

PORT OF TUCSON EARTHWORK

INVITATION FOR BID

Sealed bids for construction of the earthwork part of the Port of Tucson project shall be delivered before the date and time indicated below to the Port of Tucson at the address below. Bids must be accompanied by a surety bond of five percent (5%) of the amount of the bid.

There will be a **MANDATORY** prebid meeting at <time> on <date> at the Port of Tucson, 6964 East Century Park Drive, Tucson, AZ 85756. The meeting will include a site tour. Bids will only be accepted from firms that attend the meeting.

The project shall be complete and in place within 60 calendar days from the Notice to Proceed. Liquidated damages for late delivery will be assessed per Pima County Standard Specification Section 108-9.

The contractor must have the appropriate license issued by the State of Arizona Registrar of Contractors before award of the contract and maintain same through the duration of the project.

Union Pacific Rail Road (UPRR) owns the right of way for this project. The contractor must follow the UPRR guidelines to obtain a construction ROE prior to commencing work.

The successful contractor will be required to provide a construction schedule, QA/QC plan, and safety plan prior to start of construction.

The construction survey for this project will be provided by the Port of Tucson.

The plans include two "for reference only" sheets provided by UPRR, which are not a part of the sealed earthwork plans developed by PSOMAS. These sheets are the 30% plans for the track configuration, and are provided for contractor reference only. These are not to be included in the bid or contract in any way.

This project is partially funded by a grant from the US Department of Transportation through the Federal Railroad Administration. As a result, there are additional federal requirements applicable to this contract as described in this solicitation, including the payment of Davis-Bacon wages.

While no DBE goal has been set for this project, contractors are encouraged to maximize the use of registered DBE's where possible. All bidders are subject to the requirements of the Pima County's Disadvantaged Business Enterprise (DBE) Program Plan and associated reporting requirements for the Port of Tucson project. Please review these requirements carefully (Attachment 1 to Appendix B).

Questions must be presented in writing and directed by email to Alan@portoftucson.net. Responses that materially change this IFB will be distributed in one or more addenda.

BID DUE DATE/TIME: _____ **before X.XX (AM) PM Local Tucson Time**
LOCATION: Port of Tucson, 6964 East Century Park Drive, Tucson, AZ 85756

INSTRUCTIONS TO BIDDERS

The contractor must have or obtain a DUNS number issued by Dun & Bradstreet before award. It can take several weeks to obtain a number, so bidders should start the process early. There is no cost to obtaining a DUNS number.

1. SCOPE

The work shall be completed as called for in the Bid Documents, which includes the Invitation to Bid, Instructions to Bidders, Bid for Construction, Bid Schedule(I any), Bid Bond, Sample Contract, Payment and Performance Bonds, General Conditions, Special Conditions, Special Provisions, Plans, Standard Specifications & Details for Public Improvements 2003 Edition and Bid Addenda (if any).

This bid document contains provisions and requirements that vary from, or are not included in, the Standard Specifications. The provisions of this document take precedence over the Standard Specifications.

2. QUESTIONS

Bidders must submit questions or comments in writing by email to: Alan@portoftucson.net. Questions received seven (7) calendar days or less prior to the original deadline for receiving bids may not be addressed.

Any clarifications or interpretations of this solicitation that materially affect or change the scope or intent will be issued via addenda by email to all IFB holders. Failure to acknowledge any or all addenda may be cause for rejection of the bid.

No oral interpretations shall be effective to modify any of the provisions of the bid documents.

4. BID SUBMISSION

All bids must be submitted on the Bid Forms included with these bid Documents. Provide the price for the work in the requested manner in clearly documented figures (typewritten is preferred). A duly authorized representative of the bidding firm must sign the Bid. All figures and signatures must be in ink. Changes or corrections must be in ink and initialed in ink by the individual preparing the bid.

This bid includes an alternate for construction of Proposed Pad Number 2 (Sheet 5). Bids will initially be evaluated on the Total Bid. If there is not sufficient funding to include the alternate, then bids will be evaluated on the base bid.

Bidders should return the Bid for Construction, Bid Bond, Subcontractor List, and an executed copy of the contract. Submit the required pages in a sealed envelope clearly marked with the bidder's name and the name of the project.

NOTE: FLAGMEN MUST BE PRESENT FOR ALL WORK WITHIN 25 FEET OF THE UPRR TRACKS. PORT OF TUCSON WILL BE RESPONSIBLE FOR FLAGMEN. THE COST OF FLAGMEN SHOULD NOT BE INCLUDED IN THE BID.

5. PRICES

Prices are to include the furnishing of all materials, plant, equipment, tools, all applicable taxes, bonds, and the performance of all labor and services necessary or proper for the completion of the work, unless otherwise expressly provided in these bid documents.

6. DATE AND PLACE FOR OPENING BIDS

Pursuant to the IFB, sealed bids for performing the work will be received and opened at: Port of Tucson, 6964 East Century Drive, Tucson AZ 85756. This facility is wheelchair accessible. Upon request, ten (10) working days prior to bid opening, a signer will be provided for the hearing impaired.

Bids will be received until the date and time stated in the IFB. Bids will be opened publicly and read immediately thereafter. Late bids will not be considered, and will be returned unopened.

7. EVALUATION AND AWARD

Bidders shall guarantee bid prices for thirty (30) calendar days after the date of bid opening to allow adequate time for evaluation and award. The bid shall be recommended for award to the lowest responsive, responsible bidder, considering the total bid.

8. TIME FOR EXECUTING CONTRACT

The successful bidder will be required to execute the contract and return it to Port of Tucson within ten (10) days after receipt of Notice of Award, complete with required bond forms and insurance certificates. Failure or neglect to do so shall constitute a breach of the contract and may result in termination.

9. PROPRIETARY SPECIFICATIONS-SUBSTITUTIONS AND PRIOR APPROVAL OF ALTERNATIVE PRODUCTS PROCEDURES.

These Bid Documents prohibit the use of specifications proprietary to one supplier, distributor or manufacturer. When a specific reference to an article, manufacturer, proprietary name, device, product, material or fixture is made in these documents, it is to establish a standard of quality and shall not be construed as limiting competition, and is only used to describe more clearly the intended result.

Substitute products, materials, appliances, equipment, fixtures, or systems will be considered for prior approval. Any bidding contractor desiring to obtain prior approval(s) shall, at least eight (8) calendar days prior to the original deadline for receiving bids, submit, in a sealed envelope, catalog cuts, shop drawings, or other descriptive literature for products, materials, appliances, equipment, fixtures, or systems for which the bidder wished to make substitution. The bidder shall make request to PORT OF TUCSON in triplicate on copies of form included. Submittal(s) shall include a complete and adequate analysis showing point-for-point comparison to specified item(s) or system(s) and shall prove equality or superiority. Include related Section and Drawing number(s), and fully document compliance with requirements for substitutions. Include product data/drawings, description of methods, samples where applicable, statement of effect on construction time (if any) and coordination with other affected Work. Anything less than the above submittal requirements will not be considered. If available, the bidder shall include identification of previous local use of proposed substitutions with dates and names of PORT OF TUCSON.

- A. Direct submittals from subcontractor's, material vendors, or manufacturers will not be accepted. All prior approval requests MUST be made by bidding general contractors. Submissions from subcontractors or suppliers will not be considered.
- B. The PORT OF TUCSON will be the sole judge of equivalency of proposed substitution(s).

- C. Prior to making a prior approval request, bidder shall satisfy itself that the item or system the bidder proposes is, in the bidder's best judgment, equal to that specified; that it will fit into space allocated; that it affords comparable ease of operation, maintenance, and service; that its appearance, longevity, and suitability for climate and use are comparable to that specified; and that substitution is in County's best interest.
- D. Readily available manufacturer's data is not sufficient for establishing proof of quality.
- E. The bidder may be required to provide laboratory test data performed by a nationally recognized independent testing laboratory known for its testing expertise. Laboratory tests shall include types of materials used in substitute item or system, including thickness and strength, and a direct comparison to item or system specified for capacities, capabilities, coatings, functions, life cycle usage, and operations.
- F. Burden of proof that a proposed substitution is equal to a specified item or system shall be upon Contractor, who shall support the request with sufficient test data, samples, brochures, and other means to permit a fair and equitable decision on merits of proposal.
- G. The PORT OF TUCSON will notify Bidders of acceptance via a written addendum to the Bid Documents listing accepted substitutions.

Acceptance of substitutions shall not relieve Contractor from responsibility for complying with all other requirements of the Bid documents and coordinating substitution(s) with adjacent materials and other affected equipment.

Submit substitution requests to
Alan Levin
At the Port of Tucson
6964 East Century Park Drive
Tucson, AZ 85756

CLEARLY IDENTIFY ON SUBMITTAL ENVELOPE THAT IT CONTAINS A SUBSTITUTION REQUEST or the package may be mistaken for a bid and not be opened.

10. NON-COLLUSION

Each bidder, by signing and submitting a bid, is certifying that the bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with this bid.

11. SUBCONTRACTORS

The contractor shall submit with its bid, a list of Subcontractors and major Suppliers it intends to use in the performance of the work. Only those Subcontractors and/or Suppliers identified on the List of Subcontractors form submitted with the bid proposal and approved by the PORT OF TUCSON will be permitted to perform work on this Project. Substitutions or addition of subcontractors-suppliers will only be permitted by approval of the PORT OF TUCSON.

THE CONTRACTOR SHALL NOT SUBCONTRACT AT ANY TIER WITH ANY FIRM, PERSON OR OTHER ENTITY LISTED IN THE FEDERAL GOVERNMENT'S SYSTEM FOR AWARD MANAGEMENT (SAM) ([HTTPS://WWW.SAM.GOV/PORTAL/PUBLIC/SAM](https://www.sam.gov/portal/public/sam)) WITH AN ACTIVE EXCLUSION.

