

# **PIMA COUNTY**

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## **PROCUREMENT**

### **SOLICITATION FOR QUALIFICATIONS**

#### **JOB ORDER MASTER AGREEMENT: Traffic Signal, Road Intersection, Paving and Drainage Improvements**

**TUCSON, ARIZONA**

**September 2016**

**Pima County Procurement Department  
Design & Construction Division  
130 West Congress Street, Third Floor  
Tucson, Arizona 85701  
(520) 724-3731 / Fax (520) 724-4434**

**Solicitation No. 231853**

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**NOTICE OF SOLICITATION FOR QUALIFICATIONS**

**SOLICITATION FOR QUALIFICATIONS No. 231853**

**JOB ORDER MASTER AGREEMENT: TRAFFIC SIGNAL, ROAD INTERSECTION, PAVING AND DRAINAGE IMPROVEMENTS**

Pima County is seeking Statements of Qualifications (SOQ) for Traffic Signal, Road Intersection, Paving and Drainage Improvements required on an as-needed basis throughout Pima County. The estimated annual County expenditure for these services is \$3,000,000.00. The intent of this solicitation is to award a Job Order Master Agreement to three (3) to five (5) separate Contractors who will subsequently compete for individual Job Orders for projects by providing quotes as each project arises. Each Job Order will be implemented by issuing a Delivery Order (DO) for the work. Each Job Order DO will be a separate contract for construction. Individual Job Orders shall not exceed \$1,000,000.00, including all change orders. The scope of work for each project cannot be precisely defined at this time, but the expectation is that the majority of Job Orders will be in the \$100,000 to \$300,000 range. Some Job Orders may be Federally funded or funded by the Regional Transportation Authority, for which additional contract provisions and prevailing wages may be applicable. The anticipated range of services includes:

- Traffic Signals – including intersection signals, pedestrian crossings, photo radar installations and emergency responder/public safety modifications that will require the general contractor or a specialty subcontractor to immediately respond to correct a transportation problem;
- Roadway intersections – including concrete flatwork, safety improvements and site distance or traffic capacity modifications;
- Paving – roadway pavement improvements, including shoulders and bike/pedestrian paths; and
- Drainage – miscellaneous intersection and roadway drainage improvements such as culverts and minor structures.

No minimum amount of work is guaranteed. The County anticipates pricing individual job orders by obtaining quotes from one or all Job Order Contractors, as outlined in the solicitation materials, as each unique project arises. Appropriate payment and performance bonding per project shall be required.

**Minimum Qualifications:** Contractors performing work under Job Orders must have at the time of submittal and maintain during the course of the contract a valid Class A General Engineering License issued by the State of Arizona Registrar of Contractors to perform these services. Any subcontractors performing work under the General Contractor must also hold proper licenses issued by the State of Arizona Registrar of Contractors to perform contracted services. Failure to maintain said license may be grounds for default of the contract and subsequent termination.

**SUBMITTAL INFORMATION:**

Download solicitation at: <http://www.pima.gov/procure/ifbrfp-dc.htm>.  
Contact Christy Bustillos at 520-724-8414 for hard copy version.  
No charge for first copy. \$25.00 for additional copies.

**SOQ DUE DATE/TIME:**

**October 4, 2016 at or before 4:00 PM Local Tucson Time**

**LOCATION:**

Procurement Department, 130 W. Congress Street, 3<sup>rd</sup> Floor, Tucson, AZ

**PRE-SUBMITTAL MEETING:**

**September 21, 2016, 2:00 PM Local Tucson Time**

**LOCATION:**

Procurement Department, 130 W. Congress Street, 3<sup>rd</sup> Floor, Tucson, AZ

**DIRECT QUESTIONS IN WRITING TO:**

Anthony V. Schiavone, Commodity / Contracts Officer  
Fax: 520-724-4434 / E-mail: [Anthony.schiavone@pima.gov](mailto:Anthony.schiavone@pima.gov)

**PUBLISH:**

**The Daily Territorial: September 9, 12, 13, and 14 2016**  
**Arizona Daily Star: September 9, 23, 2016**

## GENERAL INFORMATION

1. **SCOPE OF SERVICES:** Pima County is seeking Statements of Qualifications (SOQ) from qualified firms or individuals for the establishment of Job Order Master Agreement (MA) for Traffic Signal, Road Intersection, Paving and Drainage Improvements in Pima County on an as-needed basis for various County departments. The County intends, but is not obligated, to select up to five Contractors to share in the Master Agreement to be established in an amount up to \$3,000,000.00. Job Orders will be implemented by issuing a Delivery Order (DO) for the work. Each DO will be an independent contract to complete the Job Order. Individual Job Orders shall not exceed \$1,000,000.00 each.

The scope of work for each project cannot be precisely defined at this time, but the anticipated range of services includes:

- Traffic Signals – including intersection signals, pedestrian crossings, photo radar installations and emergency responder/public safety modifications to be available 24 hours/day seven days/week;
- Roadway Intersections – including concrete flatwork, safety improvements and site distance or traffic capacity modifications;
- Milling/Paving – roadway pavement improvements, including shoulders and bike/pedestrian paths; and
- Drainage – miscellaneous intersection and roadway drainage improvements such as culverts and minor structures.

Services may be provided on a sub-contracted basis. The County has determined that the estimate of \$3,000,000.00 is an annualized amount that is reasonable and continuing.

Each Job Order for a project that is either fully or partially funded by Federal Highway Administration (FHWA) aid shall state that the Contractor shall comply with the requirements of **Exhibit "D"** and shall physically incorporate **Exhibit "D"**, Supplemental Provisions for Federal-Aid Construction Contracts, including Form FHWA 1273, "Required Contract Provisions for Federal-Aid Construction Contracts". A copy of the most current applicable Wage Determination issued by the United States Department of Labor shall also be attached to the Job Order. The Contractor shall comply in all respects with these additional requirements. Current wage determinations may be found at <http://www.wdol.gov/dba.aspx>

For each Job Order for a project that is either fully or partially funded by Regional Transportation Authority (RTA) funds, the Contractor shall comply with the requirements of **Exhibit "E"**, Supplemental Provisions for RTA Funded Contracts. Such projects shall be separately bonded and insured. Contractor's Certificates of Insurance shall provide that both the County and RTA are endorsed as Additional Insured, and Payment and Performance Bonds shall have both County and RTA as beneficiary.

The work shall be completed as specified by the following documents which are incorporated into this SFQ by reference to the extent consistent with provisions of the SFQ documents:

- Executed Agreement, including all Parts.
- Project Plans (if any)
- Special Provisions (if any)
- PAG Standard Specifications for Public Improvements, 2015 Edition, hereinafter referred to as the "Standard Specifications"
- Standard Details for Public Improvements, 2003 Edition, City of Tucson-Pima County
- Pima County Roadway Design Manual, 2013
- PCDOT and FCD Traffic Signal Design Manual (2008)
- PCDOT and COT Pavement Marking Design Manual 2<sup>nd</sup> Edition, August 2008
- Arizona Department of Transportation, Highways Division, Standard Drawings Construction 2012 Edition.
- Manual on Uniform Traffic Control Devices for Streets and Highways, 2009
- Rental Rate Blue Book for Construction Equipment

**It is the respondent's responsibility to become familiar with the requirements of the above documents.**

Contractors performing work under Job Orders must hold a valid Class A General Engineering license issued by the State of Arizona Registrar of Contractors at the time of proposal submission and maintain such license throughout the duration of the contract.

2. **REQUIRED SUBCONTRACTING PLAN:** The Arizona Revised Statutes, § 34-604(C)(2)(e)(i) require that JOC contractors select subcontractors on the basis of qualifications alone or qualifications and price, but NOT price alone. A qualifications and price selection may be accomplished in a single step considering both qualifications and price or using a two-step process in which the first step is based on qualifications only and the second step may use either qualifications and price or price alone.

The plan, with any changes that may be negotiated between the Contractor and County, will be incorporated into the Agreement and be an obligation of the Contractor. Please note failure to provide a Subcontractors Selection Plan shall cause rejection of the SOQ as non-responsive as submission of a Subcontractor Selection Plan is a requirement under A.R.S. § 34-604(C)(2)(e)(i).

3. **JOB ORDER MASTER AGREEMENT:** The COUNTY anticipates awarding individual Job Orders to Contractors pursuant to the requirements of Exhibit "C" – Special Conditions Multiple Award Job Order Contract. Any firm responding to this Solicitation for Qualifications (SFQ) must agree to perform all work in accordance with the terms and conditions included in the Sample Contract and associated documents, including the General Conditions, Special Conditions and Appendices to the Contract, provided with or referenced by this SFQ. All respondents shall familiarize themselves with the requirements and processes defined in the Contract and its Exhibits prior to responding to this SFQ.

The term of the Master Agreement will be for an initial term of one year and includes the option to extend the Contract for up to four (4) additional one-year periods. The full term of the Master Agreement will not exceed except to complete a job order already started.

Job Order Contractors shall file with the County payment and performance bonds, as required by A.R.S. § 34-610, no later than the time of agreement on the price for any construction under this contract. Bonds may be submitted on an annual basis for the full value of all construction reasonably anticipated during the contract year or may be provided on a job-order by job-order basis; in the latter case, Contractor may anticipate additional job orders and provide bonds in reasonable increments. At no time shall the cumulative value of the bonds be less than the total value of the construction performed by Contractor under this Agreement, including job orders awarded to Contractor but not yet completed. **If bonds are secured on a job-order by job-order basis, County will obtain the appropriate bonds from Contractor upon issuance of a Job Order and release of the Delivery Order.**

**Job Order Quotes:** All quotations for Job Orders must be presented in the format required by the COUNTY representative issuing the request for quotation.

4. **SMALL BUSINESS ENTERPRISES (SBE) PROVISIONS**

The overall goal for participation by Small Business Enterprises (SBEs) is six percent (6.00%).

Individual job orders estimated at \$300,000.00 or greater shall require review and approval of a Contractor submitted SBE Utilization by the SBE Program Coordinator for specific goal setting appropriate to the suggested scope of work prior to Notice to Proceed by County.

Respondents shall address the use of available SBE firms in meeting the goal in their subcontractor selection plan. **The current list of certified Small Business Enterprises may be obtained at <http://www.pima.gov/procure/mwbe/SBEDir.pdf>.**

5. **CONFIDENTIALITY AND DISCLOSURE:** Responses to this solicitation shall be considered privileged communications as to technical, financial, and institutional Content until award of the Master Agreement. Until that time, pursuant to A.R.S. §34-604(H), only the names of the firms on the short list may be disclosed. In accordance with that section, limited material may be disclosed after award of the contract; after contract execution, all material is publicly available. **Any material that you consider to be trade secret or proprietary must be clearly identified and marked. Under A.R.S. §34-604(H), the County must agree with your claim of confidentiality before any material may be withheld from disclosure. The County has initiated a new policy on confidential information that is reflected in the Public Information article of the attached sample contract. Respondents should familiarize themselves with that provision.**
6. **INTENT TO RESPOND.** Firms that intend to submit SOQs should notify the COUNTY as soon as possible of their intent by email to [anthony.schiavone@pima.gov](mailto:anthony.schiavone@pima.gov).
7. **INQUIRIES / QUESTIONS.** Inquiries shall be written, preferably sent by email. All questions must be received no later than seven (7) calendar days in advance of the submittal due date. All questions regarding this SFQ shall be directed to the following **Point of Contact:**

Anthony V. Schiavone – Commodity/Contracts Officer  
Pima County Procurement Department, Design & Construction Division  
130 W. Congress, 3<sup>rd</sup> Floor  
Mail Stop DT-AB3-126  
Tucson, AZ 85701  
[Anthony.schiavone@pima.gov](mailto:Anthony.schiavone@pima.gov) or Fax (520) 724-4434
8. **CLARIFICATIONS / ADDENDA:** Any clarifications or interpretations of this Statement for Qualifications (SFQ) that materially affect or change the scope or intent will be issued via addenda and posted by the County on the County's web site (<http://www.co.pima.az.us/procure/ifbrfp-dc.htm>). Oral statements or clarifications not in writing shall be non-binding and without legal effect. The County will make an effort to notify respondents of the posting of addenda; however, it cannot guarantee that every potential respondent will be notified each time. Therefore, **it is the responsibility of all respondents to check the website periodically for addenda and to obtain this information in a timely manner.** Failure to include acknowledgment of all addenda may be cause for rejection of the SOQ. **No oral interpretations shall be made as to the meaning of any of the SFQ documents, or be effective to modify any of the provisions of the SFQ documents. Oral interpretations of the SFQ documents are not binding on the County.**
9. **ACCEPTANCE OF EVALUATION METHODOLGY:** By submitting its SOQ in response to this SFQ, respondent acknowledges and accepts the evaluation process, the established criteria and associated point values, and that determination of the "most qualified" firm will require subjective judgments by the County.
10. **PRE-SUBMITAL CONFERENCE:** The date and time of a pre-submittal conference, if applicable, is indicated on the Notice of Solicitation for Qualifications page of this document. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstandings of County's position. Any questions regarding this solicitation should be presented to County at this conference.
11. **SUBMISSION OF QUALIFICATIONS:** The County will receive SOQs at the date, time and location described on the "NOTICE OF SOLICITATION FOR QUALIFICATIONS" page.
12. **SUBMITTAL:** Respondents shall submit one (1) hardcopy original, Six (6) hardcopies, and one (1) electronic copy of their Questionnaire and Statement of Qualifications as further described in the Required Submittal Information and Evaluation Criteria Section of this document. The hardcopy originals shall be delivered in a sealed envelope and clearly marked with the Firm Name, Name and

Number of the SFQ, Due Date, and Time addressed to: Pima County Procurement Department, Design & Construction Division, Attn: Anthony V. Schiavone, Commodity/Contracts Officer, 130 W. Congress Street, 3rd Floor, Tucson, AZ 85701.

SOQs received after the due date and time as noted on the Notice of SFQs page will be returned to the respondent unopened. No late Submittals will be accepted. The County will not acknowledge or receive SOQs that are delivered by telephone, facsimile (fax), or electronic mail (e-mail). Properly submitted SOQs will not be returned to respondents.

13. **CONTRACTOR SELECTION PROCESS:**

- A. The evaluation of the SOQs shall be based on the requirements described in this SFQ and pursuant to A.R.S. §34-603. All properly submitted responsive SOQs will be evaluated, and ranked according to the stated selection criteria and relative weight of the selection criteria by the selection committee. SOQs shall not include any information regarding respondent's fees, pricing, person-hours or other cost information.
- B. A "Consultant Selection Committee" will be comprised of Representatives from Department of Transportation Traffic, Operations, and Field Engineering Divisions, Public Works, and a senior management employee of a licensed contractor. A Contracts Officer from the Pima County Procurement Department, Design & Construction Division will act as the non-scoring Chair of the selection committee.
- C. The County does not intend to conduct interviews, but reserves the right to short-list firms and conduct interviews if determined in the best interest of the County.
- D. The Pima County Procurement Department, Design and Construction Division, will issue a Notice of Award to the successful persons or firms prior to the contract award by the Pima County Board of Supervisors. This Notice of Award constitutes acceptance of the respondent's Proposal and binds the successful respondent to execute a Letter of Commitment agreeing to be bound by the terms of the Master Agreement.
- E. The rights and obligations provided for in the Agreement shall become effective and binding upon the parties only with its formal execution by the County. Selection of the Contractors shall be at the discretion of the County and the County reserves the right to reject any or all qualification statements.
- F. The respondents to whom Awards are made will be required to execute a Letter of Commitment agreeing to be bound by the terms of the MA and return it and insurance certificates to the Pima County Procurement Department, Design and Construction Division, within ten (10) calendar days after receipt of the Notice of Award. Failure or neglect to do so may result in rejection of the respondent's proposal.
- G. Once the master agreement is awarded, individual Job Orders will be competed on price or price and schedule if they are expected to be over \$100,000. Job Orders less than \$100,000 may be assigned to one of the contractors or may be competed. Any job that is funded by federal monies, regardless of amount, will be competed. Individual Job Orders shall not exceed \$1,000,000.00.
- H. Contractor shall file payment and performance bonds with COUNTY, as required by A.R.S. § 34-608 as amended by Laws 2005, ch. 162, HB2579, no later than the time of agreement on the price (or Guaranteed Maximum Price) for any construction under this agreement. Bonds may be submitted on an annual basis for the full value of all construction reasonably anticipated during the contract year or may be provided on a job-order by job-order basis; in the latter case, CONTRACTOR may anticipate additional job orders and provide bonds in reasonable increments sufficient to cover multiple anticipated job orders. At no time shall the cumulative value of the bonds be less than the total value of the construction performed by CONTRACTOR under this agreement, including job orders awarded to CONTRACTOR but not yet completed.

