (b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.
- (c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
- (d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).
- (e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).
- (f) Any substance which the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

“Indirect Costs” are the General Conditions, Payment and Performance Bonds, Insurance, Taxes, and Permitting and Licensing Fees as defined in Article 4.3.

“Informational Submittals” – Submittals are required (common with construction projects) for the architect and engineer to verify that the correct products and quantities will be installed on a project.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project, Site, or any Work.

“Liquidated Damages” means an amount the CMAR will pay as required in Article 3.4.

“Must” and “will” as used in this Contract are mandatory.

“Notice to Proceed” means a written notice given by the UCFD to the CMAR fixing the date on which the CMAR will start to perform the CMAR’s obligations under this Contract.

“Owner Agent,” “UCFD’s Agent” or “Owner Representative” see “UCFD’s Senior Representative.”

“Payment Request” means a monthly progress payment request that is based on a monthly estimate of the dollar value of the Work completed.

“Preconstruction Services” means advice given during the design phase. Preconstruction Services will be contracted for between the UCFD and the CMAR in accordance with the provisions of Article 1.3.1, as required by A.R.S. §34-603(C) (1) (c). Services may include the following: design review, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, GMP preparation, and subcontractor bid phase services.

“Preconstruction Agreement” means the Contract between the UCFD and the CMAR for the services provided by the CMAR during the design phase which may include the following: design recommendations, project scheduling, constructability reviews, alternate systems evaluation, cost estimate, GMP preparation, and subcontractor bid phase services.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CMAR to illustrate materials or equipment for some portion of the Work.

“Professional Certification” – Professional certification is a designation which indicates that a person is qualified to perform a job or task. Professional certification can be trade certification or professional designation.

“Project” means the Work to be completed in the execution of this Contract as described in the Recitals and in Exhibit A attached.

“Project Record Documents” means the documents created pursuant to Article 1.6.

“Project Record Drawing Prints” – Set of current design drawings used by construction contractor for reference during construction. These drawings are typically marked up during the construction process, and are used to develop the subsequent “as-built” drawings.

“Project Team” – Consists of the Design Professional, the CMAR, the Contract Administrator, the UCFD’s representatives and other stakeholders who are responsible for making decisions regarding the Project.

“Punch List” means those minor items of Work to be completed before Final Acceptance which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Occupancy.

“Samples” means physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Savings” means the difference between the Guaranteed Maximum Price and the Final Cost of the Work (including CMAR’s Fee). One Hundred Percent (100%) of savings will accrue to the UCFD, unless otherwise agreed in the itemization of the Guaranteed Maximum Price.

“Schedule of Values (SOV)” means the Document specified in the construction phase, which divides the Contract Price into pay items so that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

“Shop Drawings” mean drawings, diagrams, schedules and other data specially prepared for the Work by the CMAR or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Site” means any site, land, or premises on which the Project is to be located or constructed including multiple areas within the Town of Carefree, Town of Cave Creek, and City of Scottsdale. The CMAR will require all subcontractors to include the street addresses or descriptors, as applicable, in their contracts.

“Specifications” means those sections of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain applicable administrative details.

“Subcontractor” means any person or entity retained by the CMAR as an independent contractor to perform a portion of the Work and must include material men and suppliers. All subcontractors must be selected in accordance with the selection plan stated in Article 1.13.

“Substantial Completion” means when the Work, or when an agreed upon portion of the Work is sufficiently complete so that the UCFD can occupy and use the Project or a portion of it for its intended purposes. This may include, but is not limited to: (a) approval by the Fire Marshall and local authorities (Certificate of Occupancy); (b) issuance of elevator permit; (c) demonstration to the UCFD that all systems are in place, functional, and displayed to the UCFD or its representative; (d) installation of all materials and equipment; (e) UCFD review and acceptance of all systems; (f) UCFD review and acceptance of draft O&M manuals and record documents; (g) UCFD operation and maintenance training completed; (h) HVAC test and balance completed (provide minimum 30 days before projected substantial completion); (i) completed landscaping and site work; and (j) final cleaning.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with the CMAR or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase work by the CMAR or any Subcontractor.

“UCFD” or “District” or “Owner” means the Town of Carefree, Arizona Utilities Community Facilities District, a special purpose tax-levying district and municipal corporation and political subdivision of the State of Arizona. For purposes of this Contract, the use of the terms “UCFD” or “District” or “Owner” shall be include by reference the Carefree Water Company (“Water Company”) and the Town of Carefree (“Town”).

“UCFD’s Project Contingency” is an allowance established solely by the UCFD to be used at the sole discretion of the UCFD to cover any increases in Project costs that result from UCFD directed changes or unforeseen site conditions. The UCFD’s Project Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full contract price for construction. Taxes will be applied by the CMAR at the time that the

UCFD's Project Contingency is used. Any CMAR Construction Fee on changes using the UCFD's Project Contingency will be determined under Article 5.

"UCFD's Senior Representative" means the person designated in Article 7.3.

"Work" means the entire completed construction or the various separately identifiable parts of the construction, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

*END OF CONTRACT - SIGNATURES ON NEXT PAGE.*



TOWN OF CAREFREE, ARIZONA UTILITIES  
COMMUNITY FACILITIES DISTRICT

PROJECT NO. 2021-W01, CONTRACT NO. C2022-01

This Contract has been executed by the parties above named on the date and year written above, to be retained by the District Clerk.

The CMAR agrees that this Contract, as awarded, is for the stated work and understands that payment for the total work will be made on the basis of the indicated amount(s), under the terms and conditions of the Contract.

CONSTRUCTION MANAGER AT RISK:

**ACHEN-GARDNER CONSTRUCTION, LLC**, an Arizona Limited Liability Company

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

Print name: \_\_\_\_\_

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

**THE TOWN OF CAREFREE, ARIZONA  
UTILITIES COMMUNITY FACILITIES DISTRICT**  
Arizona municipal corporation

ATTEST:

\_\_\_\_\_  
Les Peterson, Chairman

\_\_\_\_\_  
Kandace French Contreras, District Clerk

REVIEWED:

\_\_\_\_\_  
Greg Crossman, PE  
District Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Wright, District Attorney

**EXHIBIT A  
PROJECT DESCRIPTION  
SCOPE OF WORK – GMP A2**

Contractor shall perform all work and furnish all materials and labor for the construction of a concrete water storage reservoir at the Tom Darlington site as defined in GMP A2 attached as Exhibit C.

**EXHIBIT B  
PRECONSTRUCTION AGREEMENT**

**PRECONSTRUCTION PHASE SERVICES CONTRACT**

**C2021-01**

**IS ON FILE AT THE DISTRICT CLERK'S OFFICE**

# **EXHIBIT C**

## **GMP A2**



March 18, 2022

E-Mailed: 3-18-22  
greg@carefreewaterco.com

Town of Carefree, Arizona Utilities Community Facilities District  
7181 Ed Everett Way  
Carefree, AZ 85377

**Attn:** Greg Crossman, P.E., General Manager and Contract Administrator

**Re:** Carefree Water Consolidation Project  
Town of Carefree Project No. 2021-W01  
Achen-Gardner Project No. 3878104

**Subj:** Achen-Gardner GMP A2 Proposal

Dear Mr. Crossman:

Achen-Gardner Construction, LLC respectfully submits for your review and approval our GMP A2 Proposal dated 3/18/22 for the Town of Carefree Water Consolidation Project, Town of Carefree Project No. 2021-W01. Achen-Gardner proposes to complete the scope of work defined on the plans labeled Tom Darlington Water Storage Reservoir, Carefree Water Company, Located In Section 3 & 4 of Township 5 North, Range 4 East, of the Gila And Salt River Base And Meridian, Maricopa County, Arizona, from Burgess & Niple Inc. stamped by Jeffery Marnicio on 12/16/21 sheets 1-20 and E-001 - 008 for a Guaranteed Maximum Price (GMP) not to exceed \$1,821,104.23 as qualified here in.

Please feel free to contact myself with any questions or comments by phone at (602)-376-0103 or by e-mail at [bfroelich@achen.com](mailto:bfroelich@achen.com). We are looking forward to a successful project with the Carefree Water Company.