12. SUSPENSION & DEBARMENT

By submitting this bid, the bidder is certifying that neither it nor any of its principals are currently suspended or debarred, or under consideration for suspension or debarment, by any public agency or entity at the local, state or Federal level.

13. ARIZONA CONTRACTOR'S LICENSE

Each bidder shall note its license number(s) where requested. The contractor must be appropriately licensed by the State of Arizona Registrar of Contractors before award of the contract and maintain said license throughout the duration of the project. Failure to obtain this license by the end of the sixtieth (60th) calendar day after bid opening may result in rejection of the bid without further recourse and award of the contract to the next appropriately licensed low responsive, responsible bidder. For the purposes of this paragraph, the day of bid opening shall be excluded and the day following will be the first day after bid opening.

14. UNBALANCED BIDS

The PORT OF TUCSON reserves the right to reject a bid as non-responsive if the prices bid are materially unbalanced between line items. A bid is materially unbalanced when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated and there is a reasonable doubt that the bid will result in the lowest overall cost to PORT OF TUCSON, even though it may be the low evaluated bid.

15. JOINT VENTURES

Bidders that submit a bid as a Joint Venture must include a copy of the Joint Venture Agreement at the time of bid. The bid must be executed by the Joint Venture Partners or by one Joint Venture Partner with a letter of authorization from the other Joint Venture Partners. The bid bond must be presented in the Joint Venture's name as the Principal.

16. PUBLIC INFORMATION

Responses to this solicitation may come into the possession of the County, in which case they shall be considered public information after award and execution of the contract. They may also come into the possession of federal agencies, in which case an information request would be subject to the federal Freedom of Information Act.

17. PIMA COUNTY ONESTOP SYSTEM

Pima County One Stop often has professional and administrative staff, managers, and experienced construction supervisors and workers available for immediate hire. Call (520) 243-6700 or contact One Stop at <http://www.pima.gov/ced/agencies-employerservices.shtml>

END OF INSTRUCTIONS TO BIDDERS

REQUEST FOR PRIOR APPROVAL OF SUBSTITUTE ITEMS OR SYSTEMS

A complete reproduction of this form must accompany all requests for prior approval. Failure to submit this form with request may be cause for rejection. Substituted items or systems may be incorporated into the Work only after receipt of Port of Tucson's written approval in the form of an addendum.

Note: This request must be received at least eight (8) calendar days prior to the *original* deadline for receiving bids.

[Subcontractor] [Material Vendor] [Manufacturer]: _____

Item or System: _____

Specification Section Reference: _____

Drawing Reference: _____

Affect, if any, on Construction Time: _____

Summary of Related Work Requiring Coordination (if any): _____

(Contractor shall assume responsibility for complete coordination with Work of all trades involved if Request for Prior Approval is approved.)

Attached documentation: The following is herewith attached to provide complete documentation of requested substitution. (Indicate with a check next to those documents attached.)

- | | |
|--------------------------------------|-------------------------|
| 1. Point-for-Point Comparison: _____ | 4. Shop Drawings: _____ |
| 2. Product Data: _____ | 5. Test Reports: _____ |
| 3. Samples: _____ | 6. Other: _____ |

SIGNATURE: _____ DATE: _____

PRINTED NAME & TITLE: _____

FIRM NAME: _____

BID FOR CONSTRUCTION

BID OF: _____
 (CONTRACTOR'S NAME)

The undersigned bidder has carefully examined the Bid Documents and the site of the work for the **PORT OF TUCSON EARTHWORK** and will provide all necessary machinery, tools, apparatus, and other means of construction and do all the work and furnish all material called for by this Contract, including the Specifications and Plans incorporated herein. The undersigned bidder understands that the quantity of work for the bid amounts as shown herein shall be a fixed not-to-exceed amount, complete in place.

BASE BID: BIDDER AGREES TO PERFORM ALL OF THE NECESSARY WORK DESCRIBED IN THESE SPECIFICATIONS AND AS SHOWN ON THE DRAWINGS, EXCLUDING THE ALERNATE, FOR THE FIXED PRICE OF:

_____ DOLLARS (\$ _____)
 (written- Base Bid Amount)

ALTERNATE: BIDDER AGREES TO CONSTRUCT PROPOSED PAD # 2 FOR THE FIXED PRICE OF:

_____ DOLLARS (\$ _____)
 (written-Alternate Bid Amount)

TOTAL BID.....\$ _____

The prices are to include the furnishing of all materials, plant, equipment, tools, scaffolds, and all other facilities, all applicable taxes, insurance and bonds, and the performance of all labor and services necessary for proper completion of the work.

BIDDER SHALL SIGNIFY RECEIPT OF ADDENDA (IF ANY). Any bid that fails to acknowledge any addendum that directly affects cost, scope or schedule will be rejected as nonresponsive.

Addendum #	By (Bidder Initials)	Date	Addendum#	By (Bidder Initials)	Date

BIDS MUST BE SIGNED BY AN AUTHORIZED CONTRACTOR REPRESENTATIVE

Bidder hereby certifies that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

Signature of Bidder: _____

Printed Name: _____ Date: _____

CONTRACTOR INFORMATION PAGE

The undersigned bidder acknowledges receipt of the complete bid documents for this project, and has examined and is familiar with all documents, including those incorporated by reference, which are applicable to this project.

Company/Firm Name: _____ DUNS Number: _____

Address: _____

City, State, Zip Code: _____

Corporate Headquarters (City and State): _____

Telephone No.: (____) _____ Fax No.: (____) _____

Arizona Contractor's License Number(s) and Type(s)

CERTIFICATION:

Bidder hereby certifies that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

SIGNATURE: _____ DATE: _____

PRINTED NAME & TITLE: _____

ARIZONA STATUTORY BID BOND
PURSUANT TO TITLE 34, ARIZONA REVISED STATUTES

KNOW ALL MEN BY THESE PRESENTS THAT: _____

hereinafter "Principal"), as Principal, and _____
(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____, with its principal offices in the City of _____, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto Port of Tucson, (hereinafter "Obligee"), in the sum of Five Percent (5%) of the amount of the bid of Principal, submitted by Principal to the Obligee for the work described below, for the payment of which sum, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the work titled:

SOLICITATION

PORT OF TUCSON EARTHWORK

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

Witness our hands this _____ day of _____, 20_____.

Principal By: _____

Surety By: _____

SAMPLE CONTRACT

<p>PROJECT: PORT OF TUCSON EARTHWORK</p> <p>CONTRACTOR:</p> <p>AMOUNT:</p> <p>FUNDING:</p>	
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CONSTRUCTION SERVICES CONTRACT

THIS CONTRACT is entered into between the Port of Tucson (hereafter "PORT OF TUCSON") and _____ hereafter called
CONTRACTOR.

WITNESSETH

WHEREAS, Pima County, a body politic and corporate of the State of Arizona (hereafter "COUNTY"), collaborated with PORT OF TUCSON on the application for and was awarded grant Number FR-TII-0029-14-01-00 for National Infrastructure Investments in the amount of \$5,000,000 from the United States Department of Transportation ("DOT"), acting through the Federal Railroad Administration ("FRA"), under the provisions of the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6, March 26, 2013) for the specific purpose of supporting Port of Tucson expansion; and

WHEREAS, COUNTY is responsible for administration and oversight of the aforesaid grant and reporting to the federal agencies; and

WHEREAS, as part of this project, PORT OF TUCSON requires the services of a CONTRACTOR to provide all equipment, labor and material required to construct the Port of Tucson Earthwork ("Project"); and

WHEREAS, CONTRACTOR submitted the low responsive, responsible bid in response to PORT OF TUCSON's solicitation for said work.

NOW, THEREFORE, for the consideration hereinafter named, PORT OF TUCSON and CONTRACTOR agree as follows:

ARTICLE I - TERM AND EXTENSION/RENEWAL/CHANGES

This Contract shall commence on [MM/DD/YY], and shall terminate on [MM/DD/YY], unless sooner terminated or further extended pursuant to the provisions of this Contract.

Construction completion time for the work to be performed under this Contract shall be 60 calendar days after the date of the *Notice to Proceed*. Liquidated damages shall be assessed in accordance with the Standard Specifications for Public Improvements Section 108-9.

PORT OF TUCSON shall have the option to extend the contract termination date for project completion. Any

modification or extension of the contract termination date must be by formal written amendment executed by the parties hereto.

ARTICLE II - SCOPE OF SERVICES

CONTRACTOR shall provide all labor, materials and equipment necessary to complete the Port of Tucson Earthwork Project. All work shall be as called for by the Bid Documents, any issued Addenda, and other documents incorporated into this contract, all made a part hereof.

The City of Tucson/Pima County Standard Specifications & Details for Public Improvements 2003 Edition are incorporated into this contract the same as if set forth, EXCEPT for those provisions addressing measurement of work and payment.

Contractor understands that this Contract is wholly or partially funded by a federal grant and that Contractor is therefore subject to the additional federal requirements stated in Appendix (C) SPECIAL CONDITIONS – FEDERAL and all attachments thereto, if any. Contractor agrees to comply with all such requirements and agrees further that any failure by Contractor to comply with federal requirements may be deemed a substantial breach of this Contract subject to termination for default in accordance with Article XV.

CONTRACTOR also understands and agrees that site visits or inspections may be conducted by any of the agencies involved, including the Department of Labor, the COUNTY, the Union Pacific Railroad (UPRR), or the FRA. CONTRACTOR considered these possibilities in the preparation of its bid and will make no claim for additional costs arising from any such visit.

ARTICLE III - PAYMENTS

A. General

1. In consideration of the services specified in this Contract, the PORT OF TUCSON agrees to pay CONTRACTOR in the manner hereinafter specified. For this Article, "subcontractor" includes supplier. Payment shall be made based on **Appendix "A" - Bid for Construction** submitted by Contractor in response to Solicitation No. _____, and attached hereto and made part of this contract.