14. **TENTATIVE SELECTION SCHEDULE:** The following represents anticipated milestone dates for the selection. Any known conflicts with the dates such as observed holidays, scheduled vacations, trade seminars, etc. that could interfere with your participation in the selection should be made known to the Contracts Officer immediately.

Pre-Submittal Meeting:	September 21, 2016 at 2:00 p.m.
Statements of Qualifications (SOQ) due:	October 4, 2016 at 4:00 p.m.
Notice of Recommendation for Award:	November 2016
Award by Pima County:	December 13, 2016

15. **COUNTY'S RESERVATION OF RIGHTS:** The County may evaluate the SOQs based on the anticipated completion of all or any portion of the Project. The County reserves the right to divide the Project into multiple parts, to reject any and all SOQs and re-solicit for new SOQs, or to reject any and all proposals and temporarily or permanently abandon the SFQ. County makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this SFQ for any project and no such representation is intended or should be construed by the issuance of this SFQ.
16. **ACCEPTANCE OF METHODOLOGY:** By submitting its SOQ in response to this SFQ, respondent accepts the evaluation process and acknowledges and accepts that determination of the "most qualified" firm(s) will require subjective judgments by the County.
17. **COST OF SUBMITTAL PREPARATION:** This SFQ does not commit County to pay any costs incurred in the preparation, presentation or return of submittal including interview time.
18. **WAIVER OF CLAIMS:** Each respondent in submitting an SOQ is deemed to have waived any claims for damage by reason of the selection of another submission and/or the rejection of said respondent's submission.
19. **ELIGIBLE RESPONDENTS:** Only individual firms or lawfully formed business organizations may apply. (This does not preclude a respondent from using consultants.) The County will contract only with the individual firm or formal organization that submits an SOQ.
20. **JOINT VENTURES:** Respondents that submit an SOQ as a Joint Venture must include a copy of the Joint Venture Agreement at the time of submittal. The Introductory Letter must be executed by the Joint Venture Partners or by one Joint Venturer with a letter of authorization from the other Joint Venture Partners. This Agreement is NOT included in the 30 page-count limitation.
21. **SUSPENSION / DEBARMENT:** By submitting its SOQ in response to this SFQ, respondent is certifying that neither it nor any of its principals are debarred or suspended or under consideration for suspension or debarment by any federal, state or local government or agency. If a respondent is not able to so certify, the respondent must submit a letter that identifies the agency involved and a contact and explains why respondent is suspended or debarred or being considered for suspension or debarment.
22. **PROTESTS:** The Pima County protest procedures are in Chapter 11.20 of the Pima County Procurement Code, available through <http://www.pima.gov/cob/code/>. The five-day period to file a protest of the award will be measured from the date the Notice of Recommendation for Award is posted on the Pima County Procurement website at <http://www.pima.gov/procure/awards/> without regard to whether individual notices were issued. It is the responsibility of bidders and offerors to check the website.
23. **PIMA COUNTY ONE STOP 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://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=18397>

**End of General Information**

## **REQUIRED SUBMITTAL INFORMATION AND EVALUATION CRITERIA**

### **A. SUBMISSION INSTRUCTIONS**

This solicitation includes the Exhibit '1' Questionnaire. This questionnaire must be completed and **signed**. Failure to use or complete and sign the provided forms in this section may result in rejection.

Submit **one original and Six (6) copies** in a sealed envelope or package clearly marked with the Firm Name, Name of the SFQ, Submittal Due Date and Time; addressed to: Pima County Procurement Department, Design & Construction Division, Attn: Anthony V. Schiavone, Commodity/Contracts Officer, 130 W. Congress Street, 3rd Floor, Mail Stop DT-AB3-126, Tucson, AZ 85701.

Responses must be received and time stamped at the Submittal Location no later than the Submittal Due Date and Time. Late submittals will NOT be accepted.

Pursuant to Pima County Policy all information submitted in response to this SFQ shall be deemed to be public information after award and execution of the agreement. The County has implemented a procedure for the handling of confidential information that is reflected in Article 28 of the sample contract included in this solicitation, as Attachment '2'.

**Cost Information Prohibited:** DO **NOT** SUBMIT OR COMMUNICATE TO THE COUNTY ANY INFORMATION ON FEES, COEFFICIENTS, PRICE, MAN-HOURS OR ANY OTHER COST INFORMATION. ARIZONA LAW PROHIBITS THE COUNTY FROM CONSIDERING ANY COST FACTORS AS DESCRIBED HEREIN DURING STEP ONE. Any Statement of Qualifications that contains any information of this type may, in the sole discretion of the County, be deemed non-responsive and be returned to the Contractor.

### **B. STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA**

The Statement of Qualifications will be evaluated and scored based on the responses received to the information requested below.

• General Qualifications	40 points
• Prior Project Experience as Prime Contractor	40 points
• Method of Approach	65 points
• References	30 points
• <u>Subcontracting Plan</u>	<u>25 points</u>
<b>Total: 200 points</b>	

Each Statement of Qualification should be bound on the left side and have front and back covers. The submittal pages shall not exceed 8.5 X 11 inches, except where noted in the criteria listed below. Larger sheets may be used if they are folded to not larger than 8.5 X 11 inches. All pages shall be printed on one side only. For word processed pages, the minimum font size is 10, and black ink is preferred. Responses should be kept concise, and shall not be more than **twenty-four (24)** pages in length, not including the front and back covers, indexes, or required attachments. **Clear brief responses that are under the maximum page limit are preferred to unclear responses that use the maximum number of pages.** Additional information other than that requested shall not be included or the submission may be rejected.

SUMMARY OF PAGE LIMITS (MAXIMUM) FOR SUBMITTAL:

Introductory Questionnaire (Exhibit 1) - required	2 pages
General Qualifications	12 pages
Prior Project Experience As Prime Contractor	As listed in the Criteria (2 – 11x17 pages)
Method of Approach	10 pages
Subcontractor Selection Plan	
Total Pages per SOQ	<b>24 pages max</b> , not including Subcontractor Selection Plan and required attachments

**INTRODUCTION QUESTIONNAIRE (see Exhibit 1)**

Complete and sign the attached Exhibit 1 Introduction Questionnaire (2 pages) on pages 15 and 16 of this SFQ document. This questionnaire and any requested attachments do not count toward the page count for subsequent sections.

**GENERAL QUALIFICATIONS**

**40 POINTS**

**A. Familiarity with Scope of Work and Project Team Organization (6 pages) – 8 points**

- 1) Briefly, indicate the Firm's history, years in business, and capacity to perform small to medium (\$250,000 to \$750,000) traffic signal, roadway intersection, paving and drainage improvement projects. (4 points)
- 2) Identify the Key Personnel who will perform services should your firm be awarded the contract. Identify each Key Personnel's relevant qualifications and experience as it relates to the scope of work of this contract. (2 points)
- 3) Provide an organization chart that depicts the project team organization and lines of authority. Clearly indicate superior/subordinate reporting relationships; Provide names of Project Managers, Site Supervisors, Inspectors, Estimators, etc. Include if applicable, Key Personnel from major Subcontractors or Suppliers that would contribute to major portions of the scope of work of this contract. (1 point)
- 4) Within the organization chart, show the proposed percent participation of amongst each team member on this project. (1 point)

**B. Safety (1-2 pages, excluding OSHA Log and EMR copies) – 8 points**

- 1) Identify your firm's Safety Officer. Is the Safety Officer full-time and safety their sole job assignment or part of other assignments/duties? Identify/list all major certifications or training the Safety Officer has obtained. (3 points)
- 2) Describe how the Safety Officer will evaluate/assess each Job Order and implement a safety plan for each Job Order with/for the County. (3 points)
- 3) Provide copies of the following:
  - i. The OSHA 300 Log for the past three years (1 point)
  - ii. Experience Modification Rate (EMR) for the past three years, documented/verified from your Worker's Compensation insurance provider (1 point)

**C. Financial Capacity/Bonding/Insurance (1 page, excluding items 1-4) – 8 points**

- 1) Total Bonding Capacity - Single Limit and Aggregate Limit
- 2) Current Backlog
- 3) Surety Company Rating (e.g. A.M. Best, Moody's, S&P, etc.)
- 4) Insurance Provider Rating (e.g. A.M. Best, Moody's, S&P, etc.)

(Items 1-4 must be documented/verified from your surety or insurance carrier) (4 points)

- 5) Describe your firm's method of approach to bonding this contract and your firm's ability to provide the required payment and performance bonds in a timely manner. Include time required to deliver bonding to PCDOT once a proposal is accepted and prior to the issuance of a Purchase Order and Notice to Proceed. RTA and Federally funded projects may require each Job Order be separately bonded and insured to include them as additional insured and bond beneficiary – how do you plan to accommodate this requirement? (4 points)

**D. Equipment (1 page) – 10 points**

Provide a listing the equipment available to your firm to utilize on this contract. Identify the equipment by the following:

- 1) Name/Description, years in service, and whether owned, rented, or provided by a subcontractor. (5 points)
- 2) Identify at any given time, what percent of your heavy equipment fleet is down for maintenance or repairs. (5 points)

**E. Sustainability – (2 pages) – 6 points**

On May 1, 2007, the Pima County Board of Supervisors passed a comprehensive Sustainability Ordinance for all County operations. Sustainability is defined as *"Improving the quality of life for current generations without jeopardizing the ability of future generations to do the same."* To that end, please describe:

- 1) Philosophy and/or company policies on project site waste prevention, reduction, and recycling; (2 points)
- 2) Utilization of environmentally preferable materials in construction, including use of non-potable water where feasible, purchase of locally produced/manufactured products to minimize transport, etc.; (2 points)
- 3) Your internal office practices that lessen impact on non-renewable resources and global climate change (reduction in water, energy, or paper use, minimization of solid waste and disposition of hazardous materials, use of recycled office supplies, alternative fuel fleets, compressed or flexible work week schedules, etc.) (2 points)

**PRIOR PROJECT EXPERIENCE AS PRIME CONTRACTOR**

**40 POINTS**

**A. Prior project experience (Up to two (2) 11" X 17" pages) – 40 points**

Preferably on 11x17" paper, provide a listing of prior traffic signal, roadway intersection, paving and drainage improvement projects similar in scope and size of this contract your firm has completed

as the Prime Contractor in the last three years. Include information in a table with the following columns:

- A brief name/description of the project
- Original estimate or bid cost
- Actual final construction cost
- Original estimated start/completion date
- Actual start/completion date
- Small business utilization, if known
- Client name, contact person and phone number
- Any unique characteristics of the project that apply to the scope of work of this contract.

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**METHOD OF APPROACH**

**65 POINTS**

**A. General Project Approach (2-4 pages) – 20 points**

- 1) Describe your firm's overall commitment to responding to the County's requests for services.

For Example:

Explain how your firm is committed to providing a completed bid schedule for each project being considered in a reasonable timeframe. (2 points)

Explain your firm's capability to respond to an emergency work environment in a reasonable timeframe (24/7). (2 points)

What is your firm's commitment for providing a supervisor on every project that is assigned? (2 points)

- 2) Describe your firm's approach to design partnering and ensuring project success in design/pre-construction. (2 points)
- 3) Describe how your firm handles cost control (daily, monthly and completion tracking/reporting); scheduling (initial and progress schedules); how are cost overruns identified and how are they mitigated? (5 points)
- 4) Describe your firm's willingness to participate public involvement; (2 points)
- 5) Describe your firm's conflict communication plan; what is your proposed escalation ladder? (3 points)
- 6) Describe your firm's project closeout and final documentation process. (2 points)

**B. Job Order Management (2-3 pages) – 25 points**

Describe your firm's ability to timely and appropriately process necessary paperwork and issue cost estimates and schedules related to the County's job order service requests. Include in your response specific detail regarding the following:

- 1) Upon receipt of a job order request for quotation from the County, how many days does your firm require to process and complete all necessary paperwork and return a proposal to the County? (5 points)
- 2) Upon acceptance of a quote and issuance of a Notice to Proceed, how many days does your firm typically require to mobilize forces and start construction? (5 points)

- 3) Describe your firm's change request procedure and how change requests are communicated with the Owner. For example, you have been assigned a project via the "job order contract". This particular project requires you to replace an asphalt driveway. You accept the task, mobilize equipment, start demolition activities, and find a 12 inch concrete driveway apron existing underneath the asphalt. Neither the owner nor the contractor knew that the concrete driveway existed prior to the job commencing. As a Job Order Contractor, what is your responsibility for completion of the project? (15 points)

**C. Value Analysis/Value Engineering/Risk Mitigation (1-2 pages) – 10 points**

- 1) What capabilities does your firm have to provide additional Value Analysis/Value Engineering to Job Orders of limited design prior to construction? What is your willingness to provide these services as part of your job order quotation? (4 points) \*
- 2) What capabilities do you have to identify and communicate various opportunities for risk mitigation with the Owner at the time of Job Order development? What risk avoidance strategies have you commonly employed and shared with Owners to reduce threats to the project's success? What are the main things an Owner can do to help you as the Contractor deliver a successful project? For example, you have received a task via the job order contract. This task is to enlarge an existing intersection by adding additional left turns on all 4 approaches. In addition, there will be storm drainage additions with associated pipes. Before the earthwork/roadway construction can begin the contractor notices that the signal polls and mast arms are in the way. The intersection vehicular volume approach 75,000 cars per day. Explain your approach to the project minimizing the owner's cost to construct the project. (6 points)

*\* NOTE: Specific pricing information, including proposed value engineering or cost savings information shall not be submitted with the respondent's initial Statement of Qualifications. Any Statement of Qualifications that contains any information of this type may, in the sole discretion of the County, be deemed non-responsive and be returned to the Contractor.*

**D. Quality Control/Quality Assurance (1 page) – 10 points**

- 1) Describe your firm's subcontractor and vendor/material supplier QC/QA management approach (QC methods, control limits and documentation). (4 points)
- 2) How do you ensure that supplier materials are delivered within the Owner's specifications? (6 points)

**REFERENCES**

**30 POINTS**

Respondents shall provide the PERFORMANCE INQUIRY on pages 15-16 from three (3) Clients. The Clients shall not be from Pima County. Your selected Clients must fax the PERFORMANCE INQUIRY directly to the Pima County Procurement Department no later than the Submittal Due Date and Time. Do not include Performance Inquiries with your proposal or they may be rejected. The County is not responsible for ensuring receipt of the Performance Inquiries from your Clients.

***Clients may attach additional pages if necessary – there is no page limitation for the Performance Inquiries.***

**PART II - SUBCONTRACTOR SELECTION PLAN- QUALIFICATIONS BASED SELECTION**  
**(25 POINTS)**

The subcontractor selection plan, page 17, will be evaluated and scored separately from the written Questionnaire by representatives of the Pima County Procurement Department Business Enterprise Program, and the Project Manager. The average score obtained on the subcontracting plan will be added to the average score for the questionnaire evaluation to arrive at the total score for the written SOQ's.