Sincerely;

ACHEN-GARDNER CONSTRUCTION, LLC

*Brian Froelich*

Brian Froelich, Project Manager

Attachments

Cc: Project File  
DS / [dspitza@acen.com](mailto:dspitza@acen.com)

**ACHEN-GARDNER CONSTRUCTION, LLC** | [www.achen.com](http://www.achen.com)

550 SOUTH 79TH STREET | CHANDLER, AZ 85226 | P: 480.940.1300 | P: 800.580.5548 | F: 480.940.4576

ARIZONA: 261745 A, 261746 B-1, 261747 B-4 | COLORADO: 20101257887 | NEW MEXICO: 365027

**INDEX OF ATTACHMENTS**

**GMP PROPOSAL (3/18/2022)**

**Town of Carefree, Arizona Utilities Community Facilities District  
Carefree Water Consolidation Project  
TOC Project Number: 2021-W01/ AGC Project Number: 3878104**

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- **ATTACHMENT A: PROJECT DESCRIPTION.....PAGE 3**
- **ATTACHMENT B: THE WORK.....PAGE 4**
  - **B.1: PROPOSAL LIST OF DOCUMENTS.....PAGE 4**
  - **B.2: PROJECT CONSTRUCTION PHASE KEY PERSONNEL.....PAGE 5**
- **ATTACHMENT C: GMP PROPOSAL SCHEDULE OF VALUES.....PAGE 6**
  - **C.1: GMP PROPOSAL SOV.....PAGE 6**
  - **C.2: CLARIFICATIONS, INCLUSIONS & EXCLUSIONS.....PAGE 7**
- **ATTACHMENT D: PROJECT SCHEDULE.....PAGE 12**
- **ATTACHMENT E: DN TANKS CONFIRMATION LETTER AND CLARIFICATION LETTER NO.: 1 FROM DN TANKS .....PAGE 13**

## **ATTACHMENT A – PROJECT DESCRIPTION**

### **GMP PROPOSAL (3/18/2022)**

**Town of Carefree, Arizona Utilities Community Facilities District  
Carefree Water Consolidation Project  
TOC Project Number: 2021-W01/ AGC Project Number: 3878104**

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The Town of Carefree, Arizona Utilities Community Facilities District (the UCFD), through the Carefree Water Consolidation Project, seeks to expand service to more than 20% of Carefree residents who are currently being furnished potable water by the Town of Cave Creek in what are identified as Neighborhoods A, B, and C. This complex project will involve a variety of water system improvements at more than 20 project “sites”. Including the installation of various water lines up to 12” diameter (possibly even 16” diameter), the construction of a new 300,000 gallon concrete potable water storage reservoir, and upgrades or improvements to multiple booster pump stations.

The Work will generally be consistent with that shown in the plans labeled Tom Darlington Water Storage Reservoir, Carefree Water Company, Located In Section 3 & 4 of Township 5 North, Range 4 East, of the Gila And Salt River Base And Meridian, Maricopa County, Arizona, from Burgess & Niple Inc. stamped by Jeffery Marnicio on 12/16/21 sheets 1-20 and E-001 - 008.

The scope included in GMP A 2 is as follows:

- The construction of the 300,000-gallon concrete potable water storage reservoir tank by DN Tanks as detailed in the attached schedule of values and in the attached Confirmation Letter and Clarification Letter No. 1 by DN Tanks dated March 4, 2022 (Attachment E).
- Oversight and support of water reservoir construction by Achen Gardner Construction.

**ATTACHMENT B.1 – PROPOSAL LIST OF DOCUMENTS**

**GMP PROPOSAL (3/18/2022)**

**Town of Carefree, Arizona Utilities Community Facilities District  
Carefree Water Consolidation Project  
TOC Project Number: 2021-W01/ AGC Project Number: 3878104**

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The GMP proposal included herein was developed based off of the following items:

- Plans labeled Tom Darlington Water Storage Reservoir, Carefree Water Company, Located In Section 3 & 4 of Township 5 North, Range 4 East, of the Gila And Salt River Base And Meridian, Maricopa County, Arizona, from Burgess & Niple Inc. stamped by Jeffery Marnicio on 12/16/21 sheets 1-20 and E-001 – 008.
- MAG Specifications.
- Achen-Gardner’s Design Phase Proposal and associated Design Phase Services Contract for this project, Town of Carefree Project No. 2021-W01, Contract No. C2021-01 executed on March 2nd, 2021.
- Achen-Gardner’s Design Phase Proposal including all attachments dated 2/24/21.
- Achen-Gardner’s GMP A1 Proposal including all attachments dated 10/20/2021.
- Request for Statement of Qualifications Construction Manager at Risk Services (2020)
- Statement of Qualifications Dated 10/29/20.
- Confirmation Letter and Clarification Letter No. 1 by DN Tanks dated March 4, 2022 (Attachment E).
- Change Order #1 to GMP A1 Dated March 14, 2022 from Achen-Gardner to the Town Of Carefree.
- Achen-Gardner’s Executed contract for GMP A1 including all attachments. Project No.:2021-W01 Contract No.: C2021-06 (including GMP A1 proposal dated 10/20/2021).



**ATTACHMENT B.2 – KEY CONSTRUCTION PHASE PERSONNEL**

**GMP PROPOSAL (3/18/2022)**

**Town of Carefree, Arizona Utilities Community Facilities District  
Carefree Water Consolidation Project  
TOC Project Number: 2021-W01/ AGC Project Number: 3878104**

Achen-Gardner’s project key personnel for construction phase are as follows:

<b>Name:</b>	<b>Title:</b>	<b>Phone:</b>	<b>E-Mail:</b>
Brian Froelich	Project Manager	602-376-0103	<a href="mailto:bfroelich@achen.com">bfroelich@achen.com</a>
Mark Gierszewski	Project Superintendent	602-980-1621	<a href="mailto:mgierszewski@achen.com">mgierszewski@achen.com</a>
Kevin Quinlan	Project Superintendent	602-815-0243	<a href="mailto:kquinlan@achen.com">kquinlan@achen.com</a>
Mike Gewecke	Field Operations Manager	602-370-2003	<a href="mailto:mgewecke@achen.com">mgewecke@achen.com</a>
Howdy Hale	Specialty Superintendent	602-397-2704	<a href="mailto:hhale@achen.com">hhale@achen.com</a>
Abigail Goode	Project Engineer	602-377-4593	<a href="mailto:agoode@achen.com">agoode@achen.com</a>
Chris Robbins	Project Engineer	602-883-6173	<a href="mailto:crobbs@achen.com">crobbs@achen.com</a>

Additional team members to provide support during the construction phase are as follows:

<b>Name:</b>	<b>Title:</b>	<b>Phone:</b>	<b>E-Mail:</b>
Dan Spitza	President	602-397-3658	<a href="mailto:dspitza@achen.com">dspitza@achen.com</a>
Andy Mortensen	Project Lead Estimator	480-940-1300	<a href="mailto:amortensen@achen.com">amortensen@achen.com</a>
Jason Robinson	Director Water/Wastewater Plants	602-359-4081	<a href="mailto:jrobinson@achen.com">jrobinson@achen.com</a>

*(Note: Additional key construction phase personnel will be added or removed to this list as necessary.)*

GMP A2 -Town Carefree - Carefree Water Consolidation Project					ATTACHEMENT C1	
TOC PROJECT 2021-W01 AGC PROJECT 3878104					3/24/2022	
Bid Item No.	Description	Quantity	Unit	Unit Price	Total	
<b>RESERVOIR CONSTRUCTION</b>						
6071	FURNISH/INSTALL RESERVOIR (DN Tanks)	1.00	LS	\$ 1,113,682.08	\$ 1,113,682.08	
6072	MAINTAIN SITE AND RAMP/ACCESS	1.00	LS	\$ 24,872.96	\$ 24,872.96	
6073	REMOVAL OF CONCRETE DEBRIS	1.00	LS	\$ 7,263.24	\$ 7,263.24	
<b>SUBTOTAL FOR RESERVOIR CONSTRUCTION</b>					<b>\$ 1,145,818.28</b>	
<b>GENERAL CONDITIONS</b>						
7000	SURVEY	1.00	AL	\$ 10,000.00	\$ 10,000.00	
7020	CONSTRUCTION WATER & DUST CONTROL	1.00	LS	\$ 30,241.63	\$ 30,241.63	
7030	SWEEPING	1.00	LS	\$ 48,300.00	\$ 48,300.00	
7040	TEMPORARY SITE FENCE	1.00	LS	\$ 5,890.00	\$ 5,890.00	
7050	GENERAL CONDITIONS	4.50	MO	\$ 43,734.40	\$ 196,804.80	
7070	TRAFFIC CONTROL	1.00	LS	\$ 43,670.00	\$ 43,670.00	
<b>SUBTOTAL GENERAL CONDITIONS</b>					<b>\$ 334,906.43</b>	
<b>RUNNING TOTAL NO. 1 DIRECT COST</b>					<b>\$ 1,480,724.71</b>	
8100	CONTRACTOR FEE FOR OVERHEAD & PROFIT	12.50%			\$ 185,090.59	
<b>SUBTOTAL CONTRACTOR FEE</b>					<b>\$ 185,090.59</b>	
<b>RUNNING TOTAL NO. 2 DIRECT COST AND CONTRACTOR FEE</b>					<b>\$ 1,665,815.30</b>	
8200	INSURANCE	1.75%			\$ 29,151.77	
8300	BONDS	0.70%			\$ 11,864.77	
<b>SUBTOTAL INSURANCE AND BOND</b>					<b>\$ 41,016.54</b>	
<b>RUNNING TOTAL NO.3 DIRECT COST, CONTRACTOR FEE, INSURANCE AND BOND</b>					<b>\$ 1,706,831.84</b>	
8400	SALES TAX 65% of 10.3%	6.695%			\$ 114,272.39	
8410	SALES TAX CREDIT FOR WATERLINE MATERIAL PURCHASE				\$ -	
<b>SUBTOTAL SALES TAX</b>					<b>\$ 114,272.39</b>	
<b>TOTAL GMP A2-Town Carefree - Carefree Water Consolidation Project</b>					<b>\$ 1,821,104.23</b>	