2. (N/A)

3. Total Payment for this Contract shall not exceed _____ Words _____ Dollars (\$Numbers).

4. CONTRACTOR must cite the CT (Contract) number on all invoices. CONTRACTOR shall provide detailed documentation in support of requested payment. Invoices and payments must comply with A.R.S. § 34-221.

B Progress Payments to Subcontractors

1. Each line item for which payment is claimed based on the work of a subcontractor must identify the subcontractor by name. CONTRACTOR shall pay each subcontractor and supplier for which CONTRACTOR receives payment on an invoice within seven (7) days of receipt of the progress payment for that invoice. Such payments shall be in the amount allowed by COUNTY for each subcontractor or supplier, to the extent of their interest therein. Retention by CONTRACTOR shall not exceed the actual percentage retained by COUNTY from the progress payment. COUNTY, at any time, in its sole discretion, may require that invoices be supported by evidence of payment to subcontractors and suppliers.

2. CONTRACTOR shall withhold from an invoice the application and certification for payment of a subcontractor or supplier to which payment will not be made in accordance with the preceding paragraph (B)(1) as a result of unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, or other legitimate dispute or disagreement justifying nonpayment. On separate page(s) accompanying the invoice

CONTRACTOR shall identify excluded subcontractors/suppliers and provide a brief justification for their nonpayment on the current invoice.

3. Failure to pay a subcontractor for which payment was made by PORT OF TUCSON shall be deemed an unjustified failure to pay for which PORT OF TUCSON may withhold from CONTRACTOR the sum of Two Thousand Dollars (\$2,000.00) plus the amount of the payment made by PORT OF TUCSON. Such sum(s) shall be retained by PORT OF TUCSON until the nonpayment issue is resolved, unless CONTRACTOR provides evidence convincing to the PORT OF TUCSON, in its sole discretion, that the failure to pay was justified. Each succeeding month of unjustified nonpayment shall be deemed a new failure for which an additional Two Thousand Dollars (\$2,000.00) may be withheld. At the sole discretion of PORT OF TUCSON, repeated instances of unjustified nonpayment(s) may result in withholding of progress payments until the subcontractor/supplier payment issues are resolved.

C. Subcontractor Final Payments

CONTRACTOR shall make prompt final payment to each of its subcontractors of all monies due the subcontractor, including retention, if any, after the subcontractor has satisfactorily completed all of its work, there are no outstanding issues arising from the work, and PORT OF TUCSON has incrementally accepted subcontractor's work in accordance with Section 105-17 of the Standard Specifications. If the final payment, including retention, if any, is not made within seven (7) days of PORT OF TUCSON payment to CONTRACTOR for subcontractor's work, PORT OF TUCSON, in its sole discretion, may withhold Two Thousand Dollars (\$2,000.00) from CONTRACTOR's progress payment(s) in accordance with paragraph (B)(3) above. Notwithstanding Incremental acceptance of subcontractor's work, the warranty thereon shall begin upon acceptance of the entire project.

D. Reservation of Audit Right

For the period of record retention required under Article XXII, PORT OF TUCSON reserves the right to question any payment made under this article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

ARTICLE IV - INSURANCE

CONTRACTOR shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

- a) Commercial General Liability Insurance at least as broad as ISO's Standard CG 00 01 Form, and including Products/Completed Operations, in an amount not less than \$1,000,000.00 combined single limit Bodily Injury and Property Damage.
- b) Commercial or Business Automobile Liability Insurance at least as broad as ISO's Standard CA 00 01 Form, for owned, non-owned and hired vehicles used in the performance of this Contract with limits not less than \$1,000,000.00 combined single limit, or \$1,000,000.00 bodily injury and \$1,000,000.00 property damage; and,
- c) Statutory Workers' Compensation as required by law, including Employers Liability Coverage.

CONTRACTOR shall provide PORT OF TUCSON with current certificates of insurance from carriers acceptable to PORT OF TUCSON. PORT OF TUCSON and COUNTY shall be endorsed as "Additional Insured" under the Commercial General Liability Policy and Automobile Liability Policy. All certificates of insurance must provide for guaranteed thirty (30) days written notice to PORT OF TUCSON and COUNTY of cancellation, non-renewal or material change.

Throughout the term of the Contract, CONTRACTOR shall submit updated insurance certificates and endorsements annually to PORT OF TUCSON within thirty (30) days of the policy renewal date.

ARTICLE V - INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless PORT OF TUCSON and COUNTY, their officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of the CONTRACTOR, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. This obligation shall survive termination or expiration of this Contract. The obligations under this Article shall not extend to the negligence of COUNTY, PORT OF TUCSON, their agents, employees or indemnitees.

ARTICLE VI - COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.

ARTICLE VII - INDEPENDENT CONTRACTOR STATUS

The status of CONTRACTOR shall be that of an independent contractor. Neither CONTRACTOR, nor its officers, agents or employees shall be considered an employee of PORT OF TUCSON. CONTRACTOR shall be responsible for payment of all federal, state, and local taxes associated with compensation received pursuant to this Contract and shall indemnify and hold PORT OF TUCSON harmless from any and all liability which either may incur because of CONTRACTOR'S failure to pay such taxes.

ARTICLE VIII - CONTRACTOR/SUBCONTRACTOR PERFORMANCE

CONTRACTOR shall perform the work with the degree of care and skill which a licensed contractor in Arizona would exercise under similar conditions. CONTRACTOR shall employ suitably trained and skilled personnel to perform all services under this Contract.

CONTRACTOR shall ensure that all subcontractors engaged to perform any portion of the Contract have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this contract. CONTRACTOR shall not permit any subcontractor to perform work that does not fall within the scope of the subcontractor's license, except as may be permitted under the rules of the Registrar of Contractors.

CONTRACTOR shall perform the work under this Contract using the subcontractors named on the Subcontractor List submitted with CONTRACTOR's bid for the Contract.

CONTRACTOR will be fully responsible for all acts and omissions of its Subcontractor and of persons directly or indirectly employed by Subcontractor and of persons for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of PORT OF TUCSON and COUNTY to pay or see to the payment of any money due any Subcontractor, except as may be required by law.

CONTRACTOR SHALL NOT SUBCONTRACT AT ANY TIER WITH ANY FIRM OR PERSON LISTED IN THE FEDERAL GOVERNMENT'S SYSTEM FOR AWARD MANAGEMENT (SAM) ([HTTPS://WWW.SAM.GOV/PORTAL/PUBLIC/SAM](https://www.sam.gov/portal/public/sam)) WITH AN ACTIVE EXCLUSION.

This provision shall be included in all subcontracts and all subcontractors will be required to include this provision in their subcontracts at every tier. CONTRACTOR shall immediately notify PORT OF TUCSON if any subcontractor is suspended or debarred after award of the subcontract.

ARTICLE IX - ASSIGNMENT

CONTRACTOR shall not assign its rights to this Contract, in whole or in part, without prior written approval of the PORT OF TUCSON. Approval may be withheld at the sole discretion of PORT OF TUCSON, provided that such approval shall not be unreasonably withheld.

ARTICLE X - NON-DISCRIMINATION

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf. During the performance of this contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE XI - AMERICANS WITH DISABILITIES ACT (ADA)

CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CONTRACTOR is carrying out government programs or services on behalf of PORT OF TUCSON, then CONTRACTOR shall maintain accessibility to the program to the same extent and degree that would be required of the PORT OF TUCSON under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

ARTICLE XII - AUTHORITY TO CONTRACT

CONTRACTOR warrants its right and power to enter into this contract. If any court or administrative agency determines that PORT OF TUCSON does not have authority to enter into this contract, PORT OF TUCSON shall not be liable to CONTRACTOR or any third party by reason of such determination or by reason of this contract.

ARTICLE XIII - FULL AND COMPLETE PERFORMANCE

The failure of either party to insist on one or more instances upon the full and complete compliance with any of the terms or provisions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE XIV - CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. §38-511, the pertinent provisions of which are incorporated into this contract by reference.

ARTICLE XV - TERMINATION OF CONTRACT FOR DEFAULT

A. Upon a failure by CONTRACTOR to cure a default under this Contract within 10 days of receipt of notice from PORT OF TUCSON of the default, PORT OF TUCSON may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, PORT OF TUCSON may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, or plant on the work site necessary for completing the work. The CONTRACTOR and its sureties shall be liable for any damage to the PORT OF TUCSON resulting from CONTRACTOR's default, including any increased costs incurred by PORT OF TUCSON in completing the work.

B. The occurrence of any of the following shall constitute an event of default:

1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
2. Persistent or repeated refusal or failure to supply enough properly skilled workmen or materials to perform the work on schedule;
3. Failure to provide competent supervision at the site;
4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or remove any defective or deficient Material
5. Failure to make prompt payment to subcontractors or suppliers for material or labor;
6. Loss of contractor, business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR's performance of this Contract;
7. Disregard of laws, ordinances, or the instructions of PORT OF TUCSON or its representatives, or any otherwise substantial violation of any provision of the contract; or
8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONTRACTOR, or CONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

C. In the event of a termination for default:

1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONTRACTOR for this project shall become PORT OF TUCSON's property and shall be delivered to PORT OF TUCSON not later than five (5) business days after the effective date of the termination;
2. PORT OF TUCSON may withhold payments to CONTRACTOR arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due PORT OF TUCSON from CONTRACTOR is determined; and
3. Subject to the immediately preceding subparagraph (2), PORT OF TUCSON's liability to CONTRACTOR shall not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

D. The Contract will not be terminated for default nor the CONTRACTOR charged with damages under this Article, if—

(1) Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR.