Each Contractors subcontracting plan will be incorporated by reference into the Agreement. Each Contractor will be obligated to comply with its own plan. Note that a subcontractor selection plan is a requirement of A.R.S. § 34-604(C)(2)(e)(i) and, as such, must be submitted; failure to submit a subcontractor selection plan will result in rejection of the Statement of Qualifications..

**EXHIBIT "1" SOQ QUESTIONNAIRE**  
**Traffic Signal, Road Intersection, Paving and Drainage Improvements – SFQ # 231853**

Firm Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address (if different from mailing address): \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Email: \_\_\_\_\_

Corporate Headquarters (City/State): \_\_\_\_\_

Business Type: Sole Proprietorship [ ] Partnership [ ] Corporation [ ] Joint Venture [ ]

Is the Business a Certified Small Business Enterprise? Yes [ ] No [ ]

How many years has this business been in existence under its present ownership? \_\_\_\_\_

Under what other names have your Company operated and the length of time in business under those names?

<u>Previous Name</u>	<u>Length of Time in Business Under Name</u>
_____	_____
_____	_____

What was the total amount of Traffic Signal, Road Intersection, Paving and Drainage Improvements work your firm has completed in the prior periods?

2016 YTD: Number of Contracts \_\_\_\_\_ Total Value \$ \_\_\_\_\_

2015: Number of Contracts \_\_\_\_\_ Total Value \$ \_\_\_\_\_

2014: Number of Contracts \_\_\_\_\_ Total Value \$ \_\_\_\_\_

By dollar value, approximately what percentage of your work is:

Commercial \_\_\_\_\_% Public/Government \_\_\_\_\_%

Does your company have an established written safety policy? Attach a copy. Yes [ ] No [ ]

Does your company have a written incident investigation procedure? Attach a copy. Yes [ ] No [ ]

Does your company have a written substance abuse policy? Attach a copy. Yes [ ] No [ ]

Do you apply your substance abuse policy to subcontractors or require them to have substance abuse policies? Yes [ ] No [ ]

List the licenses held by your company issued by the Arizona Registrar of Contractors:

License Number	Class
_____	_____
_____	_____
_____	_____

RESPONDENT SHALL SIGNIFY RECEIPT OF ADDENDA (IF ANY). Failure to Acknowledge Receipt of any Material Addendum may result in rejection of the SOQ as non-responsive.

Addendum #	By (Name)	Date	Addendum #	By (Name)	Date

SOQ Submitted by (Name) \_\_\_\_\_ Title \_\_\_\_\_

By signing this submittal, the undersigned certifies that all information provided is accurate and valid.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Company Officer Authorized to Obligate the Company

**End of Exhibit "1" Questionnaire**



**ATTACHMENT 1 (2 Pages)**  
**CONTRACTOR PERFORMANCE INQUIRY**



PIMA COUNTY PROCUREMENT DEPARTMENT  
DESIGN AND CONSTRUCTION DIVISION  
PHONE: 520-724-8414  
FAX: 520-724-4434

**PROPOSING FIRM NAME:** \_\_\_\_\_

**FOR: SOLICITATION No. 231853, JOB ORDER MASTER AGREEMENT FOR TRAFFIC SIGNAL, ROAD INTERSECTION, PAVING AND DRAINAGE IMPROVEMENTS**

PIMA COUNTY, ARIZONA IS CONSIDERING THE ABOVE NAMED INDIVIDUAL OR COMPANY'S APPLICATION TO PROVIDE WELL INSTALLATION, DEVELOPMENT, AND REPAIR TO PIMA COUNTY. PLEASE RANK THE INDIVIDUAL OR COMPANY'S PAST PERFORMANCE IN THE CATEGORIES INDICATED ON PAGE 22 AND THE DEFINITIONS ON PAGES 23 - 25.

**PLEASE FAX/EMAIL THIS SHEET (Page 18) AND YOUR COMPLETED QUESTIONNAIRE (Page 19) TO THE FOLLOWING ON OR BEFORE October 4, 2016.**

**ATTENTION: Anthony V. Schiavone  
Pima County Procurement Department  
Design and Construction Division  
Email: [anthony.schiavone@pima.gov](mailto:anthony.schiavone@pima.gov)  
Fax: 520-724-4434**

Proposing Firm may contact you if PERFORMANCE INQUIRY due date has been revised by subsequent solicitation addendum. Any published revised Submittal Due Date will supersede above schedule.

**FIRM PROVIDING REFERENCE:**

**Name of Company:** \_\_\_\_\_

**Person Completing Reference:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

The contractor listed below has named you as a reference on a project completed within the last three years. We would appreciate it if you could respond to the questions below regarding this contractor and email or fax your response to [anthony.schiavone@pima.gov](mailto:anthony.schiavone@pima.gov) (520) 724-4434, Attn: Anthony V. Schiavone, Design and Construction Division, Pima County Procurement Department.

We require your response by **4:00 PM, October 4, 2016** in order to consider the Contractor's proposal for a Job Order Contract. In order for your response to be considered for the Respondent, please reply on or before that date.

Contractor for whom reference is provided: \_\_\_\_\_

Project Name: \_\_\_\_\_

	Never			Always	
Did Contractor take adequate precautions to provide for the safety of employees, the public, and others?	1	2	3	4	5
Did Contractor take adequate steps to ensure that its work did not disrupt other ongoing activities?	1	2	3	4	5
Did Contractor avoid initiating unwarranted change orders?	1	2	3	4	5
Did Contractor respond timely to your requests for changes?	1	2	3	4	5
Was Contractor's project coordination and supervision satisfactory during the entire project?	1	2	3	4	5
Was Contractor's quality of work satisfactory?	1	2	3	4	5
Were you pleased with the Contractor's overall performance?	1	2	3	4	5
Would you recommend Contractor for similar projects in the future?	1	2	3	4	5
Would you use this Contractor again?	1	2	3	4	5

Thank you very much for your response.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

**End of Attachment 1 – Contractor Performance Inquiry**

**ATTACHMENT 2**  
**SAMPLE MASTER AGREEMENT**

<b>PIMA COUNTY DEPARTMENT OF TRANSPORTATION</b>	
<b>PROJECT:</b>	JOB ORDER MASTER AGREEMENT TRAFFIC SIGNAL, ROAD INTERSECTION, PAVING AND DRAINAGE IMPROVEMENTS
<b>CONTRACTORS:</b>	
<b>AMOUNT:</b>	
<b>FUNDING:</b>	(stamp here)

**JOB ORDER MASTER AGREEMENT**

THIS MASTER AGREEMENT, hereinafter also referred to as Contract, is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and <CONTRACTOR>, hereinafter called CONTRACTOR, collectively referred to as the Parties.

**WITNESSETH**

**WHEREAS**, COUNTY has a need to establish a Contract with up to five (5) Job Order Contractors for Traffic Signal, Road Intersection, Paving and Drainage Improvement Services; and,

**WHEREAS**, CONTRACTOR is qualified and willing to provide such services; and

**WHEREAS**, COUNTY therefore conducted a competitive qualifications-based procurement for Job Order Contractors under Solicitation #231853; and

**WHEREAS**, based on an evaluation of the respondents' representations of their qualifications and necessary due diligence, COUNTY selected up to five (5) highest qualified contractors as Job Order Contractors; and

**WHEREAS**, the Job Order Contractors have agreed to be bound by and adhere to the requirements of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other valuable and good consideration the Parties hereto agree as follows:

**ARTICLE 1 – BASIC TERMS**

This Master Agreement (Agreement), as approved by the Board of Supervisors commences on <BOS Approval date> and shall terminate on <date>, unless sooner terminated or further extended pursuant to the provisions of this Agreement. This Agreement establishes the terms under which the Job Order Contractors will be assigned and perform tasks and projects under this Agreement. COUNTY, at its sole discretion, may extend up to four (4) additional one-year terms or add funding to this Agreement at any time with the approval or consent of the CONTRACTORS.

For projects less than \$100,000.00, the COUNTY may select a Contractor based on availability, specialty, or such other basis or bases as the COUNTY may determine in its sole discretion.

For projects of \$100,000.00 or more, the Contractors will compete on the basis of price or price and schedule through a simplified quoting procedure. Price may be either fixed price or a guaranteed maximum price.

No individual Job Order may exceed \$1,000,000.00.

Construction completion time for work to be performed under this Contract will be as stated in individual Job Orders issued under this contract. COUNTY will assess Liquidated damages against CONTRACTOR based upon the construction completion time, if so specified in a Job Order.

Each CONTRACTOR shall select subcontractors in accordance with CONTRACTOR'S Subcontractor Selection Plan, incorporated herein by reference.

All warranty and indemnification obligations under this contract shall survive expiration or termination of the contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with A.R.S. § 34-226, as amended by Laws, 51st Legislature (2013), 1st Regular Session, Ch. 0238, shall, in all cases, not be void, but shall be interpreted and applied as if it were consistent with A.R.S. § 34-226.

### **ARTICLE 2 – SCOPE OF SERVICES**

CONTRACTOR will provide for COUNTY all labor, materials and equipment necessary to complete the work identified in individual Job Orders awarded to CONTRACTOR under this Contract. The scope of work under this Contract is more fully set forth in **Exhibit A – Scope of Work (2 Pages)**, incorporated into this Contract. All work will be done per specifications called for in Job Orders, **General Conditions, Exhibit B (14 Pages), Special Conditions – Multiple Award Job Order Contract, Exhibit C (18 Pages)**, and other documents incorporated into this Contract, all made a part hereof.

### **ARTICLE 3 – COMPENSATION AND PAYMENT**

CONTRACTOR shall provide detailed documentation in support of requested payment. Any payments under this Article shall not prevent the COUNTY from objecting to charges after payment therefor in appropriate cases, or from seeking reimbursement for any such charges. Payment shall be made in accordance with ARS § 34-607.

CONTRACTOR will provide detailed documentation in support of requested payment. CONTRACTOR must cite the Contract number on all invoices. Payments will be made in accordance with A.R.S. § 34-221.

For the period of record retention required under Article 23, 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

CONTRACTOR will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is at CONTRACTOR'S own risk.

### **ARTICLE 4 – INSURANCE**

Contractor will procure and maintain at its own expense insurance (the "Required Insurance") as will protect the Contractor from claims which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The below Required Insurance are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. The County in no way warrants that the required

insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

#### **4.1 Insurance Coverages and Limits:**

- 4.1.1 **Commercial General Liability (CGL):** Occurrence Form covering liability arising from personal injury, bodily injury, broad form contractual liability, independent or sub-contractors, property damage and products-completed operations with minimum limits not less than \$2,000,000 Each Occurrence and \$3,000,000 General Aggregate.
- 4.1.2 **Business Automobile Liability:** Coverage form (CA 00 01 or equivalent) for any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$2,000,000 Each Accident.
- 4.1.3 **Workers' Compensation (WC) and Employers' Liability:** Workers' Compensation with Employers Liability limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.
- 4.1.4 **Builders Risk Insurance:** Builders risk shall be maintained in force on the entire work and apply on a replacement cost basis. Insurance shall be written on a completed value form and in an amount equal to the initial contract sum subject to subsequent modifications of the contract sum. The insurance shall name as insureds Pima County, Contractor, and all subcontractors in the work. The policy shall contain a provision that the insurance will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Pima County.
- 4.1.5 **Professional Liability Errors and Omission (E&O) Insurance:** Professional Liability to include professional misconduct and negligent acts of anyone performing professional services under this Contract with policy limits not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. A Claims-Made policy is acceptable.

**Examples requiring Professional Liability Insurance:** Architect, Engineer, Lawyer, Construction Manager, Licensed Health Care Practitioner, Surveyor or Accountant. (See appropriate language above.)

#### **4.2 Additional Coverage Requirements:**

- 4.2.1 **Claims Made Coverage:** If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- 4.2.1 **Insurer Financial Ratings:** Coverage must be placed with insurers lawfully authorized to do business in Arizona and with A.M. Best rating of not less than A- VII, unless otherwise approved by the County.
- 4.2.2 **Additional Insured:** The General Liability policy must be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.
- 4.2.3 **Waiver of Subrogation:** Commercial General Liability, Workers' Compensation and Builders Risk must each contain a waiver of subrogation in favor of County and its Agents for losses arising from work performed by or on behalf of the Contractor.
- 4.2.4 **Primary Insurance:** The Required Insurance policies, with respect to any claims related to this Contract, must be primary and must treat any insurance carried by County as excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).

- 4.2.5 Subcontractors: Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

**4.3 Verification of Coverage:**

- 4.3.1 Insurer or Broker of Contractor must evidence compliance with the Insurance Requirements by furnishing certificates of insurance executed by a duly authorized representative of each insurer. Each certificate must include:
- The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate,
  - A notation of policy deductibles or SIRs relating to the specific policy, and
  - Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.
- 4.3.3 Each Required Insurance policy and appropriate endorsements must be in effect not less than 15 days prior to commencement of work under this Contract. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the Required Insurance, or to provide evidence of renewal, is a material breach of this Contract.
- 4.3.4 County reserves the right to, at any time, require complete copies of any or all Required Insurance policies.
- 4.3.5 Cancellation Notice: Contractor's insurance policies and endorsements shall not be permitted to expire, be cancelled, suspended or materially changed from the agreed upon Insurance Requirements for any reason without thirty (30) days advance written notice to the County of the policy cancellation, suspension or material change. Contractor must provide written notice to County within 2 business days of receipt of notice from insurer. For cancellation for non-payment, Insurer is to provide County with written notice 10 days prior to cancellation of policy.

**4.4 Approval and Modifications:**

The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

**ARTICLE 5 – INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR indemnifies and holds harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONTRACTOR, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article do not extend to the negligence of COUNTY, its agents, employees or indemnities.

All warranty and indemnification obligations under this Contract survive expiration or termination of the Contract, unless expressly provided otherwise. Any indemnification provision inconsistent with A.R.S. § 34-226 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.

Upon request, CONTRACTOR may fully indemnify and hold harmless any private property owner granting a right of entry to CONTRACTOR for the purpose of completing the project.

#### **ARTICLE 6 – COMPLIANCE WITH LAWS**

CONTRACTOR will comply with all applicable 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 govern the rights of the Parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

#### **ARTICLE 7 – INDEPENDENT CONTRACTOR STATUS**

The status of CONTRACTOR is that of an independent contractor and CONTRACTOR is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONTRACTOR will be responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONTRACTOR from COUNTY. CONTRACTOR will be responsible for program development and operation without supervision by COUNTY.

#### **ARTICLE 8 – CONTRACTOR/SUBCONTRACTOR PERFORMANCE**

CONTRACTOR will perform the work in accordance with the terms of the Contract and with the degree of care and skill which a licensed contractor in Arizona would exercise under similar conditions. CONTRACTOR will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CONTRACTOR will obtain the approval of COUNTY.

CONTRACTOR is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by CONTRACTOR under this Contract. Without additional compensation, CONTRACTOR will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONTRACTOR found during or after the course of the services performed by or for CONTRACTOR under this Contract, regardless of COUNTY having knowledge of or condoning or accepting the products or the services. Correction of such deficiencies will be at no cost to COUNTY.

CONTRACTOR will ensure that all SUBCONTRACTORS have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this Contract. CONTRACTOR will 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 will be fully responsible for all acts and omissions of its SUBCONTRACTOR(S) and of persons directly or indirectly employed by a 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 creates any obligation on the part of COUNTY to pay or see to the payment of any money due any SUBCONTRACTOR, except as may be required by law.

**ARTICLE 9 – ASSIGNMENT**

CONTRACTOR will not assign its rights to this Contract in whole or in part, without prior written approval of COUNTY. COUNTY may withhold assignment at its sole discretion, provided that COUNTY will not unreasonably withhold such approval.