## **ATTACHMENT C.2 – GMP CLARIFICATIONS, INCLUSIONS, & EXCLUSIONS**

### **GMP PROPOSAL (3/18/2022)**

**Town of Carefree, Arizona Utilities Community Facilities District  
Carefree Water Consolidation Project  
TOC Project Number: 2021-W01/ AGC Project Number: 3878104**

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#### **1. Scheduling and Phasing:**

- a. For the purpose of this GMP, adverse weather conditions such as average days of rain per month, is assumed to be Two (2) each per month. A weather-related delay may be claimed on days where rainfall did not actually occur, but follows a day of heavy rain that has impacted the schedule. That is, the 9 days of weather-related delays will not result in delays to the project schedule. If the project experiences additional weather-related delays beyond this amount, the Contractor shall be entitled to negotiate a commensurate extension of time associated with the delays and/or a Price adjustment for additional costs associated with but not limited to General Conditions, accelerations, etc. Based on the proposed NTP of April 4, 2022 and substantial completion of GMP A2 on August 8, 2022, the project duration is 126 calendar days.
- b. Work Hours – This GMP is based on a 8-hour day time work shift Monday to Friday. (re: Attachment D – Schedule). Night and weekend work shall be for restrictive activities as agreed upon with the Town or as required to fulfill off-peak activities as coordinated with and agreed to by the Town. Overtime hours are excluded except. If owner directed overtime is required, the premium cost will be compensated for out of Owner contingency or negotiated Change Order.

#### **2. General Clarifications:**

- a. The scope of this proposal is based on the quote and plan sheets as provide by DN Tanks (see Attachment E).
- b. Re: Schedule of Values – This GMP will be administered as a measured quantity using the Town approved unit price type contract. Final contract price / payout will be based on field measured final completed quantities, Town approved unit prices (see Attachment C.1 dated 3/18/22) and applied fee structure (re: Items 8100-8410 percentages), guaranteed not-to-exceed the GMP amount (see GMP SUMMARY ATTACHMENT C.1). It is understood that these individual OWNER approved unit prices include the cost associated with the risk of delivering the work and are not subject to adjustment unless mutually agreed to.
- c. This Project is proposed to be administered as a Measured Quantity/Unit Price Guaranteed Not-to-Exceed Contract (re: to Attachment s C1). The Schedules of Values (Direct Costs) are defined by the individual work items and their associated unit prices (re: Attachment C1, Running Total #1) plus negotiated general conditions, fee structures, and markups (re: Attachment C1, Subtotals #2 and #3, and associated Items 8100-8410). Fee and mark-ups shall apply to all direct costs, general conditions, change orders, and use of Owner

Contingency. Final contract price/payout shall be based on field measured, final completed quantities, approved unit prices, and approved change orders. It is understood that these individual negotiated and approved unit prices include the costs associated with the risk of delivering the work.

- d. Other Contractor Coordination – The CMAR agrees to make a good faith effort in coordinating its work with that of “other” contractors working within the project limits.
- e. Re: Scope of Work - It is understood that the documents listed in Attachment B.1 (i.e. plans, specifications, etc.) have been used to prepare this GMP. Item “descriptions” and “units” (or unit of measure) included in Attachment C shall serve to assist in the clarification of and definition of the scope of work included under each item of work (i.e. “Bid Item”). The cost associated with any changes, revisions, additions and / or deletions directed by the Town will be compensated for and funded through Owner Contingency, change order, or future GMP as mutually agreed to by all parties. Additionally Attachment E is the detailed DN Tank Confirmation Letter and Clarification Letter No. 1 by DN Tanks dated March 4, 2022
- f. Re: NTP - the Notice to Proceed date is to be mutually agreed upon. Our proposal assumes a NTP on April 4, 2022.
- g. Deliverables Scope, as modified and agreed to in the Construction Manager at Risk – Preconstruction services contract dated March 2nd, 2021.
- h. List of Clarifications and/or Assumptions included in this Attachment and/or any of the other GMP Attachments shall take precedence over all Contract Agreements, Plans and Specifications and Town General Conditions articles and/or provisions.
- i. Construction Management Plan is not required and is not included in this GMP.
- j. Proposed project schedule, excludes logic associated with acquiring temporary construction easements or permanent right-of-way (ROW) of any kind. This GMP assumes that all right-of-way and easements required to construct the Project will be acquired by Town staff no later than Notice to Proceed, or in a time period not to impact the proposed sequencing and schedule of the Project. Any delays, associated costs, or schedule accommodations outside those shown on the schedule are not included in the overall duration presented in this Attachment D or in the GMP.
- k. This GMP excludes all costs associated with Town of Carefree permit & plan review fees, QA (i.e. inspection) costs, impact fees, utility company fees and/or any other permit or fee not detailed in Attachment C and related Attachments.
- l. Definition of “Lump Sum” – Work Items that have been designated “Lump Sum” are a single fixed unit price of one each Lump Sum (LS).
- m. All approved quantity over-runs will be paid for out of Owner Contingency or change order.

- n. This GMP excludes the additional cost associated with COVID 19 safety procedures, as would be additional to those currently utilized by Achen Gardner at the time of writing this GMP. This relates to accommodate temporary water services, and to sanitary facilities during temporary shutdowns of services to accommodate tie-ins, etc. Any additional cost incurred to the project specifically for COVID 19 protection will be charged to owner contingency or a change order to the project. This includes but is not limited to additional temporary hand wash stations and/or restrooms for businesses or residents, service and cleaning worksite portable restrooms (more than twice per week), and cleaning the field office (more than once per week).
- o. Any person on site, regardless of who they are employed by, will be required to follow the COVID-19 procedures outlined in Achen-Gardner's project safety manual and any additional requirements deemed necessary by the government or construction team as the project progresses.
- p. Allowance Items –Work Items that have been designated “Allowance” are a best estimate of the cost of work for which a scope has yet to be confirmed/determined or a Unit Price finalized. The Allowance Quantity and Unit Price values are not guaranteed, and are subject to adjustment by mutual agreement between the Town and CM@Risk as the scope and/or price is confirmed. Final adjustments to Attachment C1, Item No. 7000 shall be made based on final allowance scope of work completed. Associated increases/decreases in cost will be funded/credited from/to the Owner Contingency Item when defined by Owner.

### **3. General Bid Item Inclusions/Clarifications:**

- a. Bid Item 6071: FURNISH/INSTALL TANK (DN Tanks) – Price is based off Confirmation Letter and Clarification Letter No. 1 by DN Tanks dated March 4, 2022 provided to Achen Gardner by DN Tanks and Attachment E in this GMP proposal, and includes the cost of the secondary bond requested by DN Tanks in the Clarification Letter No. 1. Any variance to the work detailed in this attachment will be paid for by Owner Contingency or change order to the contract.
- b. Bid Item 6072: MAINTAIN SITE AND RAMP/ACCESS - This line item will be used to cover the cost for all maintenance by Achen Gardner per DN Tanks requirements as stated in attachment E and agreed as needed by designated team representatives on site.
- c. Bid item 6073: REMOVAL OF CONCRETE DEBRIS – This line item will be used to cover the cost to remove any and all concrete debris in the reservoir tank site by Achen Gardner per DN Tanks directives.
- d. Bid Item 7020: CONSTRUCTION WATER & DUST CONTROL – Duration is based off 126 calendar days. Price based on Town of Carefree furnishing construction water at no cost to Achen Gardner Construction

- e. Bid Item 7040: TEMPORARY SITE FENCE – Achen Gardner will continue to use the previously installed temporary construction fence with tan screen under GMP A2. The cost for this line item is limited to 126 calendar days. Any additional days need to be covered by an additional GMP or Change Order to the project
  
- f. Bid Item 7070: TRAFFIC CONTROL - Achen Gardner will use the shoulder on the east side of the north bound lanes to create a construction site access pull off. Allowing approved traffic to enter the site without negatively impacting north bound traffic. Achen Gardner will set up a closure of the high speed south bound travel lane directly across from the sites entrance/exit to be used as an entrance lane for construction vehicles in to south bound traffic. Achen Gardner will remove the south bound traffic control set up from end of work shift Friday to start of work shift Monday morning unless otherwise agreed to by Achen Gardner and Town. Any additional Traffic control deemed necessary but not described in this GMP will be paid for by the Town as a change order to the project.

#### **4. General Exclusions:**

- a. This GMP excludes the fence on the top of the reservoir tank and the raised concrete on top of the tank for this fence.
  
- b. This GMP proposal excludes any and all costs associated with handling and / or disposing of hazardous wastes not introduced by Achen-Gardner.
  
- c. The furnishing of any utility pole supports of any kind.
  
- d. Our Proposal excludes cost impacts due to project shut downs for special events or Holiday moratoriums.
  
- e. Price excludes any temporary water or sewer service. If temporary water or sewer service is required, the cost will be paid for with a change order, unless the temporary service is used by the CMAR for their purposes.
  
- f. Excludes cost for future additional excavation needed due to natural or human interference with the site unless specifically agreed to by Achen Gardner and the Town of Carefree.
  