Examples of such causes include—

- (i) Acts of God or of the public enemy,
 - (ii) Acts of the PORT OF TUCSON or COUNTY in either its sovereign or contractual capacity,
 - (iii) Acts of another Contractor in the performance of a contract with the PORT OF TUCSON?,
 - (iv) Fires,
 - (v) Floods,
 - (vi) Epidemics,
 - (vii) Quarantine restrictions,
 - (viii) Strikes,
 - (ix) Freight embargoes,
 - (x) Unusually severe weather, or
 - (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the CONTRACTOR and the subcontractors or suppliers; and
- (2) The CONTRACTOR, within three (3) days from the beginning of any event of default or delay (unless extended by PORT OF TUCSON), notifies the PORT OF TUCSON in writing of the cause(s) therefor. In this circumstance, the PORT OF TUCSON shall ascertain the facts and the extent of the resulting delay. If, in the judgment of PORT OF TUCSON, the findings warrant such action, the time for completing the work may be extended.

E. For the purposes of paragraph A above, "receipt of notice" shall include receipt by hand by CONTRACTOR's onsite project manager, facsimile transmission, or under the Notices clause of this Contract.

F. If, after termination of the Contract for default, it is determined that the CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the PORT OF TUCSON.

G. The rights and remedies of PORT OF TUCSON in this Article are cumulative and in addition to any other rights and remedies provided by law or under this contract.

ARTICLE XVI - TERMINATION FOR CONVENIENCE

PORT OF TUCSON may terminate this Contract at any time by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials shall, at the option of the PORT OF TUCSON, become its property. If the Contract is terminated by PORT OF TUCSON as provided herein, CONTRACTOR shall be paid an amount based on the time and expenses incurred by CONTRACTOR prior to the termination date, however, no payment shall be allowed for anticipated profit on unperformed services.

Notwithstanding any other provision of this Contract, this Contract may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining PORT OF TUCSON or other public entity obligations under this Contract. PORT OF TUCSON shall have no further obligation to CONTRACTOR, other than to pay for services rendered prior to termination.

ARTICLE XVII - NOTICES

Any Notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

PORT OF TUCSON:

Alan Levin
Port of Tucson
6964 East Century Park Drive
Tucson, AZ 85756

CONTRACTOR:

ARTICLE XVIII - <RESERVED>

ARTICLE XIX - CONTRACT DOCUMENTS

A. INCORPORATION OF DOCUMENTS: CONTRACTOR and PORT OF TUCSON in entering into this Contract have relied upon information provided in SOLICITATION: PORT OF TUCSON EARTHWORK, BID FOR CONSTRUCTION, BONDS (BID, PAYMENT, AND PERFORMANCE BONDS), SPECIAL CONDITIONS – FEDERAL, GENERAL CONDITIONS, SPECIAL PROVISIONS, PLANS, CONSTRUCTION DOCUMENTS, DRAWINGS AND SPECIFICATIONS, ADDENDA, and on information provided in the CONTRACTOR response to this solicitation. These documents are hereby incorporated into and made a part of this Contract by reference as if set forth in full herein.

B. ORDER OF PRECEDENCE: In the event of a conflict or inconsistency between or among the documents incorporated into this contract, the Contract Documents shall take precedence in the following order:

- a) EXHIBIT "B" - Special Conditions, including attachments
- b) This Contract
- c) EXHIBIT "C" - General Conditions
- d) Special Provisions, Technical Specifications, and Plans
- e) Contractor Response to the Solicitation
- f) Instructions to Bidders
- g) Invitation to Bid

The parties may, by written mutual agreement, deviate from this order of precedence in resolving inconsistencies between or among contract documents. Any such agreement interpreting the Contract shall be incorporated into the Contract by Amendment.

In the event of a conflict between any of provisions in the Special Conditions and any provision of this Contract or any other incorporated document, the provision in the Special Conditions shall take precedence.

ARTICLE XX - BONDING REQUIREMENTS

It is a requirement of the grant underlying this contract that the CONTRACTOR shall provide Payment and Performance bonds for not less than one hundred percent (100%) of the contract amount. Copies of said bonds shall be attached to and become a part of this contract.

ARTICLE XXI - PORT OF TUCSONSHIP OF DOCUMENTS

All original drawings, boring logs, field data, estimates, field notes, plans, specifications, documents, reports, calculations, maps and models, and other information developed by CONTRACTOR under this Contract shall vest in and become the property of the PORT OF TUCSON and shall be delivered to PORT OF TUCSON upon completion or termination of the services, but CONTRACTOR may retain record copies thereof. The Granting Agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this contract or any subcontract; and (b) Any rights of copyright to which CONTRACTOR or PORT OF TUCSON acquires PORT OF TUCSONship under this contract.

ARTICLE XXII - BOOKS AND RECORDS

CONTRACTOR shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of PORT OF TUCSON, COUNTY, the granting agency or the Comptroller General of the United States.

In addition, CONTRACTOR shall retain all records relating to this contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

ARTICLE XXIII - REMEDIES

Either party may pursue any remedies provided by law for the breach of this contract. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this contract.

ARTICLE XXIV - SEVERABILITY

Each provision of this contract stands alone, and any provision of this Contract found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE XXV - <Reserved>

ARTICLE XXVI - LEGAL ARIZONA WORKERS ACT COMPLIANCE

CONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONTRACTOR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR shall further ensure that each subcontractor who performs any work for CONTRACTOR under this contract likewise complies with the State and Federal Immigration Laws.

PORT OF TUCSON shall have the right at any time to inspect the books and records of CONTRACTOR and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONTRACTOR'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting CONTRACTOR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CONTRACTOR shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, (subject to PORT OF TUCSON approval if SBE or DBE preferences apply) as soon as possible so as not to delay project completion.

CONTRACTOR shall advise each subcontractor of PORT OF TUCSON'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that PORT OF TUCSON may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which CONTRACTOR shall be entitled to an extension of time, but not costs.

ARTICLE XXVII- ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This contract may be modified, amended, altered or extended only by a written Amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this Contract on the dates written below.

PORT OF TUCSON

CONTRACTOR

Signature

Signature

Date

Name and Title (Please Print)

Date

ARIZONA STATUTORY PERFORMANCE BOND

PURSUANT TO TITLE 34, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: _____

hereinafter "Principal"), as Principal, and _____

(hereinafter "Surety"), a corporation organized and existing under the laws of the State of _____, with

its principal office in the City of _____, holding a certificate of authority to transact surety

business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are

held and firmly bound unto PORT OF TUCSON (hereinafter "Obligee") in the amount of _____

_____, for the payment whereof, 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 Obligee, dated

_____ for:

SOLICITATION: PORT OF TUCSON EARTHWORK

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

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same 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.

Witness our hands this _____ day of _____, 20_____.

By: _____

Principal

By: _____

Surety

ARIZONA STATUTORY PAYMENT BOND
PURSUANT TO TITLE 34, ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: _____
(hereinafter "Principal"), as Principal, and _____ (hereinafter
"Surety"), a corporation organized and existing under the laws of the State of _____, with
its principal office in the City of _____, holding a certificate of authority to transact surety
business in Arizona issued by the Director of Department of Insurance pursuant to Title 20, Chapter 2, Article 1,
as Surety, are held and firmly bound unto PORT OF TUCSON (hereinafter "Obligee") in the amount of _____
_____ for the payment whereof, 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 Obligee, dated
_____ for:

SOLICITATION: PORT OF TUCSON EARTHWORK

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 THE 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 2,
Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the
provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same
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 in the court.

Witness our hands this _____ day of _____, 20____.

By: _____
Principal

By: _____
Surety

APPENDIX "B"

SPECIAL CONDITIONS – FEDERAL

This contract is funded, in part, by a grant from the United States Department of Transportation through the Federal Railroad Administration. Federal regulations require that the following clauses be included in this contract. In the event of a conflict between any of these clauses or any of the Attachments to these SPECIAL CONDITIONS – FEDERAL and any other part of the contract, the federal requirements govern.

Contractor must comply with these clauses and the Attachments to this APPENDIX B.

Attachment 1 Port of Tucson DBE Program Plan

Attachment 2 TIGER 2013 Grant Assurances and Certifications

Attachment 3 Heavy Construction Wage Determination

Article 1 -- Debarred or Suspended Subrecipients

CONTRACTOR shall not subcontract, and shall ensure that no subcontracts are awarded at any tier, to any individual, firm, partnership, joint venture, or any other entity regardless of the form of business organization, that is listed in the System for Award Management (SAM), at <https://www.sam.gov> with an active exclusion. This provision shall be included in all subcontracts and all subcontractors will be required to include this provision in their subcontracts at every tier. CONTRACTOR shall immediately notify Port of Tucson if any subcontractor is suspended or debarred after award of the subcontract.

Article 2 -- Minority, Woman-Owned, Small Business, and Disadvantaged Business Enterprise Subcontracting

If performance of this Contract will require subcontracting, then:

(1) CONTRACTOR will take all necessary affirmative steps to assure that minority firms, women's business enterprises, labor surplus area firms and Disadvantaged Business Enterprises (DBE) are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses, DBEs, and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, DBEs, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, DBEs, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, DBEs, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the County's Small Business Entity Program.

Article 3 -- Access To Records and Records Retention

A. Records to be Kept. Records shall be maintained in accordance with requirements prescribed by the granting agency or COUNTY with respect to all matters covered by this contract. Except as otherwise authorized, such records shall be maintained for a period of five (5) years after receipt of the final payment under this contract or the termination of litigation, if later. In the event of a conflict between or among the requirements of the COUNTY or granting agency, the most stringent will govern.

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Inspection of Records. At any time during normal business hours and as often as COUNTY, the granting agency, and/or the Comptroller General of the United States may deem necessary, the CONTRACTOR shall make available to COUNTY, the granting agency and/or representatives of the Comptroller General for examination all of its records, with respect to all matters covered by this contract, and will permit them to audit, examine and make excerpts or transcripts from such records including contracts, invoices, materials, payrolls, records of personnel, conditions of employment and any other data relating to matters covered by this contract.