**ARTICLE 10 – NON-DISCRIMINATION**

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any SUBCONTRACTORS**. During the performance of this Contract, CONTRACTOR will 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 11 – AMERICANS WITH DISABILITIES ACT**

CONTRACTOR will 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 COUNTY, then CONTRACTOR will maintain accessibility to the program to the same extent and degree that would be required of COUNTY 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 Contract.

**ARTICLE 12 - AUTHORITY TO CONTRACT**

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

**ARTICLE 13 – NON-WAIVER**

The failure of COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not 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 is not an accord and satisfaction.

**ARTICLE 14 – CANCELLATION FOR CONFLICT OF INTEREST**

This Contract is subject to the provisions of A.R.S. §38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."

**ARTICLE 15 – TERMINATION OF CONTRACT FOR DEFAULT**

- A. Upon a failure by CONTRACTOR to cure a default under this Contract within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by

Contract or otherwise. CONTRACTOR and its sureties, if any, will be liable for any damage to COUNTY resulting from CONTRACTOR'S default, including any increased costs incurred by COUNTY in completing the work.

- B. The occurrence of any of the following constitutes 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 workers 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 to remove any defective or deficient Material
  5. Failure to make prompt payment to SUBCONTRACTORS or suppliers for material or labor;
  6. Loss of CONTRACTOR'S 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 COUNTY 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 become COUNTY'S property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
  2. COUNTY 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 COUNTY from CONTRACTOR is determined; and
  3. Subject to the immediately preceding subparagraph (2), COUNTY'S liability to CONTRACTOR will 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 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 CONTRACTOR. Examples of such causes include—
    - (i) Acts of God or of the public enemy,
    - (ii) Acts of COUNTY in either its sovereign or contractual capacity,
    - (iii) Acts of another contractor in the performance of a Contract with COUNTY,
    - (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 CONTRACTOR and the SUBCONTRACTORS or suppliers; and

2. CONTRACTOR, within three (3) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, COUNTY will ascertain the facts and the extent of the resulting delay. If, in the judgment of COUNTY, 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" includes 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 COUNTY.
- G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

#### **ARTICLE 16 – TERMINATION FOR CONVENIENCE OF COUNTY**

COUNTY 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 will, at the option of COUNTY, become its property. If COUNTY terminates the Contract as provided herein, COUNTY will pay CONTRACTOR an amount based on the time and expenses incurred by CONTRACTOR prior to the termination date. However, COUNTY will make no payment for anticipated profit on unperformed services.

#### **ARTICLE 17 – NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision in this Contract, COUNTY may terminate this Contract if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, COUNTY has no further obligation to CONTRACTOR, other than payment for services rendered prior to termination.

#### **ARTICLE 18 – NOTICES**

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

COUNTY:

Louis Tapley, Project Manager  
Department of Transportation  
1313 S Mission Road  
Tucson, AZ 85713  
Tel: (520) 724-5918

Any Notice required or permitted to be given by COUNTY may be served by personal delivery or certified mail to CONTRACTOR'S contact name in CONTRACTOR'S electronic vendor record.

#### **ARTICLE 19 - NON-EXCLUSIVE CONTRACT**

CONTRACTOR understands that this Contract is Non-Exclusive and is for the sole convenience of COUNTY. COUNTY reserves the right to obtain like services from other sources for any reason.

**ARTICLE 20 - CONTRACT DOCUMENTS**

- A. INCORPORATION OF DOCUMENTS: CONTRACTOR and COUNTY in entering into this Contract have relied upon information provided in SOLICITATION NO. 231853 – Job Order Master Agreement: Traffic Signal, Road Intersection, Paving and Drainage Improvements, EXHIBIT "A" – SCOPE OF WORK, BONDS (BID, PAYMENT, AND PERFORMANCE BONDS), EXHIBIT "B" - GENERAL CONDITIONS, EXHIBIT "C" - SPECIAL CONDITIONS – MULTIPLE AWARD JOB ORDER CONTRACT, SAMPLE JOB ORDER FORM, AND THE SUBCONTRACTOR SELECTION PLAN, ADDENDA, and on information provided in the CONTRACTOR'S response to this Solicitation, Job Orders and Modifications thereto, and all drawings and specifications referenced in this contract or included in such Job Orders as may be issued under this Contract. 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 take precedence in the following order:
- a) This Contract
  - b) Special Conditions – Multiple Award Job Order Contract
  - c) General Conditions
  - d) Job Orders
  - e) Technical Specifications
  - f) Contractor's Response to the Solicitation

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

In the event of any conflict between any provision in the Special Conditions, if any, and any provision of the General Conditions, or any other incorporated document, the provision in the Special Conditions takes precedence.

**ARTICLE 21 - BONDING REQUIREMENTS**

CONTRACTOR will file payment and performance bonds with COUNTY, as required by A.R.S. § 34-608, no later than the time of agreement on the price (or Guaranteed Maximum Price) for any construction under this Contract. Bonds will be submitted on an annual basis for the full value of all construction reasonably anticipated during the contract year or may be provided on a job-order by job-order basis; in the latter case, CONTRACTOR will anticipate additional job orders and provide bonds in reasonable increments. At no time will the cumulative value of the bonds be less than the total value of the construction performed by CONTRACTOR under this Contract, including job orders awarded to CONTRACTOR but not yet completed. If bonds are secured on a job-order by job-order basis, the Contracting Department will obtain the appropriate bonds from CONTRACTOR upon issuance of a Job Order and release of the Delivery Order.

**ARTICLE 22 - OWNERSHIP 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 vest in and become the property of COUNTY and will be delivered to COUNTY upon completion or termination of the services, but CONTRACTOR may retain record copies thereof.

**ARTICLE 23 – BOOKS AND RECORDS**

CONTRACTOR will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

CONTRACTOR will retain all records relating to this Contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONTRACTOR may, at its option, deliver such records to COUNTY for retention.

#### **ARTICLE 24 – REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in ARTICLE 27 are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

#### **ARTICLE 25 – SEVERABILITY**

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

#### **ARTICLE 26 – DELAYS**

Neither party hereto is in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

#### **ARTICLE 27 – DISPUTES**

In the event of a dispute between COUNTY and CONTRACTOR regarding any part of this Contract or the Parties' obligations or performance hereunder, either Party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a meeting between the Director of the Pima County Department administering this Contract and CONTRACTOR'S counterpart official, such meeting to be held within one (1) week of the request, unless otherwise agreed. If the dispute is still not resolved after that meeting, then either Party may pursue such remedy or remedies as may be available to them under the laws of the State of Arizona. The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of any dispute.

#### **ARTICLE 28 – PUBLIC INFORMATION**

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H), in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by CONTRACTOR in any way related to this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any information submitted related to this Contract that CONTRACTOR believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a public record and should not include any information considered confidential.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONTRACTOR of the request for release, unless CONTRACTOR has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the

request for release is not counted in the time calculation. CONTRACTOR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

COUNTY is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is COUNTY in any way financially responsible for any costs associated with securing such an order.

**ARTICLE 29 – 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 will further ensure that each SUBCONTRACTOR who performs any work for CONTRACTOR under this Contract likewise complies with the State and Federal Immigration Laws.

COUNTY has 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, is 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 will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement SUBCONTRACTOR (subject to COUNTY approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.

CONTRACTOR will advise each SUBCONTRACTOR of COUNTY'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 COUNTY 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 is 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 are 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 will be excusable delay for which CONTRACTOR is entitled to an extension of time, but not costs.

**ARTICLE 30 – ISRAEL BOYCOTT CERTIFICATION**

CONTRACTOR hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by CONTRACTOR may result in action by the COUNTY up to and including termination of this Agreement.

**THIS PAGE IS LEFT INTENTIONALLY BLANK**

**ARTICLE 31 – 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.

APPROVED:

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Date

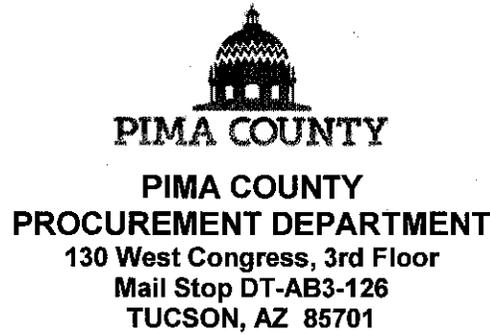
CONTRACTOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (Please Print)

\_\_\_\_\_  
Date

**MASTER AGREEMENT COMMITMENT LETTER**



<Date>

<Address>

Dear <Name>

Enclosed is your copy of Job Order Master Agreement No. <#> for <Subject Matter>.

An officer or manager of your firm with authority to contractually bind the firm must acknowledge receipt of the Agreement and your commitment to abide by its terms by completing the below paragraph and returning this letter, with an original signature, to the undersigned Contracts Officer within ten (10) working days of the date of this transmittal.

I, \_\_\_\_\_, am the \_\_\_\_\_, of \_\_\_\_\_ and affirm that I am authorized to execute contracts on behalf of this firm. By my signature below, this firm agrees, without exception, to be bound by the terms and conditions of the above cited Job Order Master Agreement the same as if my signature were on that document.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

Your signature above constitutes execution of the Agreement. This letter will be incorporated into the Agreement and maintained in the Agreement file.

**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 Pima County, Arizona, (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:

**JOB ORDER MASTER AGREEMENT TRAFFIC SIGNAL, ROAD INTERSECTION,**  
**PAVING AND DRAINAGE IMPROVEMENTS**

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 copies 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\_\_\_\_.

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Surety

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

**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 Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto Pima County, Arizona, (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:

**JOB ORDER MASTER AGREEMENT TRAFFIC SIGNAL, ROAD INTERSECTION,  
PAVING AND DRAINAGE IMPROVEMENTS**

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\_\_\_\_.

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Surety

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

## EXHIBIT "A" SCOPE OF WORK (2 Pages)

This is an indefinite quantity, unit priced, annual term, Job Order contract under which the Contractors will provide all labor, materials, management, supervision, services, and coordination required to a construct a full range of traffic signal, roadway intersection, paving and drainage improvement projects located in Pima County, including Ajo, Arizona. Work shall be performed as defined and ordered by the COUNTY by issuance of an individual job order for each individual project. COUNTY may select a Contractor for the award of a Job Order for a Project expected to cost less than \$100,000 based on availability or such other criteria as COUNTY may determine in its sole discretion. The selection of the Contractor for award of a Job Order for a Project valued \$100,000 or greater will be based on the responses to a simplified request for quotation covering either cost or cost and schedule from ALL Job Order Contractors under contract to PCDOT. Contractors may be required to submit quotes based on the full spectrum from limited conceptual drawings to complete construction documents, and variations in between. The quotation may also require the Contractor to perform limited pre-construction services such as alternatives analysis or material availability and pricing, or scheduling/phasing. The Contractor's quoted cost shall either be lump sum or Guaranteed Maximum Price, to deliver the project complete and in place. Job order contractors must provide a quote within five (5) business days of a request for quotation and begin work within five (5) business days of the Notice to Proceed in order to be considered eligible for award of the Job Order.

### DESCRIPTION OF WORK and SERVICES

It is expected that the content of work will vary for each Project/Job Order. All work will be ordered and performed in accordance with the Contract, Specifications, General and Special Conditions of the Contract documents, Special Provisions and Plans.

Pima County may provide Project Plans and Special Provisions for each Job Order. The Project Plans and Specifications may range from very limited conceptual designs to full construction documents and provisions. Generally, the Contractor may be required to perform conceptual estimates to determine the required items and quantities required to construct each Job Order complete and in-place, submit a detailed Lump Sum "Complete and In-Place" Price, or a Not-to-Exceed Guaranteed Maximum Price quote, along with a proposed Schedule to the COUNTY for all labor, materials, equipment and services required to satisfy the Job Order, and negotiate acceptance by the COUNTY prior to the commencement of work on each Job Order.

The scope of work for this project is comprised of the following and incidental associated work including appropriate permits needed for construction:

#### Work

Work means in response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Job Order Contractor shall, except as may be specified elsewhere in the Contract, furnish all necessary labor, materials, tools supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design, and construction work which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order.

#### General Construction And Maintenance

Surveying and staking for construction projects; Grading drainageways, ditches, berm and dike, providing and installing sub-grade, material for maintenance roads and paved pathways; Saw-cutting of various types of materials; Rolling and compacting sub-grade, and paving materials; Hauling and transporting dirt, base material, various types of heavy equipment, and other materials to the project sites; Laying down new asphalt paving; to Pima County standards.

General Road Construction

Surveying and staking for construction projects; Grading shoulders, sub-grade, finish-grade of base material for road construction; Saw-cutting of various types of paving materials; Rolling and compacting sub-grade, road shoulders, and paving materials; Hauling and transporting dirt, base material, various types of heavy equipment, and paving materials to the project sites; Laying down new asphalt paving; Installing permanent traffic striping to Pima County standards; Installing permanent traffic signing to Pima County standards.

Drainage Structures

Construction and maintenance of floodwalls, retaining walls, bank protection, stormdrains, catch basins, manholes, culverts, pedestrian bridges, grates, and other structures.

Drainage Construction

Grading for drainage structures; Installing and constructing bank protection, culverts, stormdrains, pedestrian bridges and other drainage structures to ADOT/Pima County standards; Installing curbing and associated facilities to ADOT/Pima County standards.

Fencing and Safety railing

Installation and construction of fences, barricades, safety rail, post and cable and signs.

Miscellaneous Utility Relocations

Relocating utilities in accordance with local utility standards, permits, coordination, blue staking, and connections.

Construction Traffic Control

Providing controls, directions and safety of vehicular, pedestrian, bicyclist and equestrian traffic in all associated work areas.

Landscaping and Irrigation

Providing, planting and establishing all plant materials, landscape irrigation systems and landscape hardscape.

Pavement Overlays

Asphalt; Milling; Chip-seal; Slurry-seal; Micro-seal.

Traffic Signals

Intersection signals, pedestrian crossings, photo radar installations and emergency responder/public safety modifications. Contractor will be required to be available (24/7) for emergency callout work due to storms, crashes, or other unforeseen circumstances.

Roadway Intersections

Including safety improvements and site distance or traffic capacity modifications.

## EXHIBIT "B" (12 Pages) GENERAL CONDITIONS

### **ARTICLE 1 – DEFINITIONS**

Whenever in these Specifications, or in any document of instructions where these Specifications govern, the following terms or pronouns in place of them are used, the intent and meaning will be interpreted as follows:

**Bid:** The offer of the Bidder for the work when properly made out on forms containing the Bid for Lump Sum Construction supplied by County and properly submitted, signed and guaranteed.

**Bid Documents:** All Drawings, Technical Specifications, Supplementary General and/or General Conditions, Bid Schedule, Construction Contract and Bonds, and Contract Documents.

**Bidder:** Any individual, firm or corporation, qualified as herein provided, legally submitting a Bid for the work contemplated, acting directly or through an authorized representative.

**Board:** The Board of Supervisors, Pima County, Arizona, acting under authority of the laws of Arizona.

**Building Code:** The directions, provisions, and requirements contained in the current edition of the Building Codes, 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, quality and quantity of material to be furnished and measurement for payment of same.

**Contract:** The written Agreement between County and Contractor covering the performance of the work and the furnishing of labor, equipment, and materials in the construction of the work.

**Contract Bond:** The approved form of security furnished by Contractor and its Surety as a guarantee on the part of Contractor to execute the work in accordance with the terms of the Contract.

**Contractor:** The party who undertakes to execute the work, acting directly or through an authorized lawful agent or employee.

**County:** Pima County, Arizona, a body politic and corporate, the owner of the work.

**Department:** The Pima County Department of Transportation.

**Director:** The Pima County Department Director, an assistant or other representative duly authorized by a Department Director to act on their behalf.