- g. Unstable Grade – This GMP Proposal excludes any work associated with unstable grade. If required, these costs will be compensated for under Owner Contingency or Change Order should the condition arise.
  
- h. Excludes the cost associated with any additional work required due to ground water interference. If required, these costs will be compensated for under CMAR Contingency or Change Order should the condition arise.

- i. Price excludes filling any/all abandoned pipelines. Abandoned pipelines shall be drained and capped.
- j. Price excludes Public Outreach this will be done with MakPro through CVL.
- k. Price excludes Slurry Seal.
- l. Excludes the cost of any haul permit fees.
- m. Excludes fine grading, select fill, and leveling course. This work is included in Change Order #1 to GMP A1.
- n. This Proposal excludes any Contingency for unforeseen conditions any cost arising from unforeseen conditions will be paid for through a change order to the GMP or in future GMPS.
- o. Excludes backfill of reservoir, retaining walls, and all other scope not included in Confirmation Letter and Clarification Letter No. 1 by DN Tanks dated March 4, 2022 (Attachment E)

**5. Allowance Bid Items:**

The following Allowance bid items were estimated based on current market pricing. The Allowance dollar amounts do not include overhead, profit, insurance, bonds, and sales tax. These markups will be applied and paid per Line Items #8100, 8200, 8300, 8400 and 8410 (respectively)

- a) *SURVEY* (Bid Item 7000) \$10,000.00
  - i. This Allowance Bid Item is to be utilized to cover associated with project survey by EPS. Price estimate is based off survey and any restaking needed from Confirmation Letter and Clarification Letter No. 1 by DN Tanks dated March 4, 2022 (Attachment E). Any variance to the work detailed in this attachment will be paid for by Owner Contingency or change order to the contract.

Activity ID	Activity Name	Start	Finish	Original Duration	2022																														
					April				May				June				July				August				September										
					04	11	18	25	02	09	16	23	30	06	13	20	27	04	11	18	25	01	08	15	22	29	05	12	19	26					
<b>Carefree Water Consolidation GMP A2 - DN Tanks Scope</b>					05-Apr-22	08-Aug-22	90	08-Aug-22, Carefree Water Consolidation GMP A2																											
A1000	GMP A2 NTP	05-Apr-22		0	GMP A2 NTP																														
A1010	DN Tanks Installing Reservoir Tank	05-Apr-22	08-Aug-22	90	DN Tanks Installing Reservoir Tank																														
A1020	GMP A2 Substantial Completion		08-Aug-22	0	GMP A2 Substantial Completion																														

█ Primary Baseline   
 █ Actual Work   
 █ Critical Remaining Work  
█ ( New Bar )   
 █ Remaining Work   
 ◆ Milestone





Generations Strong

10505 Corporate Drive Suite 105B, Pleasant Prairie, WI 53158 | 847.786.5010

March 4, 2022

Jason Robinson  
Achen-Gardner Construction  
550 South 79<sup>th</sup> Street  
Chandler, AZ 85226

Project Name: Carefree, AZ (Boulders)  
Owner: City of Carefree, AZ  
Engineer: Burgess & Niple, Inc.  
Bid Date: March 4<sup>th</sup>, 2022

Ladies and Gentlemen:

We are pleased to confirm our pricing for the above-referenced project as follows:

**Bid Item 0.30MG AWWA Type-III Prestressed Water Storage Tank** **\$1,107,000.00**

**ADD: Payment and Performance Bond (if required):** Add 0.60%

The above pricing is based on an open-shop environment utilizing non-prevailing wage rates, excluding all applicable taxes. DN Tanks has a long-standing policy to provide our most aggressive price to contractors prior to the bid. Accordingly, no reduction in price will be provided after the bid. Please consider this in preparing your bid.

All work and conditions as referenced in our Proposal dated October 1<sup>st</sup>, 2021 and Clarification Letter No. 1 dated March 4<sup>th</sup>, 2022 remain applicable.

If you have any questions or require any additional information, please contact me at your convenience.

Respectfully,

**Kyle Koebbe**  
*Regional Estimator*

847.946.2063 (Cell) Phone  
10505 Corporate Drive – Suite 105B – Pleasant Prairie, WI  
[www.dntanks.com](http://www.dntanks.com)





**CLARIFICATION LETTER NO. 1.1**  
AWWA D110-13 Type III Tank/Reservoir

Date: 3/22/2022

Project Name: Carefree, AZ (Boulders)  
Owner: City of Carefree, AZ  
Engineer: Burgess & Niple, Inc.  
Bid Date: ~~October 4<sup>th</sup>, 2021~~ March 4<sup>th</sup>, 2022

DN TANKS offers to do the following work, in accordance with the Owner’s Drawings and Specifications prepared by Burgess & Niple, Inc, (hereinafter “Contract Documents”) Note, at the time of submittal, DN Tanks has reviewed the **plans labeled Tom Darlington Water Storage Reservoir, Carefree Water Company, Located in Section 3&4 of Township North, Range 4 East, of the Gila and Salt River Base and Merifian, Maricopa County, Arizona from Burgess & Nipple Inc. stamped by Jeffery Marnicio on 12/16/21 sheets 1-20 and E-001 - 008.** DN TANKS’ contract price is based on the conditions outlined hereunder. In arriving at DN TANKS’ cost DN TANKS assumed an uninterrupted operation starting with the day Contractor requests DN TANKS to mobilize.

**I. OUTLINE OF SERVICES FURNISHED BY DN TANKS:**

**A. Design Calculations and Drawings:** Design calculations and drawings for the 0.30 MG precast, prestressed concrete water storage tank by a registered Professional Engineer in the State of Arizona, in accordance with AWWA D-110-13, Type III. The tank dimensions are 64-feet inside diameter (ID), 13-feet side water depth (SWD), and a finish floor elevation of 2312.00 at the tank wall, and 2312.64 at the center of the tank (2% floor slope).

**B. Labor, Materials, Supervision and Expenses:** Labor, materials, supervision and expenses for casting, installing, and prestressing of the above-referenced tank footing, floor, walls, columns, and flat slab roof only, in accordance with AWWA D-110-13, Type III and referenced in the AWWA D110 Type III Flat Slab Roof Tank Specification, as supplied by DN Tanks and shown on sheet(s) S-001 through S-005 of the Project Drawings. Provide a 6-inch thick cast-in-place reinforced concrete membrane floor, complete including sump and 6 mil poly vapor barrier. The floor is NOT designed to resist hydrostatic uplift.

**C. Tank Appurtenances:** Appurtenances in the tank to be furnished and installed by DN TANKS:

- 1) One (1) 6-inch overflow line through the tank wall including the flap valve outside the tank. The Contractor shall furnish and install the overflow catch basin beneath the overflow.
- 2) Two (2) 42-inch x 42-inch aluminum roof hatches with grating
- 3) One (1) aluminum roof vent



- 4) Two (2) fiberglass interior ladder with OSHA approved fall prevention device
- 5) Four (4) 3-inch roof sleeves
- 6) Three (3) 6-inch roof sleeves
- 7) Sixty (60) Lineal Feet of Tank Roof Retaining wall. The Retaining wall shall be 2-feet in height and shall have one (1) 6-inch pipe sleeve located in the wall.
- 8) ~~All required handrail located on top of the Tank Roof Retaining Wall. The Handrail shall be Aluminum 2-rail with Holleander Speed Clips~~ **The Contractor shall be responsible for furnishing and installing the decorative roof hand-rail, once a style is selected by the Owner.**
- 9) 1-inch thick x 12-inch wide sponge filler pad. The sponge filler pad shall be supplied to the Contractor for installation on the tank walls, where the proposed earth retaining walls align with the tank walls. The Contractor shall be responsible for furnishing and installing the vertical earth retaining walls located on either side of the tank.

**D. Concrete and Shotcrete Testing:**

All concrete and shotcrete testing (only) under DN TANKS' scope of work shall be by an independent testing laboratory paid for by DN TANKS. *Note: Per Arizona Administrative State Code Title 18 Environmental Quality, Chapter 4 Department of Environmental Quality Safe Drinking Water, Section R18-4-213, Subsection E.1 – DN Tanks will not be including any provisions as it relates to NSF-61 materials for the construction of the tank.*

**E. Exterior Decorative Coating:**

A decorative coating shall be applied to the exterior wall surfaces and roof face, **only where exposed to view after backfilling**, using two coats of a non-cementitious, high build, 100 percent acrylic resin polymer such as "Tammscoat Smooth" textured protective coating or equal.

**II. WORK TO BE PERFORMED BY THE CONTRACTOR:**

- A. Layout and Survey:** All layout and survey work required to locate the center of the tank, tank piping locations, elevations, base control lines and grades as required for the tank's construction, and benchmark of elevation, center point and north reference point for the tank construction staking. Also verify and match existing tank dimensions and elevations, as required.
- B. Erosion Control Measures:** Installing, maintaining, and removal of the erosion control measures. The Contractor shall prepare and administer the storm water pollution prevention measures as required by the project specification.
- C. Tank Excavation:** Clearing, grubbing, stripping, and excavation (including rock) required to create the reservoir site as shown on the Contract Documents and attached Sketches EX-1 and EX-2 (DN TANKS' tank construction layout and section views). Excavation should extend a down to a minimum of 1.5-feet from the bottom



of the tank floor and foundation, and should expose the granite subgrade material. Excavation should extend to a uniform subgrade (elevation 2310.50).