Article 4 -- Clean Air and Clean Water Compliance

If this Contract exceeds \$100,000, then:

In compliance with Section 306 of the Clean Air Act, as amended, (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended, (33 U.S.C. 1368), Executive Order 11738, and the Regulations (40 CFR, part 15) of the Environmental Protection Agency with respect thereto, CONTRACTOR agrees, with regard to this Contract and all subcontracts exceeding \$100,000, that:

1. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
2. They will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued thereunder.
3. They will promptly notify the Port of Tucson and COUNTY of any notification received from the EPA Office of Federal Activities, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. They will include the provisions of paragraph 1 through 4 of this subpart in every nonexempt subcontract, and take such action as the COUNTY, State or Federal Government may direct as a means of enforcing such provisions.

Article 5 -- Copyright

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

- (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
- (b) Any rights of copyright to which the grantee, subgrantee, CONTRACTOR or subcontractor purchases ownership with grant support.

Article 6 -- Energy Conservation

CONTRACTOR is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency which are contained in the State Energy Conservation Plan issued by the State of Arizona in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

Article 7 -- Prohibition Against Lobbying

CONTRACTOR certifies, to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards at all tiers including subcontracts and contracts under grants, loans, and cooperative agreements.
4. This certification is a material representation of fact upon which reliance was placed when this contract was made or entered into. Agreement to this certification is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, U.S. Code. Any person or agency that makes an expenditure prohibited by this section is subject to a civil penalty from \$10,000 up to \$100,000 for each failure. This penalty also applies to any person or agency that fails to submit or amend the disclosure form (LLL), when required. Failure to submit the required certification may result in payment under this contract being delayed or denied.

Article 6 – Labor Standards

(a) Davis-Bacon and Related Acts Provisions and Procedures

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CONTRACTOR and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under this contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The CONTRACTOR shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Granting Agency if the agency is a party to the contract, but if the agency is not such a party, the CONTRACTOR will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the COUNTY. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individual identifying number for each employee (e.g., the last four digits of the employee's social security number. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the CONTRACTOR or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The CONTRACTOR or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Railroad Administration, (write the name of the agency) the Department of Labor, or COUNTY and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid

the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference into this contract.

(6) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the granting agency may by appropriate instructions require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any subrecipient or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a CONTRACTOR and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference into this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of five years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of the COUNTY and the Department of Labor, and the CONTRACTOR or subcontractor will permit such representatives to interview employees during working hours on the job.

Article 9 -- Equal Employment Opportunity

CONTRACTOR shall comply with all applicable requirements of the following federal laws and regulations dealing with discrimination in federally assisted programs:

A. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d)** which provides that no person shall, on the ground of race, color, or national origin, be excluded from employment or participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

B. **Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309) and regulations at CFR 570.602** which provide that no person shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, be denied employment in, or be subjected to discrimination under any CDBG/HOME program or activity.

C. Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794) which provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, be denied employment in, or be discriminated against under any program or activity receiving federal assistance.

D. Age discrimination Act of 1975, as amended (42 U.S.C. 6101) which provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.

E. Executive Order 11246, as amended by Executive Order 12086, and regulations in 41 CFR 60, which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally-assisted construction contracts and subcontracts. CONTRACTORS and subcontractors shall take affirmative action to ensure fair treatment in employment, including recruitment, training, promotion, demotion, transfer, layoff, termination, and pay.

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR 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, 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 CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions in this nondiscrimination clause.

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

3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advertising the labor union or worker's representative of the CONTRACTOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the FRA, COUNTY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, and orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The CONTRACTOR will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontractor or purchase order as the contracting agency may as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of

such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Article 10 – Buy America

This project is subject to Buy America requirements. Only steel and iron on which all manufacturing processes have taken place domestically may be permanently incorporated into this project, unless waived by FRA.

APPENDIX B

ATTACHMENT 1

DBE Program Plan



PIMA COUNTY

*DBE Program Plan for
Port of Tucson Project*

Administered by:

Pima County Procurement Department

130 West Congress, 3d Floor

Mail Stop: DT-AB3-126

Tucson, AZ 85701

Office: (520) 724-8161

FAX: (520) 222-1484

<http://www.pima.gov/procure/index.asp>

December 2014

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I. POLICY STATEMENT

A. Objectives/Policy Statement

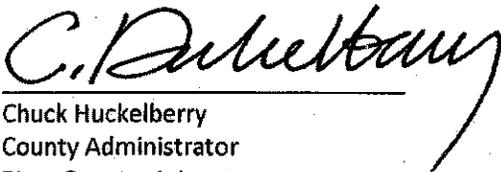
Pima County (County) has received Federal financial assistance from the United States Department of Transportation (DOT) through the Federal Railway Administration (FRA) for the Port of Tucson Project (the Project). As a condition of funding, Pima County has agreed to incorporate elements of DOT's Disadvantaged Business Enterprise (DBE) program (49 C.F.R. Part 26) into contracts and agreements for the Project.

Pima County's objectives are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts for construction, procurement, and professional services for the Project;
- Create a level playing field on which DBEs can compete fairly for Project contracts;
- Ensure that only firms certified through the Arizona Unified Certification Program as fully meeting 49 CFR Part 26 eligibility standards are counted as DBEs;
- Help remove barriers to the participation of DBEs in Project contracts; and
- Encourage participation by Small Business Concerns (SBC) in Project contracts.

The County DBE program will be managed and administered by the Small Business Enterprise/Vendor Relations Division of the Pima County Procurement Department. The Division Manager has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Division Manager is responsible for implementing all aspects of the DBE program. The DBE program will be accorded the same priority as all other legal obligations in the County's financial assistance agreement with FRA.

The County has disseminated this policy statement to the Pima County Board of Supervisors, affected County Departments and the Project Owner. Additionally, it will be made available through the County website to the public and DBE and non-DBE companies that may compete for Project contracts at any tier.



Chuck Huckelberry
County Administrator
Pima County, Arizona

Date: 12/16/14

II. GENERAL REQUIREMENTS

A. Applicability

Pima County normally receives DOT funding through FHWA and the Arizona Department of Transportation (ADOT) and must adhere to ADOT's program. As a consequence, Pima County does not have its own DBE program and lacks the predicates necessary to support a race-conscious DBE program.

As a recipient of funds directly from FRA, County has established this dedicated single-project race-neutral DBE program to implement key aspects of 49 CFR Part 26 for the Port of Tucson Project. The County is committed to ensuring DBE participation in this Project through encouraging race-neutral DBE participation.

B. Definitions

Day means business day; day on which the County is open for normal business.

Disadvantaged Business Enterprise or DBE means:

- A for-profit small business concern;
- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Subrecipient/Subgrantee: Any legal entity to which a sub-award of federal financial assistance is made and which is accountable to the recipient for the use of the funds provided (49 CFR 19.2).

County has adopted and uses the definitions related to the DBE program found in 49 CFR Part 26.5.

C. Non-Discrimination Requirements

County will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any Project or other contract on the basis of race, color, sex, national origin, age, or disability.

County will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, national origin, age, or disability.

D. Recordkeeping Requirements

1. County will report DBE participation on the Uniform Report of DBE Awards or Commitments and Payments to FRA as required.

Subrecipients/Subgrantees must report contract awards, DBE commitments, prime and subcontract payments and other requested information to County monthly. County will include subrecipient activity in its reports to FRA based on project data provided by Subrecipients/Subgrantees. Report data includes:

- Awards
- Commitments
- Payments to prime contractors and consultants
- Payments to DBE subcontractors and subconsultants
- Payments to lower-tier DBE subcontractors and subconsultants

County and its Subrecipients/Subgrantees will also monitor payments to non-DBE subcontractors and subconsultants, including lower-tier activity, to ensure prompt payment, although non-DBE information will not be included in reports.

2. Federal Financial Assistance Agreement

County has adopted the following assurances, applicable to all DOT-assisted contracts for the Project and their administration.

Assurance: 26.13(a)

"County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. County shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. County's DBE Program, as required by 49 CFR part 26 and as approved by FRA, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to County of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

This language will appear in all financial assistance agreements with Subrecipients/Subgrantees.

Assurance: 26.13(b)

County will ensure that the following clause is placed in every DOT-assisted contract and subcontract let by County and its Subrecipients/Subgrantees/Contractors:

"The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate. The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this nondiscrimination assurance."

III. ADMINISTRATIVE REQUIREMENTS

A. DBE Program Updates

County will update FRA/DOT regarding any significant changes in the program.

B. DBE Liaison Officer (DBELO)

County has designated the Manager of the SBE/Vendor Relations Division of the Procurement Department as its DBE Liaison Officer (DBELO).

Terri Spencer
Division Manager/DBELO
SBE/Vendor Relations
Pima County Procurement Department
130 W. Congress, 3d Floor
Mail Stop DT-AB3-126
Tucson, AZ 85701-1317
(520) 724-3722
Terri.Spencer@Pima.Gov

In this capacity, the DBELO is responsible for implementing the DBE program and ensuring that the County complies with the applicable key provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Procurement Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment "A" to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has professional and technical staff to assist in the administration of the program. The staff duties and responsibilities include the following:

County DBE Liaison Officer (DBELO)

- Advises the County Procurement Director regarding DBE matters and achievement.
- Supervises and coordinates activities of DBE Program staff.
- Serves as mediator when appropriate for issues that require escalation.

DBE Compliance Staff

- Gather and report statistical data and other information as required.
- Review third-party contracts and purchase requisitions for DBE compliance.
- Participates in prebid and preconstruction meetings.
- Conducts onsite Commercially Useful Function reviews.
- Facilitates resolution of DBE Prompt Pay related issues identified in the field.