**Extra Work:** Work, including materials, for which no price agreement is contained in the Contract and which is deemed necessary for the proper completion of the work.

**Item:** A detail of work for which separate payment is made.

**Laboratory:** The established laboratory of the Department or other laboratories authorized by COUNTY to test materials and work involved in the Contract.

**Plans:** The Contract drawings or exact representations thereof, which show the location, character, dimensions, and details of the work.

**Project Manager, Engineer, or Architect:** The person designated by COUNTY to oversee the project on its behalf.

Standard Specifications: The directions, provisions, and requirements contained in the current edition of the Pima Association of Governments Standard Specifications for Public Improvements, 2014 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, quality and quantity of material to be furnished and measurement of payment of same.

Supplementary Agreement: A written agreement executed by Contractor and County covering alterations to the project. A change order or a force account work request prepared on the approved form of the Department is a supplementary agreement.

Supplementary General Conditions or Special Conditions: The Supplementary General Conditions or Special Conditions are additional to the General Conditions, which are conditions or requirements peculiar to the project under consideration.

Surety: The corporate body which is bound with and for Contractor, who is primarily liable, and which (agrees) to be responsible for its payment of all debts pertaining to and for its acceptable performance of the work for which it has contracted.

The Work: All of the work specified in the Contract.

### **ARTICLE 2 – RESPONSIBILITY REGARDING EXISTING UTILITIES AND STRUCTURES**

The existence and locations of underground utilities indicated on the plans are not guaranteed and will be investigated and verified in the field by Contractor before starting work. Excavations in the vicinity of existing structures and utilities will be carefully done by hand. Contractor will be held responsible for any damage to, and for maintenance and protection of existing utilities and structures.

County does not guarantee the existence and locations of underground utilities indicated on the plans and Contractor will investigate and verify the location of underground utilities in the field before starting work. Contractor will carefully perform excavations in the vicinity of existing structures and utilities. Contractor is 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 must 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.

Contractor is fully responsible for costs incurred due to damage to utilities as a result of grading or excavation operations. Utility locations shown on the Plans are approximate, and not all utilities may be shown. The possibility of conflicts with existing utilities –in-place exists. If conflicting utilities interfere with Contractor's normal progress toward completion of this project, County may, at its option, authorize Contractor to relocate said conflicting utilities by Force Account.

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

### **ARTICLE 3 – LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

- a. Laws to be Observed -- Contractor is presumed to be familiar with and at all times will observe and comply with all Federal and State laws and local 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 will indemnify and hold harmless County and its representatives against any claim arising from the violations of such laws, bylaws, ordinances or regulations, whether by Contractor or by Contractor's employees.

- b. Permits and Licenses -- County will procure all County building permits, and sewer connection fees. Contractor will post required permits on site and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor will procure and pay for all other permits, fees, and applications for water, gas, electric and other utilities.
- c. Sanitary Provisions -- Contractor will 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 Arizona Department of Health Services or other authorities having jurisdiction therein.
- d. Public Convenience and Safety -- Contractor will have due regard for the public health and will conduct the work in such a manner as to provide and insure 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, Danger, Warning, and Detour Signs -- Contractor will 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, danger signals, reflectors, signs, or other protective devices as are required to insure 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 will be considered as included and paid for in the contract prices for the work.

- f. Use of Explosives -- Prohibited
- g. Preservation and Restoration of Property -- Contractor will be responsible for the preservation of all public and private property on the surface or underground, along and adjacent to the work and will conduct its operations so as to insure the prevention of injury or damage thereto. No land monuments or property will 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 Contractor, Contractor will restore such property 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 will make good such damage or injury in an acceptable manner.

- h. Contractor's Responsibility for Work -- Until written final acceptance of the work by COUNTY, Contractor will have the charge and care thereof and will 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 will 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 will bear the expense thereof.

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

- i. Waiver of Legal Rights -- County will 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

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 County or by any representative of County nor any payment, nor acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by County will 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 is not a waiver of any other subsequent breach.

#### **ARTICLE 4 – ACCIDENTS**

Contractor will 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.

Contractor must promptly report in writing to County all accidents whatsoever arising out of, or in connection with the performance of the work, whether on or adjacent to the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, Contractor will report the accident immediately by telephone or messenger to both County and the Board.

If any claim is made by anyone against Contractor or any Subcontractor on account of any accident, Contractor will promptly report the facts in writing to County, giving full details of the claim.

#### **ARTICLE 5 – RESERVED**

#### **ARTICLE 6 – DELAY**

If the number of calendar days in CONTRACTOR's schedule plus the grace period specified in the above paragraph equals or exceeds the number of calendar days for completion stated in the solicitation, then the completion period will be as stated in the solicitation and there will be no grace period.

COUNTY and CONTRACTOR have agreed upon the Project scope, total price, and schedule for the performance of the work. The agreed schedule represents a firm commitment by CONTRACTOR and COUNTY to complete the work within the schedule identified in this Contract, as it may be adjusted from time to time.

COUNTY and CONTRACTOR understand that events may occur that delay or disrupt the schedule or require a change in the level of resources or effort. Therefore, the Contract may be adjusted as follows for Delays:

(1) A delay in the work attributable to COUNTY is an excusable delay for which an adjustment may be made to the schedule. In any such case the schedule of the affected task or activity may be extended one day for each day of COUNTY-caused delay; provided, however, that if the COUNTY-caused delay overlaps a period of delay attributable to any other cause, the extension for COUNTY-caused delay is limited to the number of non-overlapped days of COUNTY-caused delay.

(2) There is no adjustment for any CONTRACTOR-caused delay in the work, including time to repair or replace defective work. In the event of a significant CONTRACTOR-caused delay exceeding three (3) workdays, CONTRACTOR will provide a recovery plan to COUNTY within five (5) days of COUNTY's request.

(3) A delay in the work attributable to any other cause, including strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the control of COUNTY or CONTRACTOR and that arises without the fault or negligence of either, is an excusable delay for which COUNTY and CONTRACTOR agree to negotiate an appropriate schedule adjustment. If the period of delay attributable to

any cause under this paragraph overlaps a period of delay attributable to any other cause, the adjustment under this paragraph will be made first and the delay attributed to such other cause will be limited to that occurring outside of the overlap.

(4) If any of the causes of delay in Paragraphs 1 or 3 above affects a task or activity on the critical path, then the schedule adjustment may include adjustment to the completion date. If the cause does not affect a task or activity on the critical path, then the adjustment will be made from Float and the completion date shall not be changed.

(5) If any of the causes of delay in Paragraphs 1 or 3 above results in material provable additional costs to the affected task or tasks as a result of disruption of the schedule, then the parties will negotiate an equitable adjustment therefor.

(6) COUNTY and CONTRACTOR will negotiate an equitable adjustment of cost for any task or tasks for which there is any significant change in the level of effort arising from additional or changed work requested or directed in writing by COUNTY that materially deviates from or adds to the work.

Contractor must submit claims for extension of time in writing to COUNTY for review and approval no later than seven (7) days after the initiation of that delay. In the case of a continuing cause of delay, only one claim is necessary.

County will grant approval of time extension for delays only based on the verification of a daily log maintained by the superintendent at the job site. The daily log must segregate and document each individual delay occurrence, and then separately track the job costs attributable to changes in the work noted in Article 21. Contractor's failure to maintain the daily logs in the manner described above will result in COUNTY's denial of the claim for time extension.

If Contractor has requested detail drawings and instructions as noted in Article 9, County will not approve a request for delay on account of County's failure to furnish drawings until two (2) weeks after demand for such drawings.

#### **ARTICLE 7 – EXECUTION, CORRELATION AND INTENT OF DOCUMENTS**

The Contract documents are complementary, and what is called for by any one will be as binding as if called for by all, and the most stringent requirement will 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 inferable from any heading, branch, class or trade of the specifications will be supplied unless distinctly so noted on the drawings. Materials or work described in words that so applied have a well-known technical or trade meaning will be held to refer to such recognized standards.

#### **ARTICLE 8 – DETAIL DRAWINGS AND INSTRUCTIONS**

County will furnish with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions will be consistent with the Bid documents, true developments thereof, and reasonably inferable therefrom.

#### **ARTICLE 9 – COPIES OF DRAWINGS FURNISHED**

County will provide, at no cost to Contractor, two complete sets of code approved construction documents in non-reproducible form.

County will provide, at no cost to Contractor, five (5) non-reproducible sets of construction documents used during the course of bidding the work (Bid Sets) for execution on the work. It will be Contractor's responsibility to ensure that any modifications called for as a result of the permit process are transferred to the bid sets.

Contractor may purchase additional sets of code-approved sets or bid sets construction documents, at its expense.

**ARTICLE 10 – ORDER OF COMPLETION**

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

**ARTICLE 11 – CONSTRUCTION DOCUMENTS ON THE JOB SITE**

Contractor will keep one copy of code approved construction documents on the job site, in good order, available to County and to County's representatives. This set of documents will be kept current as to pending and approved changes in the work.

**ARTICLE 12 – OWNERSHIP OF DRAWINGS**

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

**ARTICLE 13 – CONTRACTOR'S UNDERSTANDING**

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 County, either before or after the execution of this Contract, will affect or modify any of the terms or obligations herein contained.

**ARTICLE 14 – MATERIALS, APPLIANCES, EMPLOYEES**

Unless otherwise agreed, Contractor will 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 agreed, all materials will be new, and both workmanship and materials will be of good quality. Contractor will, if required, furnish satisfactory evidence as to the kind and quality of materials.

Contractor will at all times enforce strict discipline and good order among its employees, and will not employ on the work any unfit person or anyone not skilled in the work that Contractor assigns to that person.

**ARTICLE 15 – ROYALTIES AND PATENTS**

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

**ARTICLE 16 – SURVEYS, PERMITS, AND REGULATIONS**

County will furnish all property surveys unless otherwise specified. Contractor will secure and pay for permits and licenses of a temporary nature necessary for the prosecution of the work except as noted in Article 3.b.

County will secure and pay for easements for permanent structures or permanent changes in existing facilities unless otherwise agreed.

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

#### **ARTICLE 17 – PROTECTION OF WORK AND PROPERTY**

Contractor will continuously maintain adequate protection of all its work from damage and will protect County's property from injury or loss arising in connection with this Contract. It will make good any such damage, injury, or loss, except such as may be directly due to errors in the bid documents or caused by agents or employees of County. It will adequately protect adjacent property as provided by law and the bid documents. It will 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, Contractor, without special instruction or authorization from County, is hereby permitted to act at his discretion, to prevent such threatened loss or injury, and Contractor will so act, without appeal, if so instructed or authorized. Any compensation claimed by Contractor on account of emergency work will be determined by County.

Contractor is responsible for equipment, materials, and supplies until completion of the project and acceptance by County.

#### **ARTICLE 18 – INSPECTION OF WORK**

County representatives will at all times have access to the work wherever it is in preparation or progress and Contractor will provide proper facilities for such access and for inspection.

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

Re-examination of questioned work may be ordered by County and if so ordered the work must be uncovered by Contractor. If such work is found to be in accordance with the bid documents, County will pay the cost of re-examination and replacement. If such work is found not to be in accordance with the bid documents, Contractor will pay such cost.

#### **ARTICLE 19 – SUPERINTENDENCE - SUPERVISION**

Contractor will keep on its work site during its progress a competent Superintendent and any necessary assistants, all satisfactory to County. The Superintendent will not be changed except with the consent of County, unless the Superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ. The Superintendent will represent Contractor in its absence and all directions given to it will be as binding as if given to Contractor. Contractor will give efficient supervision to the work using its best skill and attention.

If 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 will be its duty to immediately inform County, in writing, and County will promptly verify the same. Any work done after such discovery, until authorized, will be done at Contractor's risk.

Neither County nor Contractor, will employ an employee of the other without consent.

#### **ARTICLE 20 – CHANGES IN THE WORK**

In giving instructions, County will have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change will be made unless in pursuance of a written order by County and no claim for an addition to the Contract sum will be valid unless so ordered.

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

- a. By mutual acceptance of a lump sum, itemized and detailed with sufficient substantiating data, as requested by County, to permit evaluation.
- b. By unit prices named in the Contract or subsequently agreed upon.
- c. By cost and fixed fee.

If none of the above methods is agreed upon, Contractor, provided it receives an order as above, will proceed with the work. In such case and also under case (c), it will keep and present in such form as County may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, County will certify to the amount, including allowance for overhead and profit, due to Contractor. Pending final determination of cost, payments on account of changes will be made on County's estimate.

The amount of Contractor's overhead and profit allowed for any change order, whether increase or decrease, will not exceed the following limits for work by Contractor:

Overhead Limit: ten percent (10%) of direct cost;  
Profit Limit: five percent (5%) of the sum of direct cost and overhead cost.

For any portion of the work for a change order that is performed by a Subcontractor or a Sub Sub Contractor, Contractor's combined overhead and profit limits allowed will not exceed five percent (5%) of the actual direct cost of the work.

Contractor's cost for additional work or changes requested by County which result in an approved extension of time to the contract will be limited to the cost of the extra work determined in one or more of the three ways described previously in this Article, and the actual wage or salary paid for the on-site job superintendent in direct employ of contractor in performance of the work. This amount will be prorated to the actual amount of extra time approved and will only include the direct amount paid to the superintendent plus actual cost of all overhead items applicable to payroll for that position, such as insurance, taxes, FICA, worker's compensation, and unemployment taxes and benefits.

#### **ARTICLE 21 – CLAIMS FOR EXTRA COST FOR ADDITIONAL WORK**

If Contractor claims that any additional instructions by drawings or otherwise involve extra cost under this Contract, it will give County written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute the work, except in an emergency endangering life or property. The procedure will then be as provided for in Article 20 "Changes in the Work". No such claim will be valid unless so made.

#### **ARTICLE 22 – DEDUCTIONS FOR UNCORRECTED WORK**

If COUNTY deems it not expedient to correct work injured or done not in accordance with the Contract, an equitable deduction from the Contract price will be made therefor.

Contractor will promptly remove from the premises all materials condemned by County as failing to conform to the Contract, whether incorporated in the work or not, and Contractor will promptly replace and re-execute its own work in accordance with the Contract and without expense to County and will bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, County may remove them and may store the material at the expense of Contractor. If Contractor does not pay the expense of such removal within ten days' time thereafter, County may, upon ten days written notice, sell such materials at auction or at private sale and will account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by Contractor.

#### **ARTICLE 23 – SUSPENSION OF WORK**

County may at any time suspend the work, or any part thereof by giving three (3) days' notice to Contractor in writing. When the reason for such suspension involves safety, health or welfare issues, the three (3) day written notice requirement may be waived at the decision of the COUNTY Management. Contractor will resume the work within ten (10) days after the date fixed in the written notice from County to Contractor to do so.

#### **ARTICLE 24 – COUNTY'S RIGHT TO DO WORK**

If Contractor neglects to prosecute the work properly or fails to perform any provision of this Contract, County may, after three (3) days written notice to the Contractor, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due Contractor.

#### **ARTICLE 25 – COUNTY'S RIGHT TO TERMINATE CONTRACT**

If Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if it fails to make prompt payment to subcontractors for material or labor, or persistently disregards laws, ordinances, or the instructions of County, or otherwise is guilty of a substantial violation of any provision of the contract, then County may, without prejudice to any other right or remedy and after giving Contractor ten (10) days written notice, terminate the employment of Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method County may deem expedient. In such case Contractor will not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price will exceed the expense of finishing the work, including compensation for additional managerial and administrative service, such excess will be paid to Contractor. If such expense will exceed such unpaid balance, Contractor will pay the difference to County. County will certify the expense incurred by County as herein provided, and the damage incurred through the Contractor's default.