NOTE: There is the potential for additional excavation required to expose the granite material located in the tank subgrade. Excavation may need to extend as much as up to 5-feet from the bottom of the tank floor and foundation. The subgrade excavation shall be carried out horizontally to a cut diameter of approximately 68-feet 0-inches (2-feet 0-inches and beyond the footing) then sloped upward to existing grade in accordance with OSHA requirements. Note the subgrade requires additional grading for the varying contours at the thickened wall brace areas and baffle wall areas as shown on drawing EX-2. The subgrade shall be scarified, moisture conditioned, processed, tested and inspected as required by the Contract Documents and Geotechnical Report. **DN TANKS shall not be held responsible for subgrade inspection or handling of unsuitable soils, if encountered.**

Additional excavation is required beyond the tank foundation for a 12-foot wide all-weather level wire winding track around the perimeter of the tank, with a finish grade of approximately 2311.50 (6-inches below the finish floor elevation of 2312.00). The all-weather, level track shall be stable and sloped away from the tank for drainage. Additional work will be required to complete the track after the tank floor is poured and the forms are stripped. Perform the excavation and preparation of the precast areas, crane positions, and work road/area as shown on the attached sketches EX-1 and EX-2. Provide all weather access roads and access ramps to the tank for access by concrete trucks, crane and other heavy construction equipment.

All work shall comply with all OSHA Safety Requirements and all OSHA Excavation Requirements per 29 CFR 1926. The Contractor shall be responsible for maintaining, protecting and repairing the integrity of the slopes for the duration of the project. All work shall be in accordance and comply with all Local, State, and Federal Regulations.

If required, a dewatering system shall be furnished, installed, inspected, maintained, and continuously operated by the Contractor for the duration of the tank's construction to provide a dry and stable working area. The site shall be graded and top of slopes bermed to divert storm water around the tank excavation.

**D. Preparation of Winding Track, Access Ramp, Work Areas and Crane Areas:**

Furnish, install, compact, grade and maintain (through the duration of tank construction) suitable granular all-weather access for heavy equipment to the job site and adequate working and storage areas for our materials and equipment. It is essential that the roadways, track and work road/areas shall be stable and passable at all times under all weather conditions. The track, crane positions, ramp, and work road areas shall consist of a minimum 6-inch layer of granular all-weather road base material over geotextile filter fabric Mirafi 500X or equal as shown on the EX-drawings. Additional grading will be required to complete the winding track after the tank floor is poured and the forms are stripped. All work shall be in accordance and comply with all local,



state, and Federal regulations. The precasting areas shall only have the native soil rolled to a hard level surface.

- E. Compacted Engineered Fill:** Furnish, install, and compact all approved imported engineered fill in accordance with the Geotechnical Report and the Contract Documents from the approved subgrade to the underside of the granular leveling base material as required. Furnish and install geotextile filter fabric Mirafi 1100N or equal on the approved subgrade.

On-site and imported soils (granular) that exhibit relatively low plasticity indices and very low to low expansive potential are generally suitable for re-use as engineered fill. Relatively low plasticity indices are defined as a plasticity index ASTM D4318 value of 15 or less. Very low to low expansive potential soils are defined as having an expansion index (PER ASTM D4829) of 50 or less. The Atterberg limits test performed on selected samples indicated that the samples tested in ranged in PI values of 0 to 19. As such, it is our opinion that some of the on-site soils may not be suitable as engineered fill during construction. Additional field sampling and laboratory testing should be conducted by the contractor prior to construction to better evaluate the suitability of on-site soils for re-use as engineered fill.

Suitable fill should not include organic material, construction debris, or other non-soil fill materials. Rock particles and clay lumps should no be larger than 4-inches in dimension.

- F. Crushed Stone Leveling Base material:** Furnish, install, compact and fine grade (0 to - 1/2") all necessary imported leveling base material. This item includes providing a minimum 6-inch layer of leveling base material under the tank floor, footing, thickened wall brace areas and pipe pits beneath the floor (refer to EX drawings). A non-woven geotextile fabric Mirafi 1100N or equal shall be placed between the Engineered fill and leveling base material. The leveling base material shall consist of a well-graded crushed stone and shall meet the specification indicated below. If crushed stone is used for the leveling base material, compaction performance criteria shall be used to gauge the degree of compaction. Crushed stone shall be placed in layers not exceeding 9 inches and compacted with at least two passes in each direction with vibratory compaction equipment. Compaction shall be inspected and verification of compaction effort shall be documented by an approved testing laboratory. All work shall be in accordance with the Geotechnical Engineer's requirements. The surface elevation of the leveling base shall be fine graded to a tolerance of plus 0 inches to minus 1/2 inch over the entire foundation area. Fine grading tolerances for floor pipe encasements shall be plus 0 inches to minus 6 inches. The Geotechnical Engineer shall evaluate the tank subgrade prior to the placement of the leveling base material. The Contractor shall coordinate the excavation of the pipe pits with DN TANKS.

The crushed stone material shall consist of clean, hard, durable, crushed particles or fragments of stone or ledge rock of uniform quality reasonably free of thin or



elongated pieces. The materials shall be free from ice, snow, rubbish, sods, roots and other deleterious or organic materials and shall conform to the following gradation requirements meeting ASTM C 33 stone size No. 67.

Sieve Size	Percent Passing By Weight
1 inch	100%
3/4 inch	90% - 100%
3/8 inch	20% - 55%
No. 4	0% - 10%
No. 8	0% - 5%

**G. Soils Testing / Design Criteria:** The Contractor shall provide all soils testing including verification of suitable subgrade conditions by a Geotechnical Engineer. The Contractor shall provide all correspondence relating to soil testing and subgrade inspection beneath the tank confirming that the design criteria stated below has been achieved prior to DN TANKS' mobilization.

This proposal is based on the following minimum foundation design criteria requirements for the Wire-Wound, Prestressed Concrete Tank.

- Allowable Bearing Capacity: 5,000 psf
- Maximum Total Settlement: 1-inch or less
- Differential Settlement: 1/2-inch or less (Total / 0.25" over 50-feet)
- PVR: 1-inch or less
- Groundwater is assumed to be below the finish floor elevation. The tank has not been designed to resist hydrostatic uplift.

The Contractor shall be responsible for the excavation of unsuitable soils including additional structural fill, compaction, fine grading and verification suitable subgrade has been achieved by a Geotechnical Engineer.

**H. Site Access Road, Storage Areas, Traffic Control, and Parking:** Contractor shall provide suitable all-weather access for heavy equipment to the job site and adequate working and storage areas for our materials and equipment. Such roads shall be suitable DN TANKS to drive its material trucks and 53' trailers up and down and positioned to allow access to the tank site. Contractor shall provide traffic control plans and flagmen if required for DN TANKS' material and equipment deliveries. Adequate parking spaces shall be provided for DN TANKS' construction personnel.

**I. Yard Piping:** Furnish and install all required yard piping to the limits shown on the contract drawings. The Contractor shall provide all required piping, fittings, valves, flexible couplings, appurtenances, all related structures, hydrostatic testing and connections to existing lines. If required, a perimeter underdrain system shall be included as specified in the Contract Documents.



This Contractor shall furnish all underslab piping “pits” complete including necessary excavation, 6-inches of leveling base at the bottom of the pit, PVC waterstop if required, concrete to provide adequate encasement including site slopes of 1H:1V on three sides, and flexible dresser couplings directly off of the tank footing of the following pipe pits;

- 1) One (1) 12-inch Outlet line complete including silt stop and concrete encasement;
- 2) One (1) 10-inch Inlet line complete to a flanged connection 1-foot above the finished floor and including concrete encasement.
- 3) One (1) 6-inch Drain line complete, including concrete encasement.

**J. Backfill and Restoration:** Contractor shall furnish and install all required backfill. There shall not be any heavy equipment allowed next to the tank structure and all backfill within three (3) feet of the tank shall be hand-compacted. All backfill within 12-feet of the tank shall be performed utilizing lightweight equipment (15,6000 lbs maximum). Contractor shall perform any paving, site work, and landscaping around the tank upon completion of DN TANKS’ operations. This shall include furnishing and installing the concrete overflow catch basin.

**K. Electrical and Instrumentation Work:** The Contractor shall be responsible for all electrical and instrumentation work and will coordinate its electrical and instrumentation conduit and box fastening details, to the tank walls and roof, with DN TANKS. A maximum anchor depth of ¾-inch is allowable on the tank.

**The Contractor shall be fully responsible for furnishing and installing all electrical and SCADA components on the tank, the required components are as stated below, but may not be limited to;**

- Two (2) Pressure Transducers
- Two (2) Water Level Indicators

**L. Shotcrete and Concrete Debris:** The Contractor shall be responsible for removing approximately 35 cubic yards of concrete rubble from the on-site panel casting beds and shotcrete rebound. DN TANKS shall be responsible for cleanup and trash removal, to a location on site, resulting from our work.