DBE compliance staff will ensure that Subrecipients/Subgrantees/Contractors sign a Compliance Statement with County that Subrecipient/Subgrantee/Contractor will adhere to County's DBE Program Plan.

Note: County reserves the right to audit Subrecipients/Subgrantees/Contractors compliance procedures and project files and conduct onsite reviews to ensure compliance with DBE program.

C. Prompt Payment Mechanisms

Pima County and its Subrecipients/Subgrantees/Contractors will include the following clause in each DOT-assisted contract:

NB: The following article is subject to edit depending on how Port of Tucson wants to structure their contract payments. The prompt payment provisions will be retained in any edit.

ARTICLE III - PAYMENTS

A. General

1. In consideration of the services specified in this Contract, the COUNTY agrees to pay CONTRACTOR in the manner hereinafter specified. For this Article, "subcontractor" includes supplier. Payment shall be made based on **Exhibit "A" - Bid Schedule** (XX pages) submitted by Contractor in response to Solicitation No. _____ and attached hereto and made part of this contract.
2. Line items for which the "Unit" is defined as L.S. shall be paid as "Lump Sum". Other line items for which the "unit" is defined as a unit of measure (i.e., "each", "L.F.", etc.) and for which there is a Unit Price, shall be measured and paid at the unit price for the actual quantity of work performed in accordance with the Standard Specifications. The quantities of unit-priced items stated in the bid schedule are estimates only and the actual quantities may be either less or more than stated in the Bid Schedule.
3. Total Payment for this Contract shall not exceed _____ Words _____ Dollars (\$Numbers).
4. CONTRACTOR must cite the CT (Contract) number on all invoices. CONTRACTOR shall provide detailed documentation in support of requested payment. Invoices and payments must comply with A.R.S. § 34-221.

B Progress Payments to Subcontractors

1. Each line item for which payment is claimed based on the work of a subcontractor must identify the subcontractor by name. CONTRACTOR shall pay each subcontractor and supplier for which CONTRACTOR receives payment on an invoice within seven days of receipt of the progress payment for that invoice. Such payments shall be in the amount allowed by COUNTY for each subcontractor or supplier, to the extent of their interest therein. Retention by CONTRACTOR shall not exceed the actual percentage retained by COUNTY from the progress payment. COUNTY, at any time, in its sole discretion, may require that invoices be supported by evidence of payment to subcontractors and suppliers.
2. CONTRACTOR shall withhold from an invoice the application and certification for payment of a subcontractor or supplier to which payment will not be made in accordance with the preceding paragraph (B)(1) as a result of unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, or other legitimate dispute or disagreement justifying nonpayment. On separate page(s) accompanying the invoice CONTRACTOR shall identify excluded subcontractors/suppliers and provide a brief justification for their nonpayment on the current invoice.

3. Failure to pay a subcontractor for which payment was made by COUNTY shall be deemed an unjustified failure to pay for which COUNTY may withhold from CONTRACTOR the sum of Two-Thousand Dollars (\$2,000.00) plus the amount of the payment made by COUNTY for that subcontractor, such sum(s) to be retained by COUNTY until the nonpayment issue is resolved unless CONTRACTOR provides evidence convincing to the COUNTY, in its sole discretion, that the failure to pay was justified, , Each succeeding month of unjustified nonpayment shall be deemed a new failure for which an additional Two-Thousand dollars (\$2,000.00) may be withheld. At the sole discretion of COUNTY, repeated instances of unjustified nonpayment(s) may result in withholding of progress payments until the subcontractor/supplier payment issues are resolved.

C. Subcontractor Final Payments

CONTRACTOR shall make prompt final payment to each of its subcontractors of all monies due the subcontractor, including retention, if any, after the subcontractor has satisfactorily completed all of its work, there are no outstanding issues arising from the work, and COUNTY has incrementally accepted subcontractor's work. If the final payment, including retention, if any, is not made within 7 days of COUNTY payment to CONTRACTOR for subcontractor's work, COUNTY, in its sole discretion, may withhold \$2,000 from CONTRACTOR's progress payment(s) in accordance with paragraph (B)(3) above. Notwithstanding Incremental acceptance of subcontractor's work, the warranty thereon shall begin upon acceptance of the entire project.

D. Reservation of Audit Right

For the period of record retention required under Article XXII, COUNTY reserves the right to question any payment made under this article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

D. Arizona Unified Transportation Registration and Certification System (AZ UTRACS)

The County will rely on the Arizona Unified Certification (UCP) Program and will not perform any certifications. The Arizona Department of Transportation (ADOT) is the lead agency for the Arizona UCP Program and requires that firms meet all eligibility standards of Subpart D of Part 26 for DBE certification. The UCP is comprised of ADOT, City of Phoenix, and City of Tucson. Requests to the County for DBE certification will be referred to the UCP.

ADOT maintains the statewide directory (AZ UTRACS) which identifies all firms eligible to participate as DBEs. The AZ UTRACS DBE directory lists the firm's name, address, phone number, fax number, email address, gender, ethnicity, certification source, NAICS codes, and the type of work the firm has been certified to perform as a DBE.

The directory is available online at www.azdbe.org. Paper copies of the DBE directory are available upon request by contacting the ADOT Business Engagement & Compliance Office at (602) 712-7761 or via email at dbesupportiveservices@azdot.gov.

E. Overconcentration

The County is relying on ADOT's representation that overconcentration appears not to exist in the types of work that DBEs perform. [ADOT FHWA DBE Program Plan, October 2013, page 10, [http://azdot.gov/docs/default-source/beco-library/adot fhwa_dbe_plan.pdf?sfvrsn=4](http://azdot.gov/docs/default-source/beco-library/adot_fhwa_dbe_plan.pdf?sfvrsn=4)]

F. Fostering Small Business Participation (26.39)

The County will encourage small business participation and recognizes this as a requirement of good faith implementation of its DBE program. County will require all Subrecipients/-Subgrantees/Contractors to encourage Small Business Concern (SBC) participation in contracts where there are appropriate subcontracting opportunities.

The County will rely on an online directory of available SBCs (similar to the DBE Directory) published by ADOT as part of the AZ UTRACS web portal. Firms can register online via the AZ UTRACS web portal. County Subrecipients/Subgrantees/Contractors will encourage small firms that conduct business with them to register as an SBC via the AZ UTRACS web portal.

G. Monitoring and Enforcement Mechanisms

County will implement appropriate mechanisms, including sanctions, suspension, debarment, and application of legal and contractual remedies available under Federal, state, and local laws, as deemed appropriate and necessary, to ensure compliance with the requirements by all program participants. Such monitoring and enforcement mechanisms will apply to Subrecipients/Subgrantees, Contractors and Subcontractors.

Specifically, County will take the following monitoring and enforcement steps:

- Bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
- Consider similar action under County's own legal authorities, including responsibility determinations in future contracts.
- Provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. *This will be accomplished via onsite visits conducted by County staff and construction field personnel. A written certification of compliance will be provided for each DBE performing work on the project.*
- Keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

County Subrecipients/Subgrantees and Contractors shall work collaboratively with the County to ensure monitoring and enforcement mechanisms take place.

IV. COUNTING PARTICIPATION

A. Set-asides or Quotas

The County does not, and will not, use quotas or set-asides in any way.

B. Overall Goal

This DBE Program Plan is dedicated to a single project. Consequently, the County does not have, and believes it is not required to have, an overall DBE goal because of the limited purpose and applicability of this plan.

C. Encouraging DBE Participation

- The County will encourage the use of DBEs to ensure that DBE firms have an equitable opportunity to participate in the Project. All DOT-assisted Project contracts will be assessed for subcontracting opportunities. Only the value of the work actually performed by the DBE will be credited toward DBE participation.
- Only the category of work for which the DBE is certified will be counted toward DBE participation.

The prime contractor, consultant, or vendor bears the responsibility to determine whether the DBE possesses the proper credentials to perform the work. If a DBE cannot complete its work due to failure to obtain or maintain its credentials, the prime contractor, consultant, or vendor bears the responsibility to immediately notify the SBE/Vendor Relations Division. AZ UTRACS is not a representation of a DBEs' qualifications and/or abilities. The prime contractor, consultant, or vendor bears all risks in the selection of subcontractors/consultants.

A DBE may participate as a prime contractor, subcontractor, or joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated into the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

If a DBE performs part of an item (for example, installation of materials purchased by a non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's contract or (2) the prime contractor's bid for the item, less a reasonable deduction for the portion performed by the non-DBE.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be credited.

The contractor, consultant, or vendor may credit lower-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a first-tier DBE subcontract.

All DBE and non-DBE subcontracting activity must be reported by the contractor, consultant, or vendor and counted toward participation. This includes lower-tier subcontracting regardless of whether or not the DBE is under contract with another DBE.

A prime contractor, consultant, or vendor may credit the entire amount of that portion of the contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor, consultant, or vendor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. A prime contractor, consultant, or vendor may credit the entire amount of fees or commissions charged by a DBE firm for providing a *bona-fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

1. Law Enforcement Off-duty officers:

For projects on which officers are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

2. Commercially Useful Function:

As a prime contractor, a DBE shall perform not less than forty percent (40%) of the contract work with its own work forces.

A prime contractor, consultant, or vendor can credit expenditures to a DBE subcontractor only if the DBE performs a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the County will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the County may examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the County will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The County will monitor and conduct on-site visits to the project to conduct commercially useful function reviews to help ensure compliance.

3. *Trucking and Materials and Supplies*

The County anticipates that neither Trucking or Materials and Supplies will play a significant role in the Port of Tucson Project or provide a substantial opportunity for DBE subcontracting. In the event that either does, the County will look to the ADOT FHWA DBE Program Plan, updated October 2013, for guidance. The ADOT plan is available at:

http://www.azdot.gov/docs/default-source/beco-library/adot_fhwa_dbe_plan.pdf?sfvrsn=4

V. COMPLIANCE AND ENFORCEMENT

A. Information, Confidentiality, Cooperation

As a result of not performing certifications, the County does not anticipate receiving any confidential business or personal financial information.