#### **ARTICLE 26 – REMOVAL OF EQUIPMENT**

In any case of annulment or termination of this Contract before completion from any cause whatever, Contractor, if notified to do so by County, will promptly remove any part or all of its equipment and supplies from the property of County, failing which County will have the right to remove such equipment and supplies at the expense of Contractor.

#### **ARTICLE 27 – USE OF COMPLETED PORTIONS**

County has the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired, but such taking possession and use is not an acceptance of any work not completed in accordance with the Bid documents. If such prior use increases the cost of or delays the work, Contractor will be entitled to such extra compensation, or extension of time, or both, as County may determine.

**ARTICLE 28 – PAYMENTS WITHHELD**

County may decline to certify payment or, because of discovered evidence or observations, may nullify the whole or any part of any certificate for payment previously issued, to such extent as may be necessary in its opinion to protect County from loss because of:

- a. Defective work not remedied.
- b. Third party claims filed or reasonable evidence indicating probable filing of such claims.
- c. Failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment.
- d. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract sum.
- e. Damage to another Contractor.

When the above grounds are removed, payment will be made for amounts withheld because of them.

**ARTICLE 29 – WARRANTY**

Contractor will provide a written guarantee covering all costs for repair or replacement of defective work for a period of two (2) years (or longer if noted elsewhere in the construction documents) from substantial completion. Contractor will complete repair, or respond to County in writing with repair solution, within seventy-two (72) hours of notification by County. County may make emergency repairs to ensure life safety or to prevent property loss, without invalidating the warranty.

**ARTICLE 30 – LIENS**

Neither the final payment nor any part of the retained percentage will become due until Contractor delivers to County a complete release of all liens arising out of this Contract, or receipts in full or in lieu thereof, and if required in either case, an affidavit that so far as it has knowledge or information, the release and receipts include all the labor for which a lien could be filed; but Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to County, to indemnify County against any lien. If any lien remains unsatisfied after all payments are made, Contractor will pay to County all monies that County may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

**ARTICLE 31 – RIGHTS OF VARIOUS INTERESTS**

Wherever work being done by County's forces or other contractors is contiguous to work covered by this Contract the respective rights of the various interests involved will be established by the County to secure the completion of the various portions of the work in general harmony.

**ARTICLE 32 – SEPARATE CONTRACTS**

County reserves the right to let other contracts in connection with this work. Contractor will afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and will properly connect and coordinate its work with theirs.

If any part of Contractor's work depends upon proper execution or results of the work of any other contractor, Contractor will inspect and its report will constitute an acceptance of the other contractor's work after the execution of its work.

To insure the proper execution of its subsequent work, Contractor will measure work already in place and will at once report to County any discrepancy between the executed work and the drawings.

**ARTICLE 33 – COUNTY'S STATUS**

The COUNTY has general review of the work and has the authority to reject all work and materials that do not conform to the contract.

**ARTICLE 34 – CLAIMS AND DISPUTES**

All claims, demands, disputes, controversies, and differences that arise between the parties hereto as result of or in connection with this Contract will be referred to County in writing with a request for review and response in accordance with this paragraph, which County will render in writing within a reasonable time.

Contractor will deliver written notice of each such claim, demand, dispute, controversy or difference to County within fifteen (15) days of the occurrence of the event giving rise thereto and written supporting data will be submitted to County within forty-five (45) days of such occurrence unless County specifies a different period of time in writing to Contractor. The submission to County with respect to any such claim, demand, dispute, controversy or difference will be a condition precedent to any exercise by Contractor of such rights or remedies as Contractor may otherwise have under the Bid documents or at law in respect of any such claim, demand, dispute, controversy or difference.

If either County or Contractor is dissatisfied with any decision of County and both parties agree in writing, then the dispute may be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) will be entered in any court having jurisdiction thereof. All arbitration hearings must be held in Tucson, Arizona.

**ARTICLE 35 – CLEANING UP**

Contractor will, as directed by County, remove from County's property and from all public and private property, at its own expense, all temporary structures, rubbish, and waste materials resulting from its operation.

**ARTICLE 36 – RESERVED**

**ARTICLE 37 – ARCHAEOLOGICAL FEATURES**

Construction for this project may occur in an archaeological sensitive area. The County Office of Conservation and Sustainability Cultural Resources Division will determine prior to construction (other than emergencies) any special site monitoring requirements. Human burials, including human skeletal remains, cremations, and funerary objects are protected under A.R.S. section 41-844 on state, county, and municipal lands, and under A.R.S. section 41-865 on private lands. Should archaeological features and/or artifacts or human remains, including human skeletal or cremation remains be discovered, work at that location will cease immediately, and the area will be taped off and avoided until archaeological investigations are completed. Construction is subject to delay in that location pursuant to applicable State law, while consultation with the Arizona State Museum and appropriate documentation and data recovery takes place. To the extent permitted by law, all archaeological artifacts and other materials will belong to Pima County. No monetary compensation will be made to Contractor for any claims due to delays in the work schedule. Only the Contract construction time will be extended to permit the original scheduled number of days for completion of the project.

**ARTICLE 38 – RESERVED**

**ARTICLE 39 – RESERVED**

**ARTICLE 40 – HAZARDOUS MATERIALS/ HAZARDOUS WASTES / HAZARDOUS SUBSTANCES ABATEMENT**

Should 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 will be served immediately to the County Project Manager, and all work surrounding said materials or substances will be ceased until directed to proceed. Construction delays due to Hazardous Materials, Hazardous Wastes or Hazardous Substances abatement may occur.

If this contract does not otherwise require the services of a Hazardous Materials contractor, abatement of such materials will be provided by Pima County, at its expense and independent of this contract.

If this contract already employs the services of a Hazardous Materials contractor, the cost to abate any such additional materials will be added to the contract as Additional Services, in accordance with the provisions of Article 21 "Claims for Cost of Additional Work", and time extensions granted in accordance with the provisions of Article 6 "Delays".

**ARTICLE 41 – WASTE DISPOSAL FACILITIES**

Contractor will legally dispose of all construction debris in appropriate County operated waste disposal facilities and pay any applicable fees. In the case of conflicts with the provisions of the Contract Specifications, this provision applies.

**ARTICLE 42 – AS-BUILT DRAWINGS**

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

**ARTICLE 43 – RESERVED**

**End of General Conditions**

## EXHIBIT "C" (18 Pages) SPECIAL CONDITIONS MULTIPLE AWARD JOB ORDER CONTRACT

### ARTICLE 1. OVERVIEW AND DEFINITIONS

#### 1.1 Overview of Job Order Contracting Arrangement

This Agreement establishes a Multiple-Award, indefinite quantity, job order contracting Arrangement for such construction services within the scope of this Agreement as COUNTY may request from time to time by issuance of an individual Job Order Contract for each Project. COUNTY may select a Contractor for the award of a Job Order Contract for a Project expected to cost less than \$100,000 based on availability or such other criteria as COUNTY may determine in its sole discretion. The selection of the Contractor for award of a Job Order Contract for a Project valued at \$100,000 or greater will be based on the responses to a simplified request for quotation covering either cost or cost and schedule from ALL Job Order Contractors under contract to PCDOT. Job order contractors must provide a quote within seven (7) working days of a request for quotation and begin work within five (5) working days of the Notice to Proceed in order to be considered eligible for award of the Job Order, unless otherwise specified in the County's request.

The COUNTY reserves the right to include Pre-Construction Services under an individual Job Order, if required.

The amount to be paid by COUNTY for the Project under each Job Order is the Contract Price in the Job Order. The Contract Price includes the Contract Price for the Work (Construction) and the Contract Price for Pre-Construction Services included in the Job Order, if any.

The Contract Price for each Job Order shall not exceed \$1,000,000.00, including any Change Orders.

There is no limit on the number of Job Orders COUNTY may issue to any Contractor during any twelve (12) month term of this Contract or during the entire period this Contract is in effect.

Generally, a CONTRACTOR may not refuse to quote any Job Order under this Agreement properly issued by COUNTY, unless CONTRACTOR can legitimately claim the scope of work is poorly defined, hazardous to health or safety, outside the bounds of the intended use of this Agreement, or the Contractor does not have the capacity to accept the Job Order and begin work in a timely manner.

COUNTY shall have the right to perform work of the types included in this Agreement itself or to have other contractors perform such work.

#### 1.2 Definitions

The following terms will have the following meanings when used in the Agreement. Other terms may be defined elsewhere in the Documents. Terms not defined in the Agreement shall have their ordinary meaning within the usage of the trade. The presence or absence of initial capitals does not indicate a change in meaning.

**"Alternatives Analysis"** means assessment of alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets County requirements.

**“Contract Price”** means the price to be paid for the Work (and for Pre-Construction Services, if any) as specified in the Job Order. The Contract Price shall be a fixed, lump sum price, or a Not-to-Exceed Guaranteed Maximum Price, based on the Contractor’s accepted quotation.

**“Contract Time”** means the time for performance of the Work under a Job Order as specified in the Job Order commencing with the Start Date and ending with Final Completion Date set forth in the Job Order, as modified.

**“Critical Path Method (CPM)”** is a scheduling technique which identifies the logical sequence of the activities occurring in a construction project, the anticipated time required to complete each activity in the project, and the activities that must be completed on schedule to finish the project within the anticipated time. Typically, activities are arrayed in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified.

**“Critical Path”** means that sequence of dependent activities in a project that will take the longest time to complete. Any delay in the completion of any of these activities may extend the Substantial Completion date.

**“Day”** means calendar day unless specifically provided otherwise or required by law.

**“Design Professional (DP)”** means, as to a Job Order, the person, if any, who will perform Design Services relating to the Work under the Job Order and who is designated as the Design Professional in the Job Order.

**“Drawings and Specifications”** means, as to a Job Order, the drawings and specifications, if any, attached to the Job Order and specifications included in the Job Order Contract Documents. The Drawings and Specifications set forth the requirements for construction of the Project. Where there are no drawings and specifications for the Work prepared by a Design Professional, COUNTY will deliver to the Contractor line drawings and/or a written description of the Work and, in each such case, the line drawings and/or the written description shall be deemed the drawings for the Work for that Job Order for all purposes.

**“Final Completion Date”** means, as to a Job Order, the date by which CONTRACTOR shall have completed all Work under a Job Order, including, without limitation, all deficiency, correction and incomplete items (Punch List).

**“Job Order”** means the Contract for a Project executed by COUNTY under this Agreement, as it may be modified by Change Orders, if any, relating to the Project under the Job Order.

**“Minor Change”** means a change in the Work having no impact on cost or time or the COUNTY’s approved design intent, as determined by COUNTY.

**“Notice to Proceed”** means written notice given by County to the Contractor fixing the date on which the Contractor will start to perform the Work under that Job Order. The start date will be the Start Date stated in the Job Order.

**“Plans and Specifications”** means the plans and specifications upon which the Job Order’s price proposal is based.

**“Pre-Construction Services”** means the performance under a Job Order requiring such services of alternatives analysis, cost or schedule estimating, value engineering, constructability or other design reviews or consultation in the review of a COUNTY or third-party design prepared by a COUNTY-provided design professional.

**“Project”** means each project of COUNTY as to which some or all of the work is to be performed under a Job Order.

**“Qualifications/Proposals Documents”** means the Solicitation for Qualifications issued by COUNTY for this Job Order Contract, all Addenda thereto, and all information and documents submitted by CONTRACTOR relating thereto including, without limitation, Contractor’s submission of formal sealed qualifications, and also including, without limitation, the subcontractor management plan submitted by the Contractor. It also includes all other qualifications/proposals documents: that is all documents and materials delivered by COUNTY to Contractor in connection with Contractor’s submission of qualifications and submission of a proposal for the contract.

**“Sales Taxes”** - Sales taxes are deemed to include all sales, use, excise, consumer, franchise, and other taxes which are legally enacted when negotiations of a Job Order Contract Price are concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

**“Schedule of Values (SOV)”** A spreadsheet with estimated costs organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the Contractor’s construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable. The SOV may be output from the Project Schedule if the Project Schedule is cost-loaded.

**“Start Date”** means, as to a Job Order, the date specified in the Notice to Proceed for that Job Order for Contractor to begin the Work.

**“Subcontractor”** means a subcontractor of the Contractor for any of the Work included in a Job Order or any subcontractor at any tier of such a subcontractor.

**“Substantial Completion”** means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that COUNTY can occupy and use the Project or a portion thereof for its intended purposes. The conditions of Substantial Completion that apply to a specific Job Order will be listed in the Notice to Proceed Letter for that Job Order.

**“Supplier”** means a person providing materials, supplies or equipment to be included in the Work to Contractor or any Subcontractor.

**“Technical Specifications”** means the general provisions and the detailed specifications prescribed by COUNTY describing the materials and performance required for each individual Job Order.

**“Work”** and **“Work (Construction)”** mean all labor, materials, supplies, tools, equipment, transportation, site cleanup, storage and disposal of construction debris, supervision, management, overhead and profit, bonds, insurance, licenses and permits, taxes, intellectual property royalty and license fees, all other

activities and items required to perform the Work under a Job Order as described in the Scope of Work in the Job Order. Work does not include Pre-Construction Services in connection with a Job Order.

## **ARTICLE 2. JOB ORDER DEVELOPMENT**

The steps for development of a Job Order and Quotation will generally be the following:

- a. For Projects estimated under \$100,000, COUNTY will notify the selected Contractor of a new Project and may or may not schedule a site visit to explain and discuss the project. Design documents, if any, will be provided to the Contractor by the time of the site visit. Once the parties agree on the scope of the project, COUNTY will memorialize the agreement in a Job Order and deliver it to Contractor who shall have five (5) working days, unless a shorter period is specified in the Job Order, to commence construction. Unless otherwise specified by COUNTY, issuance of the Job Order shall constitute Notice to Proceed.
- b. For Projects estimated at \$100,000 or greater, the COUNTY will notify ALL Job Order Contractors under contract to PCDOT. The request shall advise all Contractors of the nature of the Work to be done and include the selection criteria and methodologies PCDOT will use to make the "best value" decision. Criteria could include lowest bid, lowest bid meeting schedule, best cost alternative(s), etc. The request letter may also include an estimate of the total dollars the COUNTY has budgeted for the Job. CONTRACTOR shall be provided an opportunity to ask questions, seek clarification and/or inspect the site, if requested. Alternatively, the COUNTY may identify in the request the date and time for a meeting or site visit to explain and discuss the Work and further refine the scope of the project. Design documents, if any, may be provided in advance or at the meeting or site visit.
- c. Upon establishment of the scope of the needed Project, each Contractor interested in performing the Job Order shall prepare its proposal for accomplishment of the Project utilizing the Contractors best estimating practices to develop a fixed, lump sum or not-to-exceed Guaranteed Maximum Contract Price to complete the Work, including any additional Pre-Construction Services (if necessary). See Article 3 for a description of required proposal items. The time for submittal of proposals for individual Projects shall not exceed seven (7) working days unless approved by the COUNTY.
- d. COUNTY shall review each Contractor's proposal and may either accept the proposals or negotiate modifications to the proposals until such time the COUNTY is satisfied with each of the proposals. Such negotiations shall be limited to value alternatives of costs less than 20% of the original quotation price. Scope modifications or value alternatives that are equal to or greater than 20% shall require COUNTY to modify the original request and rebid to the benefit of all interested Contractors under this Contract.
- e. The Job Order will then be issued by COUNTY to the Job Order Contractor that submitted the best quotation (including schedule and/or value engineering alternatives), as measured by the criteria in the request for quotation. Past performance on earlier Job Orders, including past performance on cost or price control, may be used to determine award of future Job Orders.
- f. Upon issuance of each Job Order by COUNTY, the Job Order Contract will be binding upon the Contractor and COUNTY. A Job Order is considered "issued" when delivered to the Contractor or sent by facsimile copy, in which case the Job Order will be "issued" when sent to

Contractor's fax number and COUNTY's fax machine prints an acknowledgement of receipt or COUNTY.