### III. **GENERAL CONDITIONS:**

**A. Licenses and Permits:** Contractor shall procure and pay for all building permits, licenses other than contractor’s and business, and inspections required by any local, county, state, and/or Federal authority for any part of the work under this Agreement and shall furnish any bonds or security of deposits required by such authority to permit performance of the work.

**B. Safety and Security Fencing:** Contractor shall furnish any safety fencing that may be required by DN TANKS, OSHA, and/or the Owner, around the excavated site. Contractor shall be responsible for site security, including security guards.



Contractor shall be responsible for the security and well-being of DN TANKS's equipment, tools, and materials stored at the project site and shall reimburse DN TANKS all direct costs associated with damage or loss of equipment, tools, and materials as a result of vandalism or theft.

- C. **Security Clearance Requirements:** Contractor shall provide and administer the security clearance requirements for DN TANKS' personnel and DN TANKS' subcontractors' personnel in accordance with project specifications.
- D. **Temporary Facilities:** DN TANKS shall have the use of any or all of the Contractor's facilities at no cost (i.e., electricity, water, sanitary facilities, etc.).
- E. **Shop Drawings:** Contractor shall furnish DN TANKS copies of shop drawings of any items to be cast in or around the floors, wall-footings, walls, and roof (before proceeding with the installation of such items) for DN TANKS to review and approve in order that DN TANKS may be assured that there will be no interferences with the operation of DN TANKS' machinery or forming.
- F. **Tank Testing and Inspection Expenses:** The Contractor shall provide test water, fill, chlorinate and test the tank, including plugging of all openings, if required, pipe sleeves, piping, etc; transporting and/or pumping of water into the tank; disposal of leakage test water, if required, including all incidental costs related to the testing of the tank, if required. DN TANKS will observe the tank's leakage test after the tank is filled, if required. The Contractor shall provide any expenses or damages including the cost of inspection or field assistance by city employees, agencies, or inspectors arising from over time operations.
- G. **Construction Water:** Potable construction water shall be provided by the Contractor at no cost to DN TANKS. Contractor shall maintain a minimum of 6-inches of water covering the concrete floor until the tank is put into service. During the tank construction, Contractor shall provide within 50' of the tank (at no charge to DN TANKS) potable water for the tank construction, curing, and testing. Water shall be furnished under sufficient volume and pressure. Within 3 days after completion of DN TANKS' construction operations, Contractor shall furnish (at no charge to DN TANKS), sufficient water to fill and test the 0.30MG reservoir. Contractor shall be responsible for filling the tank with water. Water shall be furnished under sufficient volume and pressure to fill the tank in a one week time period. If the water (i.e. chlorinated or non-chlorinated) needs to be dechlorinated and disposed of, such costs shall be paid by the Contractor. Any and all expenses, including any Owner's assessed liquidated damages, incurred by DN TANKS or Contractor resulting from more than one week's time to fill the tank shall be paid for by Contractor. Temporary piping and backflow preventer shall be provided, installed, and removed by Contractor if necessary to fill the tank.





H. **Disinfection:** DN TANKS shall at the completion of its scope, deliver the tank interior in “broom clean” condition, free of all construction debris. Contractor shall perform reservoir disinfection concurrent with ancillary piping.

In addition, Contractor shall provide, install, and remove plugs for all pipe spools and pipes, if necessary, to allow the tank to be filled. Contractor shall be responsible for bacteriological testing upon completion of tank disinfection.

I. **Winterization and Weather Conditions:** If the tank is to remain out of service through the winter months (December through April), the Contractor shall plug all opening and fill the tank with a minimum of four (4) feet of water to protect the tank foundation from freezing. No provisions are included in our price for winter work or extreme cold-weather protection.

J. **Tank Schedule:** The Contractor agrees to provide the completed site work (tank floor base, track and work road/area complete). DN TANKS anticipates a Notice to Proceed being issued on or about ~~November 1<sup>st</sup>, 2024~~ **April 4<sup>th</sup>, 2022**. Our price is contingent upon DN TANKS being able to commence work no earlier than ~~January 4<sup>st</sup>, 2024~~ **April 4<sup>th</sup>, 2022**. It is anticipated that the construction of the 0.30 MG tank shall be accomplished in approximately 16 weeks based on a 5-day work week. This schedule is contingent on the casting areas and floor base being 100% prepared at the time of DN TANKS’ mobilization. DN TANKS’ schedule does not make any allowances for delays due to services General Contractor has not provided, bad weather, and/or other unforeseeable conditions.

K. **Supervision:** If required by the Contract Documents, DN TANKS will provide supervision of the exposed subgrade, placement of structural fill, and installation of all tank underslab piping for an Additive cost of \$3,500 per week. The Contractor shall determine the number of weeks required for DN TANKS supervision based on the Contractors duration to perform this work and include this cost in the Contractor’s bid.

L. **Wire Winding Process and Shotcrete Protection:** During the wire winding process the area near the tank shall not be occupied by construction personnel. During the shotcrete process the Contractor shall protect his work that may be subject to over spray damage.

M. **Standby Time, Delays, Construction Time and Continuous Operation:** No other construction activities can be accomplished in the tank area without the approval of DN TANKS. DN TANKS realizes that some construction for other work at the tank area will be in progress, but our proposal requires that no work shall be accomplished in the tank area without DN TANKS’ approval.

In the event that the Contractor has not completed the services it is to provide under this Agreement by the date that DN TANKS has been requested to start work by Contractor or if the tank is filled in more than one week’s time, resulting in standby



time for DN TANKS' personnel, the cost for such standby time will be charged for each day that DN TANKS' key personnel are required to wait. It is further agreed that DN TANKS shall be permitted to execute its work without delay or interruptions. If delayed, DN TANKS reserves the right to seek reimbursement or compensation from the party causing the delay. DN TANKS will assist Contractor in formulating a construction schedule.

- N. **Liquidated Damages:** DN TANKS will not be liable for penalties or liquidated damages as a result of others' work and/or time delays.
- O. **M/D/WBE Participation:** DN TANKS is a specialty design-build company with singular responsibility of the design and construction of the tank and cannot offer any M/D/WBE participation, if required by the Contract Documents.
- P. **Value Engineering:** If any value engineering between the Contractor and the Owner is to take place DN TANKS will be fully compensated and receive the full value engineering payment made to the Contractor from the Owner for DN TANKS' portion of the work. This would include those portions outlined in this proposal (concrete floors, wall footings, walls, columns, flat slab roof, seismic cables, prestressing, and shotcrete). Any other credits derived from the value engineering will go to the Contractor.
- Q. **Insurance:** DN TANKS will supply insurance certificates for the amounts and coverage as required by the contract documents, excluding Professional Liability Insurance, Builder's Risk Insurance and Owner's and Contractor's Protective Insurance. If the Contractor includes DN TANKS as an additional insured on the Contractor's insurance policy, all applicable deductibles shall be paid for by the Contractor. DN TANKS shall be named as additional named insured on the Contractor's "Builder's Risk" insurance policy to the Owner, a waiver of subrogation will be provided in favor of DN TANKS, coverage will be primary and non-contributory, and all applicable deductibles shall be paid for by Contractor, unless DN TANKS is reimbursed for acquiring its own policy.
- R. **Indemnification:** The Contractor agrees to indemnify and hold harmless DN TANKS against all claims, damages, bodily injury, and property damage arising out of the Contractor's work and caused by any act or omission of his agents and/or his employees and/or other contractors and/or subcontractors. DN TANKS will only agree to a Type III indemnity clause.
- S. **Disputes:** In the event that a dispute has to be settled by the Courts or through Arbitration, the losing party shall pay all attorney, court and arbitration expenses incurred by the prevailing party, within 10 calendar days from each date of settlement, or within 10 calendar days from date of each invoice. Payments shall not be withheld should the verdict be appealed.



- T. **Guarantee:** DN TANKS will guarantee the tanks(s) as required by the Contract Documents.
- U. **Equal Opportunity Employer:** DN TANKS is bidding this project as an equal opportunity contractor.
- V. **Complete Agreement:** This document contains all covenants, stipulations, and provisions agreed to by the parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

IV. **PRICE AND PAYMENT CONDITIONS FOR MATERIALS FURNISHED AND WORK PERFORMED:**

- A. **Progress Payments:** Progress payments shall be made monthly and in accordance with DN TANKS' Progress Payment Schedule and reach DN TANKS by the tenth (10<sup>th</sup>) of the month for materials furnished and/or work completed in the previous month. Contractor shall withhold no greater than 5% retention and, if less, will not withhold retention any greater than the percentage withheld by the Owner on DN TANKS' portion of the work. Alternately, Contractor shall assist DN TANKS in establishing a "substitute security" account with the Owner as substitution for retention.
- B. **Final Payment:** Final payment in full shall reach DN TANKS within thirty-five (35) days from the date that DN TANKS has physically completed its work under this Agreement. Contractor shall obtain the Owner's representative verbal or written approval of DN TANKS' work before DN TANKS leaves the site, in order to satisfy and insure itself that the work has been done to everyone's satisfaction. No final payment shall be delayed because of delays in water testing. Payment in full shall not relieve DN TANKS from correcting faulty materials and workmanship within the specified Guarantee Period, as listed in Section III above.
- C. **Payment:** All payments made by Contractor pursuant to this contract shall be made to DN TANKS at 11 Teal Road, Wakefield, MA 01880 and to no other party, Contractor or supply house, unless specifically directed by DN TANKS in writing. All such payments shall be received by DN TANKS by the tenth (10<sup>th</sup>) day of the month immediately following the work period for which billing was made.
- D. **Interest:** Overdue payments shall bear interest of 0.05% per calendar day (18.25% per annum) on all overdue amounts, in dispute or otherwise, until paid.
- E. **Back Charges:** There shall be no back charge of any sort by either party unless and until an authorized representative of each party has agreed to in writing the reason for and the extent of such back charge prior to such services being rendered by or for one of the parties under this Agreement.