B. Contract Performance

Contract items of work designated by the contractor to DBEs shall be performed by the designated DBE. DBE contract work items shall not be performed by the contractor or a non-DBE subcontractor without prior written notice to the SBE/Vendor Relations Division. The DBE must perform a commercially useful function. At project initiation (preconstruction meeting, kick-off meeting, etc.), contractors shall provide copies of completed and signed DBE subcontracts, purchase orders, invoices, etc.

All subcontract agreements (DBEs and non-DBEs) shall include all required assurances. This is not meant to be an exhaustive list of County/Federal contract requirements. Contractors must refer to the full County contract for complete requirements.

The following provisions must be included in all County, Subrecipient/Subgrantee and Contractor Federal-aid contracts:

1. Assurance of Nondiscrimination

The contractor and subcontractor agreements shall include language to support the following statement:

"The contractor or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of this

contract, which may result in the termination of this contract or such other remedy as the state deems appropriate. The contractor or subcontractor shall ensure that all subcontract agreements contain this nondiscrimination assurance."

2. Subcontractor Payment Reporting

The contractor or subcontractor agreements shall include language to support the following statement:

"The contractor shall provide all such required information for the current month by the 5th of the following month."

3. Lower-Tier Activity

The contractor or subcontractor agreements shall include language to support the following statement:

"Subcontractor and lower-tier(s) of subcontractor agree to fully comply with the federal aid contract provisions which are hereby fully incorporated into and made part of this subcontract. Subcontractor shall include these required contract provisions in all its lower-tier subcontracts."

4. Prompt Payment

The contractor or subcontractor agreements shall include language to support the following statement:

"The Arizona Prompt Payment statute requires a contractor to pay within seven days of receipt by the contractor or subcontractor of each progress payment or final payment, the full amount received for such subcontractor's work and materials supplied based on work completed or materials supplied under the subcontract. See A.R.S. 32-1129.02(B). As long as a subcontractor or supplier submits an invoice or pay request, and as long as there is no dispute over the quality of the work or materials, then the law demands that payment be made within seven days after the general contractor has been paid."

6. Return of Retention Requirements

The contractor or subcontractor agreements shall include language to support the following statement:

"Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes, or prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the County deems appropriate."

7. Certification of Payments to DBE Firms

The contractor or subcontractor agreements shall include language to support the following statement:

"The contractor shall submit at the completion of the project the "Certification of Payments to DBE Firms" affidavit for each DBE firm working on the project."

The Affidavit must be dated and initialed by the DBEs listed on the DBE Affidavits to be considered valid. Contractors, consultants, or vendors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes, or prompt payment and retention

requirements through subcontract terms and conditions, will be found in breach of contract which may result in termination of the contract, or any other such remedy as County deems appropriate.

C. Subcontractor Payment Monitoring

The County will require prime contractors, consultants, and vendors to maintain records and documents of payments to DBE and non-DBE subcontractors for five years following performance of the contract. These records will be made available for inspection upon request by any authorized representative of the SBE/Vendor Relations Division, FRA, USDOT, and the Comptroller General of the United States. Subcontractors are required to maintain payment information for any lower tier subcontractors for the same five-year duration.

The County Subrecipients/Subgrantees, Contractors and subcontractors are required to collect data on DBE and non-DBE participation to report on federal aid projects. Contractors, consultants, and vendors are notified that such record keeping is required for tracking DBE participation.

Contractors, consultants, and vendors performing on federal aid transportation projects are required to report monthly amounts awarded and paid to all DBEs and non-DBEs. All DBE and non-DBE subcontractors working on federal aid transportation projects are required to verify receipt of payment.

Further, first-tier subcontractors are required to report amounts awarded and paid to all lower-tier DBE and non-DBE subcontractors. Lower-tier subcontractors are required to verify receipt of payment.

Contractors, consultants, and vendors shall provide the required information for the current month by the 5th of the following month.

D. Certification of Payment

The contractor, consultant, or vendor shall submit at substantial completion of the project the "Certification of Payment" affidavit for each DBE firm working on the project. This affidavit shall be signed by the prime contractor, consultant, or vendor and the relevant DBE, and submitted to SBE/Vendor Relations Division.

APPENDIX B

ATTACHMENT 2

TIGER 2013 Grant Assurances and Certifications

EXHIBIT C

TIGER 2013 GRANT

ASSURANCES AND CERTIFICATIONS

ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

During the performance of this Grant/Cooperative Agreement, the Grantee, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities (as applicable to this grant); including but not limited to:

Potentially Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

DISCLOSURE OF LOBBYING ACTIVITIES

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2013 Discretionary Grant program, the Grantee hereby agrees that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subgrantees shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN THE PERFORMANCE OF THE TIGER III DISCRETIONARY GRANT PROGRAM

The Grantee certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The Grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the commitments made in this certification.
8. The Grantee may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Part 1200, 49 C.F.R. Part 32

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2013 Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
3. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. See Nonprocurement Suspension and Debarment (2 C.F.R. Part 1200) and Government wide Requirements for Drug-Free Workplace Grants (49 C.F.R. Part 32). The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

5. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2013 Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier

covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2013 Discretionary Grant program, the Grantee is providing the assurance and certification set out below.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B

ATTACHMENT 3

Heavy Construction Wage Determination

APPENDIX "C" –

GENERAL CONDITIONS

ARTICLE 1. DEFINITIONS

Whenever in this document, or in any document of instructions where these General Conditions govern, in addition to those in the Standard Specifications, the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

CONTRACT: The written agreement between the PORT OF TUCSON and the CONTRACTOR covering the performance of the work and the furnishing of labor, equipment, and materials in the construction of the work.

PROJECT MANAGER OR ENGINEER: The person so designated by PORT OF TUCSON to oversee the project on its behalf.

STANDARD SPECIFICATIONS: The directions, provisions, and requirements contained in the current edition of the Pima County/City of Tucson Standard Specifications and Standard Details for Public Improvements, 2003 Edition, with amendments, as adopted by Pima County, supplemented by such special provisions as may be necessary, pertaining to the method and manner of performing the work. Those provisions of the Standard Specifications pertaining to measurement and payment for unit-priced work are not incorporated into and shall not apply to this contract.

ARTICLE 2. RESPONSIBILITY REGARDING EXISTING UTILITIES AND STRUCTURES

The existence and locations of underground utilities indicated on the plans are not guaranteed and shall be investigated and verified in the field by the CONTRACTOR before starting work. Excavations in the vicinity of existing structures and utilities shall be carefully done. The CONTRACTOR shall be held responsible for any damage to, and for maintenance and protection of existing utilities and structures. At least two full working days prior to commencing excavation, CONTRACTOR shall call Blue Stake Center, 1-800-STAKE-IT, between the hours of 7:00 a.m. and 4:30 p.m., Monday through Friday, for information relative to the location of buried utilities.

The Contractor shall take full responsibility of costs incurred due to damage to utilities as a result of grading or excavation operations. Utility locations shown on the Plans are approximate, and all utilities are not necessarily shown. The possibility of conflicts with existing utilities-in-service exists. If conflicting utilities interfere with the Contractor's normal progress toward completion of this project, PORT OF TUCSON may, at its option, authorize the Contractor to relocate said conflicting utilities by Force Account.

It shall be the responsibility of the Contractor to contact the utility companies in order for them to determine if there is a need for any bracing or shoring of power or telephone poles during the construction of this project. If bracing or shoring is necessary, the Contractor shall effect this work to the satisfaction of the utility company. No measurement or direct payment will be made for bracing or shoring.

ARTICLE 3. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

- a. **Laws to be Observed** – The CONTRACTOR is presumed to be familiar with and at all times shall observe and comply with all Federal and State laws and local laws and ordinances, worker's compensation, occupational disease, and unemployment compensation laws together with the payment of all premiums and taxes therefor, also all laws, ordinances, and regulations in any manner affecting the conduct of the work and shall indemnify and hold harmless PORT OF TUCSON and its representatives against any claim arising from the violations of such laws, bylaws, ordinances or regulations, whether by the CONTRACTOR itself or by the CONTRACTOR's employees.

- b. Permits and Licenses -- The CONTRACTOR shall procure all building permits, and sewer connection fees. CONTRACTOR shall post required permits on site and give all notices necessary and incidental to the due and lawful prosecution of the work. All other permits, fees, and applications for water, gas, and electric etc., shall be procured and paid for by the CONTRACTOR.
- c. Sanitary Provisions -- The CONTRACTOR shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the State Department of Health or other authorities having jurisdiction therein.
- d. Public Convenience and Safety -- The CONTRACTOR shall have due regard for the public health and shall conduct the work in such a manner as to provide and ensure the safety and convenience of the public.

When special conditions prevail and extraordinary measures are necessary, the details will be set forth in the Technical Specifications or Special Provisions.

- e. Barricades, Warning Lights, and Detour Signs -- The CONTRACTOR shall at its expense and without further order provide, erect, and maintain at all times during the progress or temporary suspension of the work such barricades, fences, warning lights, signals, reflectors, signs, or other protective devices as are required to ensure the safety of the public, those engaged in connection with the work and the work itself.

Unless otherwise expressly stated in the Contract, no measurement or direct payment for this work will be made, but the cost of providing, erecting, and maintaining such protection devices, including guards, watchmen and/or flagmen as required shall be considered as included and paid for in the contract prices for the work.

- f. Preservation and Restoration of Property -- The CONTRACTOR shall be responsible for the preservation of all public and private property on the surface or underground, along and adjacent to the work and shall conduct its operations so as to insure the prevention of injury or damage thereto. No land monuments or property shall be disturbed or moved until an authorized agent has witnessed or otherwise referenced their locations.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence or the non-execution thereof on the part of the CONTRACTOR, such property shall be restored by the CONTRACTOR at its own expense, to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring same, or it shall make good such damage or injury in an acceptable manner.