### **ARTICLE 3. JOB ORDER PROPOSAL CONTENT**

Although specific Job Orders will vary, the content of Job Order proposals provided by each Contractor under this contract will generally include the following:

- (a) The description of the Scope of the Work;
- (b) The duration of the work, including CPM schedule (if required);
- (c) The Contract Price for Work (Construction), including prices for various proposed alternatives;
- (d) The Contract Price of Pre-Construction Services by Contractor (if any);
- (e) The name of the Contractor Representative for the Project;
- (f) The Drawings and Specifications (if any) used to prepare the quotation;
- (g) Any assumptions or exclusions that qualify the Contractor's price, including how many days the proposal is valid for;
- (h) A risk analysis of the project that identifies potential risks to the cost or schedule, or other items which the Owner may need to be informed of that will impact a successful outcome;
- (i) If any Shop Drawings, Product Data and/or Samples are required for the Job Order, the date for delivery of each required item;
- (j) A statement of which, if any, of the following are required: Preconstruction Conference, Weekly Progress Meetings, Field Office, Storage Enclosure, Materials and Equipment Handling Facility, Submittals, Shop Drawings, Product Data, Equipment List, Samples, Project Manual, Schedule of Values, Construction Progress Schedule, Narrative Reports, Progress Report, Progress Charts, Progress Photographs, Materials Status Report, Construction Diagram, Construction Status Report, Operation and Maintenance Data, Operating Maintenance Instructions and Parts List, and As-Built Drawings.

Each Job Order will be interpreted to include all items reasonably necessary to complete the Project as described in the Scope of the Work of the Job Order. All Work shall be performed in a professional manner and all materials used shall be new, of the highest quality and of the type best adapted to their purpose, unless otherwise specified.

### **ARTICLE 4. JOB ORDER NEGOTIATION**

#### **4.1 Job Order Pricing**

- 1) The Contract Price shall include all costs, including overhead, pre-construction, mobilization, indirect costs, etc., incidental to performing the work and completing the job order and with the exception of any changes in the scope of work as directed by the Owner as defined by ARTICLE 6, no additional payments will be made.

#### **4.2 Pre-Construction Services (if any)**

If CONTRACTOR is providing Pre-Construction Services, the proposal must be supported by documentation to establish that adequate involvement by Contractor in the planning, engineering and design work will be performed to satisfy the requirements of the project. Required services may include (but are not limited to) constructability reviews, materials recommendations, alternatives analysis, development of cost and schedule estimates and tradeoffs, and similar services.

### **ARTICLE 5. JOB ORDER MANAGEMENT**

#### **5.1 Planning, Scheduling, Monitoring**

Planning, scheduling and progress monitoring are essential functions of CONTRACTOR. If required by the Job Order, after the issuance of the Job Order CONTRACTOR shall prepare and submit to COUNTY a Schedule of Values allocating the Contract Price among the various portions of the Work for purposes of progress payments. The format of the Schedule of Values shall be as specified by COUNTY. In addition, if required by the Job Order, CONTRACTOR shall submit a CPM-based Construction Schedule that shall be maintained and updated for the duration of the project.

##### **(a) Project Management**

CONTRACTOR shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work under each Job Order with such diligence as to maintain a steady rate of progress or, if there is a Construction Progress Schedule, the rate of progress indicated on the Construction Progress Schedule, to prevent work stoppage, and to ensure completion of the Project under each Job Order within the Contract Time.

##### **(b) Daily Log**

CONTRACTOR shall maintain a Daily Log of construction activities using a form approved by COUNTY. CONTRACTOR shall include in the log all significant issues or problems affecting progress and completion of any Job Order.

If required in a Job Order, CONTRACTOR shall provide copies of the entries in the Daily Log to COUNTY no later than the morning of the next business day. The Daily Log does not constitute written notice to the COUNTY when such notice is required by the Contract.

##### **(c) Progress Schedule and Float**

If CONTRACTOR submits an original or updated schedule which shows the Work under a Job Order and/or individual milestone(s) completing earlier than required by the adjusted Final Completion Date in the Job Order, the differences between the forecasted early completion and the required Final Completion Date shall be considered Project-owned float available for use by both COUNTY and CONTRACTOR.

## **5.2 Reporting**

### **(a) Monthly Reporting**

If required by the Job Order, on the last business day of each calendar month, CONTRACTOR will deliver to the COUNTY a Monthly Narrative Report. The Report shall include a description of all current, issued, and in process Job Orders, the status of each and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action(s) taken or proposed.

The Report shall include for each job order the Start Date, the Final Completion Date, and, for Job Orders with more than sixty (60) days between such dates, either (A) the current Progress Schedule for the Project, or (B) the date by which CONTRACTOR is to submit a proposed Progress Schedule for approval by COUNTY.

If the Project under any Job Order is behind schedule in any month, CONTRACTOR'S Narrative Report shall indicate precisely what measures it will take in the next thirty days to put the Work back on schedule.

If requested by COUNTY, CONTRACTOR shall meet with COUNTY to review the monthly Update Report and to discuss any issues.

### **(b) Contractor Responsibility**

To the extent required in the Job Order for the Project, CONTRACTOR shall be responsible to prepare, submit and maintain the daily log, CPM schedules and Narrative Reports indicated above; failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain logs, schedules reports shall be solely CONTRACTOR's responsibility and shall not be charged to COUNTY.

## **ARTICLE 6. CHANGES AND CHANGED CONDITIONS**

### **6.1 Owner Directed Changes in the Scope of Work**

By written directive at any time, COUNTY may make any changes within the general scope of the Work under a Job Order or issue additional instructions, require additional or modified Work or direct deletion of Work. CONTRACTOR shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the COUNTY in the form of a completed and executed Change Order. If CONTRACTOR proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this article, CONTRACTOR waives all rights or claims CONTRACTOR may have as a result of the change. The COUNTY's right to make changes shall not invalidate the Agreement or Job Order Contract Documents or relieve CONTRACTOR of any liability. Any requirement of notice of change to the Surety shall be the responsibility of CONTRACTOR.

## **ARTICLE 7. DELAYS AND TIME EXTENSIONS**

### **7.1 Demonstration of Delay**

It is agreed that no time extensions shall be granted nor delay damages paid by COUNTY unless the delay can be clearly demonstrated by CONTRACTOR on the basis of the updated Critical Path Schedule, cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of the Work or other reasonable means.

## **7.2 Application of Float**

Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the adjusted Final Completion Date. Since float time within the construction schedule is jointly owned, it is acknowledged that COUNTY-caused delays on the Project may be offset by COUNTY-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, CONTRACTOR shall not be entitled to receive a time extension or delay damages until all COUNTY-caused time savings are exceeded and the Final Completion Date or milestone date is also exceeded

## **ARTICLE 8. PERFORMANCE MEASUREMENT**

### **8.1 Performance Assessment**

Promptly after final completion of the Work under each Job Order, COUNTY will complete a written evaluation of CONTRACTOR's performance of the Work. The evaluation shall consist of completion by COUNTY of the Performance Quality Evaluation Form attached as **Attachment "1"** to these **SPECIAL CONDITIONS**.

### **8.2 Feedback**

The completed Performance Evaluation will be shared with CONTRACTOR as a means of providing feedback regarding CONTRACTOR's cost, schedule and quality performance. CONTRACTOR may submit additional information, comment, recommendations or rebuttal for association with the Performance Evaluation.

### **8.3 Comparative Assessment**

CONTRACTOR's cost, schedule and quality performance of Job Orders under this Contract will be compared periodically to the performance of other like-situated Contractors. The results of these comparisons will be provided to CONTRACTOR.

CONTRACTOR understands that these assessments will necessarily involve significant subjectivity. CONTRACTOR agrees to this process and agrees further that the application of subjectivity in these assessments shall not form the basis for any claim or cause of action of any form whatsoever.

### **8.4 Consideration in Renewal**

CONTRACTOR's record of cost, schedule and quality performance and comparative assessments shall be significant considerations in the COUNTY's determination whether to renew CONTRACTOR's participation in the Agreement. CONTRACTOR agrees that any determination by COUNTY not to renew its participation based on performance will be at the sole discretion of COUNTY.

## **ARTICLE 9. SUBCONTRACTORS**

### **9.1 Subcontractor Selection**

CONTRACTOR will select Subcontractors in accordance with the Subcontractor Selection Plan incorporated into this Contract by reference.

## 9.2 Subcontracts

(a) CONTRACTOR agrees to deliver to each Subcontractor and to cause each Subcontractor to deliver to each sub-subcontractor a copy of this Agreement and the Job Order Contract Documents relating to the Work of the Subcontractor or sub-subcontractor. The Contractor agrees to include in its contract with each Subcontractor all provisions of the Agreement and Job Order documents required to be included in those contracts and to cause its Subcontractors to include the same provisions in their contracts with their sub-subcontractors at all tiers.

(b) Each Subcontract, or other Agreement, with any subcontractor for any job order shall include the address or location of the work.

## 9.3 Assignment Upon Termination

CONTRACTOR hereby assigns to COUNTY (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by CONTRACTOR for performance of any part of the Work under each Job Order, which assignment will be effective upon termination of the Contract by the COUNTY and only as to those subcontracts and purchase orders which the COUNTY assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by CONTRACTOR to the COUNTY and its assigns. Such assignment is part of the consideration to COUNTY for entering into the Contract with CONTRACTOR and may not be withdrawn prior to final completion of the Work under each Job Order.

## ARTICLE 10. TERMINATION FOR CAUSE

Anything in the Contract Documents to the contrary notwithstanding, any termination of this Agreement shall automatically terminate all Job Orders as to which the Work is not complete, except that upon any termination of this Contract, COUNTY may elect by written notification to CONTRACTOR to continue in effect any or all then uncompleted Job Orders in which event this Agreement shall continue in effect as to each continued Job Order and shall terminate upon completion of the last such Job Order.

Anything in the Agreement to the contrary notwithstanding, (i) all indemnification provisions, reimbursement provisions and payment provisions shall survive termination of this Agreement under this Article and shall continue in effect indefinitely without termination, and (ii) all guarantee and warranty provisions and all provisions in the Agreement Documents requiring CONTRACTOR to correct any Work not in accordance with the relevant Job Order Documents shall not terminate upon termination of this Agreement and shall continue in effect thereafter in accordance with the terms of each such provision.

### 10.1 Cause for Termination

In addition to the termination rights of the COUNTY in **ARTICLE XV – TERMINATION OF AGREEMENT OR JOB ORDER FOR DEFAULT** of the Agreement between COUNTY and Contractor, the COUNTY may terminate any or all Job Orders and/or the overall Job Order Agreement at the election of COUNTY, upon the occurrence of any one or more of the following events:

- (a) If CONTRACTOR refuses or fails to prosecute the Work under any Job Order with such diligence as will ensure its completion within the Contract Time for that Job Order; or if the Contractor fails to complete the Work under any Job Order within the Contract Time for that Job Order;

- (b) If CONTRACTOR or any of its key Subcontractors under any Job Order is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if CONTRACTOR or any of its key Subcontractors under any Job Order or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning CONTRACTOR or any of its key Subcontractors under any Job Order, or if a trustee or receiver is appointed for CONTRACTOR or any of its key Subcontractors under any Job Order or for any of CONTRACTOR's property on account of CONTRACTOR or a key Subcontractor under any Job Order, and, in each case, CONTRACTOR or its successor in interest or its respective key Subcontractor under any Job Order does not provide reasonably adequate assurance of future performance in accordance with the Contract Documents within 10 days after receipt of a request for assurance from the COUNTY;
- (c) If CONTRACTOR persistently fails to supply sufficient skilled workmen or suitable materials or equipment for the Work under any Job Order;
- (d) If, as to any Job Order, CONTRACTOR fails to make prompt payments to Subcontractors or Suppliers at any tier, or for labor, materials or equipment;
- (e) If CONTRACTOR fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;
- (f) If, as to any Job Order, CONTRACTOR fails to follow any reasonable instructions by the COUNTY, which are consistent with the Construction Documents;
- (g) If, as to any Job Order, CONTRACTOR performs Work which deviates from the Job Order Documents and neglects or refuses to correct rejected Work; or
- (h) If, as to any Job Order, Contractor otherwise violates in any material way any provisions or requirements of this Agreement or any Job Order Contract Documents.

## 10.2 Notice and Cure Period

If COUNTY determines that one or more events of default described in **Article 10.1** has occurred, the COUNTY may elect to terminate any or all Job Orders and/or terminate CONTRACTOR's participation in the overall Agreement. To do this, the COUNTY must first give CONTRACTOR and its Surety written notice of the events of default ("**Notice of Default**") and allow CONTRACTOR and its Surety ten (10) calendar days to cure the events of default. If the events of default are not cured within the ten (10) calendar days, COUNTY may terminate any or all Job Orders and/or terminate CONTRACTOR's participation in the overall Agreement by written notice to Contractor and its Surety.

## 10.3 Completion of Terminated Work

- (a) If any Job Order or participation in the Agreement is terminated, COUNTY may take over the Work under terminated Job Orders and prosecute them to completion, by contract or otherwise, and may exclude CONTRACTOR from the sites. The COUNTY may take possession of the Work under the terminated Job Orders and of all of CONTRACTOR's tools, appliances, construction equipment, machinery, supplies and plant which may be on the site of the Work for each terminated Job Order, and use the same to the full extent they could be used by CONTRACTOR, all without liability to CONTRACTOR. In exercising the COUNTY's right to prosecute the completion of the Work, the COUNTY may also take possession of all materials and equipment stored at the site or for which

the COUNTY has paid CONTRACTOR but which are stored elsewhere. The COUNTY may use the foregoing items to finish the Work as the COUNTY deems expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished.

- (b) If any Job Order is terminated, the COUNTY may demand that CONTRACTOR's surety take over and complete the Work under the Job Order. The COUNTY may require that in so doing, the CONTRACTOR's surety not utilize CONTRACTOR in performing the Work. Upon the failure or refusal of CONTRACTOR's surety to take over and begin completion of the Work within 20 days after the demand, the COUNTY may take over the Work and prosecute it to completion as provided above.
- (c) As to any terminated Job Order, COUNTY shall have the option of requiring any, all or none of the Subcontractors and Sub-subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.
- (d) If COUNTY takes over the Work under any terminated Job Order, unexecuted orders entered into by CONTRACTOR for performance of any part of the Work will be effective upon acceptance by COUNTY in writing and only as to those subcontracts and purchase orders which the COUNTY designates in writing.

#### **10.4 Payment for Terminated Work**

- (a) If, as to any terminated Job Order, the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work and all COUNTY damages including, without limitation, liquidated damages and compensation for additional professional and consultant services ("**COUNTY's Termination Costs**"), such excess shall be used to pay CONTRACTOR for the Work it performed and for which CONTRACTOR has not been paid previously and the amount shall be determined using the Tasks, Unit Prices, Coefficients, and Other Tasks and Other Prices included in the Job Order. If, as to any terminated Job Order, the COUNTY's Termination Costs exceed the unpaid balance of the Contract Price, the Contractor shall immediately upon demand pay the difference to the COUNTY or the COUNTY may setoff the amount against any other amounts owing to Contractor for any cause whatsoever, whether current or future. In exercising the COUNTY's right to prosecute the completion of the Work under any terminated Job Order, the COUNTY shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs to be incurred in completing the Work, and the COUNTY shall not be required to obtain the lowest figure for Work performed in completing the Project. If the COUNTY holds a competitive procurement for remedial Work or completion of the Work under a terminated Job Order, CONTRACTOR shall not be eligible for the award of such contracts.
- (b) CONTRACTOR shall be liable for any damage to the COUNTY resulting from the termination or from CONTRACTOR's refusal or failure to complete the Work under any terminated Job Order and for all costs necessary for repair and completion of the Project under each terminated Job Order over and beyond the Contract Price. CONTRACTOR shall be liable for all legal fees and costs required to enforce the provisions of the Agreement and/or Job Order Documents.