- F. **Performance/Payment Bonds:** The performance and payment bond is not included. If Contractor desires DN TANKS to furnish a performance/payment bond the charge for such bonds shall be paid directly to DN TANKS' bonding agent by Contractor or may be paid directly to DN TANKS at the rate of 0.6% of DN TANKS' subcontract amount.
  - G. **Sales Tax:** Sales tax is not included in our price.
  - H. **Wage Rates:** Our price is strictly for use in a Merit (Open-Shop) environment utilizing non prevailing wage rates.
  - I. **Changes in Scope:** Any additions, deletions, or changes to this proposal will subject our proposal price to change.
- V. **ACCEPTANCE:** Since it is imperative to DN TANKS that it is able to place its material orders (such as for prestressing material) before price escalations occur, this proposal is hereby offered for acceptance for a period of up to thirty (30) days after Contractor has received its Contract Award from the Owner. DN TANKS reserves the right, after this period, to amend its bid and to reflect any changing construction schedules and material and labor rate changes. The return to DN TANKS of an accepted, endorsed copy of this proposal, within the above referenced time period, will constitute a contract between DN TANKS and Contractor. DN TANKS reserves the right to void this proposal and any contract with the Contractor if the Contractor or any related party fails to make any payments as required by law on another contract with DN TANKS. This Proposal shall be made a part of any subcontract agreement or purchase order. In the event of a dispute or discrepancy between this proposal and Contractor's subcontract agreement/purchase order, this proposal shall govern. DN TANKS reserves the right to negotiate or reject any or all terms of any subcontract agreement or purchase order utilized by the Contractor.

Sincerely,

*Kyle Koebbe*

**Kyle Koebbe** Estimator

**DN TANKS | Generations Strong**

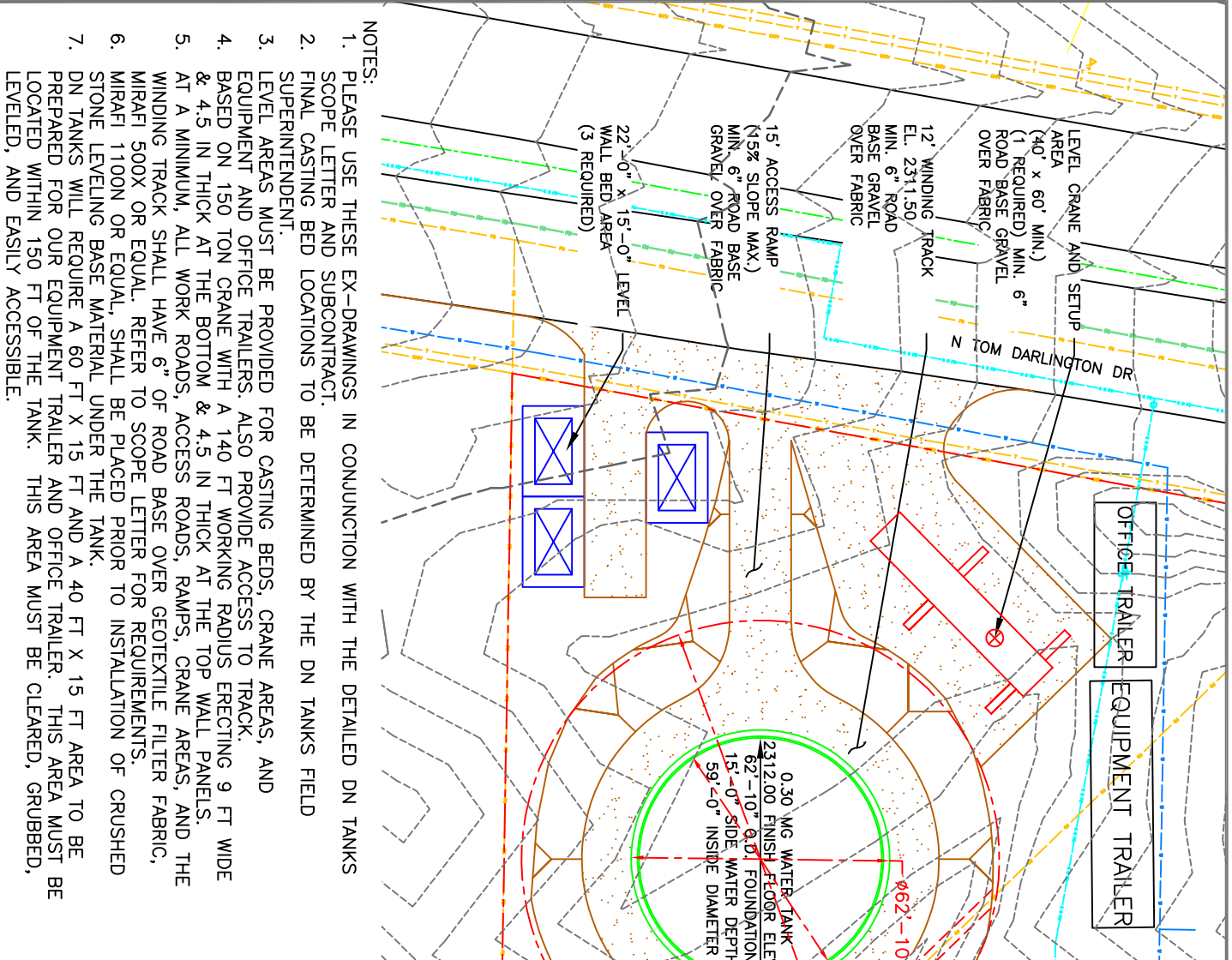
10505 Corporate Drive Suite 105B, Pleasant Prairie, WI 53158

Main Office 781.246.1133

Direct/Fax 847.786.5010 | Cell 847.946.2063

[www.dntanks.com](http://www.dntanks.com)

**Attachments:** Drawings EX-1 & EX-2



NOTES:

- PLEASE USE THESE EX-DRAWINGS IN CONJUNCTION WITH THE DETAILED DN TANKS SCOPE LETTER AND SUBCONTRACT.
- FINAL CASTING BED LOCATIONS TO BE DETERMINED BY THE DN TANKS FIELD SUPERINTENDENT.
- LEVEL AREAS MUST BE PROVIDED FOR CASTING BEDS, CRANE AREAS, AND EQUIPMENT AND OFFICE TRAILERS. ALSO PROVIDE ACCESS TO TRACK.
- BASED ON 150 TON CRANE WITH A 140 FT WORKING RADIUS ERECTING 9 FT WIDE & 4.5 IN THICK AT THE BOTTOM & 4.5 IN THICK AT THE TOP WALL PANELS.
- AT A MINIMUM, ALL WORK ROADS, ACCESS ROADS, RAMPS, CRANE AREAS, AND THE WINDING TRACK SHALL HAVE 6" OF ROAD BASE OVER GEOTEXTILE FILTER FABRIC, MIRAFI 500X OR EQUAL. REFER TO SCOPE LETTER FOR REQUIREMENTS.
- MIRAFI 1100N OR EQUAL, SHALL BE PLACED PRIOR TO INSTALLATION OF CRUSHED STONE LEVELING BASE MATERIAL UNDER THE TANK.
- DN TANKS WILL REQUIRE A 60 FT X 15 FT AND A 40 FT X 15 FT AREA TO BE PREPARED FOR OUR EQUIPMENT TRAILER AND OFFICE TRAILER. THIS AREA MUST BE LOCATED WITHIN 150 FT OF THE TANK. THIS AREA MUST BE CLEARED, GRUBBED, LEVELLED, AND EASILY ACCESSIBLE.