- g. CONTRACTOR's Responsibility for Work -- Until written final acceptance of the work by the PORT OF TUCSON, the CONTRACTOR shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by action of elements, or from any other cause, whether arising from the execution or non-execution of the work. The CONTRACTOR shall rebuild, repair, restore, and make good all injuries or damages of any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof.

In case of the suspension of work for any cause whatever, the CONTRACTOR shall be responsible for all work and materials and shall take proper care of the work, storing all materials if necessary, and shall provide suitable drainage of the work and erect necessary temporary structures.

- h. Waiver of Legal Rights -- The PORT OF TUCSON shall not be precluded or be estopped, by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and

materials furnished by the CONTRACTOR, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the Contract. Neither the acceptance by the PORT OF TUCSON or by any representative of the PORT OF TUCSON nor any payment, nor acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the PORT OF TUCSON shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damage herein provided. A waiver of any breach of the Contract shall not be held to be waiver of any other subsequent breach.

ARTICLE 4. ACCIDENTS

The CONTRACTOR shall provide, at the site, such equipment and medical facilities as are necessary to supply first-aid service to anyone who may be injured in connection with the work.

The CONTRACTOR must promptly report in writing to the PORT OF TUCSON all accidents whatsoever arising out of, or in connections with the performance of the work, whether on or adjacent to the site, which caused death, personal injury, or property damages, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to PORT OF TUCSON.

If any claim is made by anyone against the CONTRACTOR or any Subcontractor on account of any accident, the CONTRACTOR shall promptly report the facts in writing to the PORT OF TUCSON, giving full details of the claim.

ARTICLE 5. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all, and the most stringent requirement shall apply. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferred from any heading, branch, class or trade of the specifications shall be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

ARTICLE 6. ORDER OF COMPLETION

The CONTRACTOR shall submit at such times as may be requested by the PORT OF TUCSON, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work with dates at which the CONTRACTOR will start the parts of the work and estimated dates of completion of the several parts.

ARTICLE 7. CONSTRUCTION DOCUMENTS ON THE JOB SITE

The CONTRACTOR shall keep one copy of all construction documents on the job site, in good order, available to the PORT OF TUCSON and to PORT OF TUCSON representatives. This set of documents shall be kept current as to pending and approved changes in the work.

ARTICLE 8. PORT OF TUCSONSHIP OF DRAWINGS

All drawings, specifications, and copies thereof furnished by the PORT OF TUCSON are the property of PORT OF TUCSON. They are not to be used on other work and with the exception of the signed Contract set, are to be returned to PORT OF TUCSON on request, at the completion of the work. All models are the property of the PORT OF TUCSON.

ARTICLE 9. CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied itself as to the nature

and location of the work, the conformation of the ground, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract. No verbal agreement or conversations with any officer, agent or employee of the PORT OF TUCSON, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

ARTICLE 10. MATERIALS, APPLIANCES, EMPLOYEES

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the execution and completion of the work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The CONTRACTOR shall at all times enforce strict discipline and good order among CONTRACTOR's employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned by the CONTRACTOR.

ARTICLE 11. ROYALTIES AND PATENTS

The CONTRACTOR shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall hold the PORT OF TUCSON harmless from loss of account thereof, except that the PORT OF TUCSON shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the CONTRACTOR has information that the process or article specified is an infringement of a patent it shall be responsible for such loss unless it promptly gives such information to the PORT OF TUCSON.

ARTICLE 12. SURVEYS, PERMITS, AND REGULATIONS

The PORT OF TUCSON shall furnish all property surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR except as noted in Article 3.b. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the PORT OF TUCSON unless otherwise specified.

The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified. If the CONTRACTOR observes that the drawings and specifications are at variance therewith, it shall promptly notify the PORT OF TUCSON in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the CONTRACTOR performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the PORT OF TUCSON, it shall bear all costs arising therefrom.

ARTICLE 13. PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all its work from damage and shall protect the PORT OF TUCSON's and UPRR property from injury or loss arising in connection with this Contract. It shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by Agents or employees of the PORT OF TUCSON. It shall adequately protect adjacent property as provided by law and the Contract Documents. It shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority or local conditions.

If an emergency should occur affecting the safety of life or the work or of adjoining property, the CONTRACTOR, without special instruction or authorization from the PORT OF TUCSON, is hereby permitted to

act at its discretion, to prevent such threatened loss or injury, and shall so act, without appeal, if so instructed or authorized. Any compensation, claimed by the CONTRACTOR on account of emergency work, shall be determined by the PORT OF TUCSON.

ARTICLE 14. INSPECTION OF WORK

The PORT OF TUCSON and its representatives shall at all times have access to the work wherever it is in preparation or progress and the CONTRACTOR shall provide proper facilities for such access and for inspection:

If the specifications, the PORT OF TUCSON's instructions, laws, ordinances, or any public authority, require any work to be specially tested or approved, the CONTRACTOR shall give the PORT OF TUCSON timely notice of its readiness for inspection and if the inspection is by an authority other than the PORT OF TUCSON, of the date fixed for such inspection. Inspections by the PORT OF TUCSON shall be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the PORT OF TUCSON, it must, if required by the PORT OF TUCSON, be uncovered for examination at the CONTRACTOR's expense.

Re-examination of questioned work may be ordered by the PORT OF TUCSON and if so ordered the work must be uncovered by the CONTRACTOR. If such work be found in accordance with the Contract Documents, the PORT OF TUCSON shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract Documents, the CONTRACTOR shall pay such cost.

ARTICLE 15. SUPERINTENDENCE - SUPERVISION

The CONTRACTOR shall keep on its work site during its progress a competent Superintendent and any necessary assistants, all satisfactory to the PORT OF TUCSON. The Superintendent shall not be changed except with the consent of the PORT OF TUCSON, unless the Superintendent proves to be unsatisfactory to the CONTRACTOR and ceases to be in its employ. The Superintendent shall represent the CONTRACTOR in its absence and all directions given to it shall be as binding as if given to the CONTRACTOR. Important directions shall be confirmed by written request in each case. The CONTRACTOR shall give efficient supervision to the work, using its best skill and attention.

If the CONTRACTOR, in the course of the work, finds any discrepancy between the construction documents and the physical conditions of the locality, or any errors or omissions in the construction documents or in the layout as given by points and instructions, it shall be its duty to immediately inform the PORT OF TUCSON, in writing, and the PORT OF TUCSON shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONTRACTOR's risk.

Neither the PORT OF TUCSON, nor the CONTRACTOR, shall employ an employee of the other without consent.

ARTICLE 16. REMOVAL OF EQUIPMENT

In any case of annulment of this Contract before completion from any cause whatever, the CONTRACTOR, if notified to do so by the PORT OF TUCSON shall promptly remove any part or all of its equipment and supplies from the property of the PORT OF TUCSON or UPRR, as directed, failing which the PORT OF TUCSON shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

ARTICLE 17. BUILDER'S RISK

CONTRACTOR shall be responsible for equipment, materials, and supplies until completion of the project and acceptance by PORT OF TUCSON.

ARTICLE 18. GUARANTEE BONDS N/A (SUPERCEDED BY ARTICLE XX OF THE CONTRACT)

The PORT OF TUCSON shall, prior to the signing of the Contract, require the CONTRACTOR to furnish bonds covering the faithful performance in such form as the PORT OF TUCSON may prescribe. Such bonds are required and the premium shall be paid by the CONTRACTOR.

ARTICLE 19. RIGHTS OF VARIOUS INTERESTS

Wherever work being done by the PORT OF TUCSON's forces or other contractors is contiguous to work covered by this contract the respective rights of the various interest involved shall be established by the PORT OF TUCSON to secure the completion of the various portions of the work in general harmony.

ARTICLE 20. PORT OF TUCSON'S STATUS

The PORT OF TUCSON shall have general review of the work.

ARTICLE 21. CLEANING UP

The CONTRACTOR shall remove from the PORT OF TUCSON's property, UPRR property, and from all public and private property, at its own expense, all temporary structures, rubbish, and waste materials resulting from its operation.

ARTICLE 22. WASTE DISPOSAL FACILITIES

The CONTRACTOR shall legally dispose of all construction debris in appropriate County operated waste disposal facilities and pay any applicable fees.

ARTICLE 23. ARCHAEOLOGICAL SALVAGE

Whenever, during the course of construction, historical ruins or objects are encountered, such objects will not be destroyed, or moved, unless otherwise specified. Work shall be stopped and notification shall be given to the PORT OF TUCSON. Work will be rescheduled to avoid disturbing such areas, and the County shall be notified immediately. The salvage of all archaeological materials belongs to the County. (Ariz. Revised Statutes 41-841 et. seq.)

ARTICLE 24. HAZARDOUS MATERIALS/ HAZARDOUS WASTES / HAZARDOUS SUBSTANCES ABATEMENT

Should the CONTRACTOR uncover, or otherwise become aware of the presence of any Hazardous Materials, Hazardous Wastes or Hazardous Substances during the construction of this project, notice shall be served immediately to the PORT OF TUCSON, and all work surrounding said materials or substances shall be ceased until directed to proceed. The CONTRACTOR is hereby advised that construction delays due to Hazardous Materials, Hazardous Wastes or Hazardous Substances abatement may occur.

ARTICLE 25. AS-BUILT DRAWINGS

The CONTRACTOR shall keep an accurate record of all changes and deviations from the Project Plans and Specifications and submit to PORT OF TUCSON one set of "As-Built" drawings including dimension, location of underground utilities, etc., upon completion of the work. As-Built drawings shall be drawn and submitted in such a format as prescribed by PORT OF TUCSON.

END GENERAL CONDITIONS