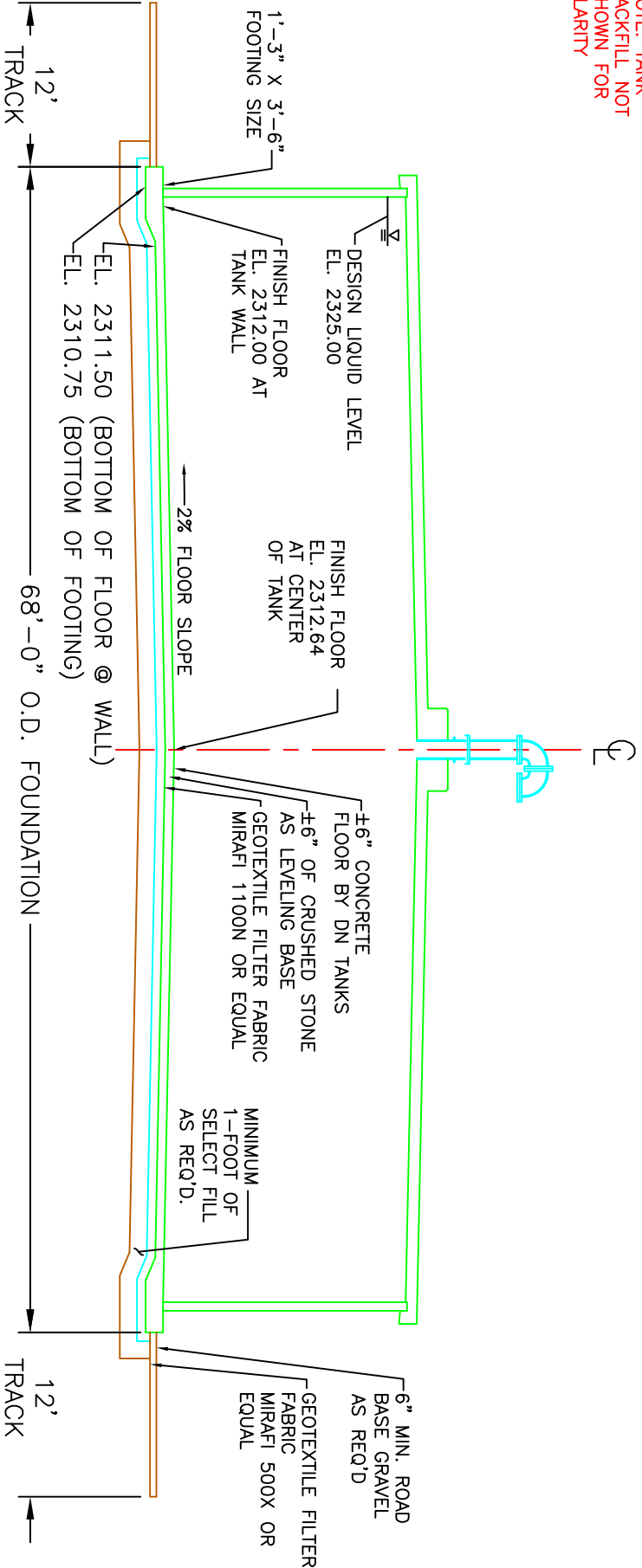
"THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF DN TANKS, AND MAY NOT BE DUPLICATED, IN WHOLE OR IN PART, USED FOR OTHER THAN INTERNAL REVIEW PURPOSES, OR DISCLOSED TO OTHERS, WITHOUT THE PRIOR EXPRESS WRITTEN PERMISSION OF DN TANKS."



**0.30 MG PRECAST, PRESTRESSED CONCRETE WATER STORAGE TANK CONSTRUCTION SITE LAYOUT - PLAN**

DRAWN BY:	DATE:	SCALE:	DWG#	REV:
KMK	09/09/21	1'-40'	EX-1	
CHECKED:	FILE:			
***	M:\Southwest Region\Arizona\Carefree, AZ (Developer) - 11875\Layouts			
SITE LOCATION:	CAREFREE, ARIZONA			
SHEET 1 OF 2				

NOTE: TANK BACKFILL NOT SHOWN FOR CLARITY



NOTES:

- PLEASE USE THESE EX-DRAWINGS IN CONJUNCTION WITH THE DETAILED DN TANKS SCOPE LETTER AND SUBCONTRACT.
- ALL TEMPORARY SLOPES ARE TO MEET OSHA REQUIREMENTS.
- FOUNDATION PREP SHALL BE ADJUSTED IN ACCORDANCE WITH THE FINAL GEOTECHNICAL REPORT.
- AT A MINIMUM, ALL WORK ROADS, ACCESS ROADS, RAMPS, CRANE AREAS, AND THE WINDING TRACK SHALL HAVE 6" OF ROAD BASE OVER GEOTEXTILE FILTER FABRIC, MIRAFI 500X OR EQUAL. REFER TO SCOPE LETTER FOR REQUIREMENTS.
- DN TANKS WILL REQUIRE A 60 FT X 15 FT AND A 40 FT X 15 FT AREA TO BE PREPARED FOR OUR EQUIPMENT TRAILER AND OFFICE TRAILER. THIS AREA MUST BE LOCATED WITHIN 150 FT OF THE TANK. THIS AREA MUST BE CLEARED, GRUBBED, LEVELED, AND EASILY ACCESSIBLE.

SECTION 1  
A-A

"THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF DN TANKS AND MAY NOT BE DUPLICATED, IN WHOLE OR IN PART, USED FOR OTHER THAN INTERNAL REVIEW PURPOSES, OR DISCLOSED TO OTHERS, WITHOUT THE PRIOR EXPRESS WRITTEN PERMISSION OF DN TANKS."



0.30 MG PRECAST, PRESTRESSED CONCRETE WATER STORAGE TANK CONSTRUCTION SITE LAYOUT - SECTION

DRAWN BY: KMK	DATE: 09/09/21	SCALE: NTS	DWG#: EX-2	REV: 00/00/00
CHECKED: ***	FILE: U:\DRAWINGS\LAYOUTS\SITE 2021\CAREFREE, AZ 09.09.21.DWG	SITE LOCATION: CAREFREE, ARIZONA		

**EXHIBIT D**  
**STATUTORY PERFORMANCE BOND**  
PURSUANT TO TITLE 34, CHAPTER 6,  
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 corporation organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Carefree, Arizona Utilities Community Facilities District, County of Maricopa, State of Arizona in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and 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 Town of Carefree, AZ Utilities Community Facilities District, dated the 29<sup>th</sup> day of March, 2022, for Contract No. C2022-01, Guaranteed Maximum Price (GMP) A2 – Tom Darlington Water Storage Reservoir – Concrete Water Storage Reservoir Construction which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein. This GMP contract represents a portion of the work under Project No. 2021-W01, Carefree Water Consolidation Project.

NOW THEREFORE, the condition of this obligation is such, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts 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 Contracts 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 6, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Contract. The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a Judge of the Court. The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, Preconstruction services, financial services, maintenance services, operations services or any other related services included in the contract.

WITNESS our hands the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
PRINCIPAL

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

\_\_\_\_\_  
SURETY (SEAL)

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

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

**EXHIBIT E  
STATUTORY PAYMENT BOND**

PURSUANT TO TITLE 34, CHAPTER 6,  
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 corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Carefree, Arizona Utilities Community Facilities District, County of Maricopa, State of Arizona, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment whereof, the said Principal and Surety bind themselves, and 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 Town of Carefree, Arizona Utilities Community Facilities District dated the 29th day of March, 2022, for Contract No. C2022-01, Project No.2021-W01, Carefree Water Consolidation Project - Tom Darlington Water Storage Reservoir – Concrete Water Storage Reservoir Construction which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the contract, this 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 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Arizona Revised Statutes, to the same extent as if they were copied at length in this Contract.

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

WITNESS our hands the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_

PRINCIPAL

\_\_\_\_\_

BY:

\_\_\_\_\_

SURETY (SEAL)

\_\_\_\_\_

AGENCY OF RECORD

\_\_\_\_\_

AGENCY ADDRESS





**CONTRACTOR'S NOTICE OF  
FINAL PAY ESTIMATE**

CONTRACT NUMBER: C2022-01

PROJECT NUMBER: 2021-W01

PROJECT NAME: Carefree Water Consolidation Project – GMP A2 – Tom Darlington Water Storage Reservoir – Concrete Water Storage Reservoir Construction

To: The Town of Carefree, Arizona Utilities Community Facilities District

This notice confirms acceptance by Contractor of final contract payment in the amount of \$ \_\_\_\_\_ which represents the balance due for subject project. This amount includes payment for all retentions held and adjusted final quantities.

**TOTAL CONTRACT AMOUNT**, including final pay estimate: \$ \_\_\_\_\_.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

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

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

For: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss  
COUNTY OF MARICOPA            )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
My Commission Expires

**CONTRACTOR'S NOTICE OF  
FINAL ACCEPTANCE**

PROJECT NAME: Carefree Water Consolidation Project

PROJECT NUMBER: 2021-W01 – GMP A2 – Tom Darlington Water Storage Reservoir –  
Concrete Water Storage Reservoir Construction

CONTRACTOR NAME: Achen-Gardner Construction LLC

FINAL CONTRACT AMOUNT:

Construction on the above project was completed on \_\_\_\_\_ and on  
\_\_\_\_\_ a final inspection was made of the subject improvements by this office.  
The work substantially conforms to the approved plans and specifications. We, therefore,  
accept those portions within the public right-of-way into our system for maintenance.

Approved By:

\_\_\_\_\_  
Contract Administrator

\_\_\_\_\_  
Construction Admin Supervisor

cc: District Clerk  
District Treasurer