#### **10.5 Nonexclusive Remedies**

In the event any Job Order or CONTRACTOR's participation in the Agreement is terminated, the termination shall not affect any other rights of the COUNTY against CONTRACTOR. The rights and remedies of COUNTY under this **Article 10** are in addition to any other rights and remedies provided by

law or under the Agreement or Job Order Contract Documents. Any retention or payment of monies to CONTRACTOR by COUNTY will not release CONTRACTOR from liability.

#### **10.6 Erroneous Termination for Cause**

If any Job Order or participation in the overall Agreement is terminated under this **Article 11**, and it is determined for any reason that there was no default under **Article 11**, the termination shall be deemed a Termination for Convenience of the COUNTY.

#### **ARTICLE 11. TERMINATION FOR CONVENIENCE OF THE COUNTY**

The COUNTY, by written notice to CONTRACTOR, may terminate any Job Order or the overall Agreement in whole or in part if sufficient appropriated or other funds are not available or the COUNTY determines, in the sole discretion of the COUNTY, that such termination is in the COUNTY's best interest. In such case, CONTRACTOR shall be paid for all Work under each Job Order for which CONTRACTOR has not been paid previously. CONTRACTOR shall also be paid reasonable termination expenses. In no event shall such payments as to any Job Order, exclusive of termination expenses, exceed the total Contract Price for the Job Order as reduced by payments previously made to CONTRACTOR and as further reduced by the value of the Work as yet not completed. Since profit and overhead are built into the Contract Price for each Job Order, CONTRACTOR shall not be entitled any additional profit or overhead on Work performed and in addition, Contractor shall not be entitled to any profit or overhead on Work not performed.

## **EXHIBIT "D"**

### **SUPPLEMENTAL PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

These provisions apply only to work subject to Federal-Aid. A copy of this Exhibit "D" and a current Wage Determination shall be attached to the Job Order for any federally funded project. Current wage determinations may be found at <http://www.wdol.gov/dba.aspx>

#### **ARTICLE 1: FEDERAL HIGHWAY ADMINISTRATION (FHWA) AID PROJECTS:**

Job Orders for projects subject to FHWA financial aid shall physically incorporate Form FHWA 1273, "Required Contract Provisions for Federal-Aid Construction Contracts" (attached), into each FHWA funded Job Order's terms and conditions. Furthermore, the CONTRACTOR shall physically incorporate the provisions into any subcontract or purchase orders per Section I of Form FHWA 1273. The form may not be incorporated by reference or modified in any way.

Additionally, Contractor agrees to display all federally-required posters. Information regarding this requirement is available at: <http://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>

#### **ARTICLE 2: DAVIS BACON ACT WAGE DETERMINATION:**

CONTRACTOR shall pay wages in accordance with the most current Davis Bacon rates in effect in Pima County, Arizona at the time the Job Order is negotiated. The CONTRACTOR shall provide to the COUNTY at the time of Job Order negotiation, an adjustment to each of the unit prices for the line items that require payment Davis-Bacon wages. The CONTRACTOR shall include a copy of the most recent Davis-Bacon Wage Determination in their proposal for incorporation into the Job Order's terms and conditions. The most current Davis-Bacon Act Wage Determinations may be found online at <http://www.wdol.gov/dba.aspx>

#### **ARTICLE 3: SUBCONTRACTORS:**

In addition to the requirements set forth in Article VIII of the Master Agreement, the CONTRACTOR 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, listed in the Federal Government's System for Award Management (SAM) system (<https://www.sam.gov/portal/public/SAM>) with an active exclusion.

Insert following language for projects in or adjacent to the ADOT right of way:

#### **ARTICLE 4: INSURANCE:**

The Consultant and all Subconsultants shall provide their insurance agent/producer with a copy of the insurance requirements within this section.

The Consultant and all Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, its agents, representatives, employees or Subconsultants, and the Consultant is free to purchase additional insurance.

The Consultant may purchase an excess or umbrella policy to secure these limits. If the Consultant or Subconsultant uses any excess or umbrella insurance to meet the required limits then this excess or umbrella insurance must be "follow form" equal to or broader in coverage than the underlying insurance requirements, including but not limited to, additional insured endorsements and waiver of subrogation endorsements.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** The Consultant shall provide coverage with limits of liability not less than those stated below.

**1. Commercial General Liability – Occurrence Form**

The policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage:

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Products and completed operations coverage shall be maintained for three (3) years after completion of design
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

<u>Contract Value</u>	<u>Required Insurance</u>			
\$0 to \$5,000,000	\$1,000,000	Each Occurrence;	\$2,000,000	Aggregate
\$5,000,001 to \$15,000,000	\$5,000,000	Each Occurrence;	\$5,000,000	Aggregate
\$15,000,001 to \$50,000,000	\$5,000,000	Each Occurrence;	\$10,000,000	Aggregate
\$50,000,001 & up	\$25,000,000	Each Occurrence;	\$25,000,000	Aggregate

- a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increase in Contract value require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.
- b. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant."*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.

- c. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

**2. Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

If work is performed on the active roadway then Consultant or Subconsultant shall provide a minimum of \$5,000,000 Combined Single Limit coverage.

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant, involving automobiles owned, leased, hired or borrowed by the Consultant.”*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.
- b. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.
- c. Policy shall contain a severability of interest provision.

**3. Worker's Compensation and Employers' Liability**

▪ Workers' Compensation	Statutory
▪ Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- a. The policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.
- b. This requirement shall not apply to: Separately, EACH Consultant or Subconsultant exempt under A.R.S. §23-901, AND when such Consultant or Subconsultant executes the appropriate waiver (Sole Proprietor/Independent Consultant) form.

**4. Professional Liability (Errors and Omissions Liability)**

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

<u>Contract Value</u>	<u>Required Insurance</u>			
\$0 to \$5,000,000	\$1,000,000	Each Occurrence;	\$2,000,000	Aggregate
\$5,000,001 to \$15,000,000	\$5,000,000	Each Occurrence;	\$5,000,000	Aggregate
\$15,000,001 to \$50,000,000	\$5,000,000	Each Occurrence;	\$10,000,000	Aggregate
\$50,000,001 & up	\$25,000,000	Each Occurrence;	\$25,000,000	Aggregate

- a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increased value of the Contract require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.
- b. In the event that the professional liability insurance required by this Contract is written on a claims- made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
- c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of the Contract.
- d. Consultant is required to carry professional liability insurance regardless of the type of contract or the scope of work and it shall not be waived without prior approval from Risk Management.

**5. Aircraft Liability – Per Occurrence Form (if applicable)**

If the Consultant or their Subconsultant will be using aircraft to perform any portion of this Contract then aircraft liability shall be provided. The policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Hangarkeepers Liability	\$1,000,000
• Per Seat Limit	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$50,000
• Each Occurrence	\$5,000,000

- a. The policy shall be endorsed to include the following additional insured language: ***“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant.”*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by the Contract.

- b. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

**6. Valuable Papers Coverage**

Valuable papers insurance shall be included in the policy for a minimum of \$25,000 or in a higher amount sufficient to assure the restoration of any document, memoranda, plans, specifications, drawings, media, computer files, data or other information related to the work of the Consultant in the completion of this Contract.

- B. ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
1. The Consultant's policies shall stipulate that the insurance afforded the consultant shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
  2. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- C. NOTICE OF CANCELLATION:** With the exception of the 10-day notice of cancellation for non-payment of premium, any changes material to compliance with this Contract in the insurance policies above shall require a 30-day written notice to the Agency. Such notice shall be sent directly to the Agency and shall be sent by certified mail, return receipt requested.
- D. ACCEPTABILITY OF INSURERS:** Consultants insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
- E. VERIFICATION OF COVERAGE:** The Consultant shall furnish the Agency with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by the Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements shall be received and approved by the Agency before work commences. Each insurance policy required by this Contract shall be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of this Contract

All certificates required by this Contract shall be sent directly to the Agency. The Pima County Contract number and project description shall be noted on the certificate of insurance. The Agency reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. SUBCONSULTANTS:** The Consultant is responsible for ensuring and/or verifying that all Subconsultants have current, valid, and collectable certificates of insurance that are consistent with the minimum requirements within the consultant Contract. This is applicable to all lines of insurance within the Contract. The Agency reserves the right to request that the Consultant provide proof that its Subconsultants have the required insurance coverage at any time.

- G. **EXCEPTIONS:** Requests for exceptions to insurance requirements for Subconsultant(s) shall be provided in writing to the Agency and the Agency's Risk Manager prior to the start of work and will be reviewed for any risks to the Agency. No work by the involved Subconsultant(s) shall proceed until the Agency makes a decision regarding the request.

Insert the following for projects that are not in or adjacent to the ADOT Right of Way.

#### **ARTICLE 4 – INSURANCE**

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY and the State in no way warrant that the minimum limits contained herein are sufficient to protect CONTRACTOR from liabilities that arise out of the performance of the work under this Contract. CONTRACTOR is free to purchase additional insurance.

CONTRACTOR may purchase an excess or umbrella policy to secure these limits. If CONTRACTOR or Subcontractor uses any excess or umbrella insurance to meet the required, then this excess or umbrella insurance must be "follow form" equal to or broader in coverage than the underlying insurance requirements, including but not limited to, additional insured endorsements and waiver of subrogation endorsements.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** CONTRACTOR shall procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage.
2. Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
3. Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$1,000,000. Note: The Workers' Compensation requirement will not apply to a CONSULTANT that is exempt under A.R.S. § 23-901, and when such CONSULTANT executes the appropriate COUNTY Sole Proprietor or Independent CONSULTANT waiver form.
4. Professional Liability (Errors and Omissions) Insurance – Professional Liability to include professional misconduct and negligent acts of anyone performing professional services under this Contract with policy limits not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. A Claims-Made policy is acceptable.

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, CONTRACTOR warrants that any retroactive date under the policy will precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

**B. Additional Insurance Requirements:**

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

1. Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, State of Arizona, Arizona Department of Transportation (ADOT), Federal Highway Administration (FHWA) and their departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of CONTRACTOR.
2. Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, State of Arizona, ADOT, FHWA and their departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of CONTRACTOR.
3. Primary Insurance: CONTRACTOR'S policies will stipulate that the insurance afforded CONTRACTOR will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY, State of Arizona, ADOT, or FHWA will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
4. Insurance provided by CONTRACTOR will not limit CONTRACTOR'S liability assumed under the indemnification provisions of this Contract.

**C. Notice of Cancellation:**

CONTRACTOR'S insurance policies and endorsements shall not be permitted to expire, be cancelled, suspended or materially changed from the agreed upon Insurance Requirements for any reason without thirty (30) days advance written notice to the COUNTY of the policy cancellation, suspension or material change. CONTRACTOR must provide written notice to COUNTY within 2 business days of receipt of notice. For cancellation of non-payment, Insurer is to provide COUNTY with written notice 10 days prior to cancellation of policy. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement, Design and Construction Division, 130 W. Congress, 3<sup>rd</sup> Floor, Tucson, AZ 85701.

**D. Verification of Coverage:**

CONTRACTOR will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. The certificate for each insurance policy is to include an original signature from an authorized representative.

1. All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
2. All certificates required by this Contract will be sent directly to the Department. COUNTY project or contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**E. Approval and Modifications:**

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal contract amendment but may be made by administrative action.

## **ARTICLE 5 – INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR will indemnify and hold harmless COUNTY, the State of Arizona, ADOT, and FHWA their officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONTRACTOR, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article shall not extend to the negligence of COUNTY, the State of Arizona, ADOT, and FHWA their agents, employees or indemnitees.

All warranty and indemnification obligations under this contract shall survive expiration or termination of the contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with State statute will be interpreted and applied as if it were consistent with State statute.

Upon request, CONTRACTOR may fully indemnify and hold harmless any private property owner granting a right of entry to CONTRACTOR for the purpose of completing the project. The obligations under this Article do not extend to the negligence of COUNTY, the State of Arizona, ADOT, and FHWA their agents, employees or indemnitees.

## **ARTICLE 6: OWNERSHIP OF DOCUMENTS:**

In addition to the requirements set forth in Article XXI of the Master Agreement, 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 Agreement or any subcontract; and (b) Any rights of copyright to which Contractor or County acquires ownership under this Agreement.

## **ARTICLE 7: BOOKS AND RECORDS:**

In addition to the requirements set forth in Article XXII of the Master Agreement, the CONTRACTOR shall also keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by the Granting Agency and the Comptroller General of the United States.

## **ARTICLE 8: CHANGED CONDITIONS:**

(1) Differing site conditions.

- (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- (ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

- (iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
  - (iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the STD's at their option.)
- (2) Suspensions of work ordered by the engineer.
- (i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
  - (ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
  - (iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
  - (iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- (3) Significant changes in the character of work.
- (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
  - (ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
  - (iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
  - (iv) The term "significant change" shall be construed to apply only to the following circumstances:
    - (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

- (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

**END OF EXHIBIT 'D' – SUPPLEMENTAL PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS**

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted 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 contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, 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 1.d. 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 29 CFR 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 1.b. 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.

b.(1) 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 therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) 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.

(3) 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 Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) 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.

c. 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.

d. 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 contracting agency 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, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, 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

a. 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. 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.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. 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 individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) 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:

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

(ii) 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;

(iii) 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.

(3) 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 3.b.(2) of this section.

(4) 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.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, 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 FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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

##### a. Apprentices (programs of the USDOL).

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.

##### b. Trainees (programs of the USDOL).

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.

c. 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.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor 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 herein incorporated by reference in 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.**

a. 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).

b. 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).

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

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction 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 29 CFR 5.5(a) or 29 CFR 4.6. 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 (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 (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 (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency 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 (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier 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 first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier 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 Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is 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.

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## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) 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;

(3) 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 (a)(2) of this certification; and

(4) 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.

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

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. 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.

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. 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 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.

f. 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 exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. 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 participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is 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 Participants:**

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 participating in covered transactions 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.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 Federal 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 cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. 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 Federal 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.

2. 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 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## **EXHIBIT "E" – SUPPLEMENTAL PROVISIONS FOR REGIONAL TRANSPORTATION AUTHORITY FUNDED CONSTRUCTION CONTRACTS**

### **ARTICLE 1. BASIC TERMS:**

Any changes to the Project which result in the final project cost deviating by ten or more percent from the RTA's budget amount for the Project must be approved by the RTA in advance of those changes being made, regardless of whether the RTA is funding the change or not. For the purposes of this paragraph only, the term "project" refers specifically and exclusively to the project as defined and funded by the Agreement between COUNTY and RTA.

### **ARTICLE 2. INSURANCE**

In addition to the requirements set forth in Article IV of the Master Agreement, Both COUNTY and the RTA shall be endorsed as "Additional Insured" under the Commercial General Liability Policy. All certificates of insurance must provide for guaranteed thirty (30) days written notice to COUNTY of cancellation, non-renewal or material change.

### **ARTICLE 3. INDEMNIFICATION**

In addition to the requirements set forth in Article V of the Master Agreement, the CONTRACTOR shall indemnify, defend, and hold harmless the RTA, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any omission, fault or negligence by the CONTRACTOR, its agents, employees, subcontractors, or anyone under its direction or control or on its behalf in connection with performance of this Master Agreement. This obligation shall survive termination or expiration of this Master Agreement. The obligations under this Article shall not extend to the negligence of the RTA, its agents, employees or indemnitee.

### **ARTICLE 4. BONDING REQUIREMENTS**

In addition to the requirements set forth in Article XX of the Master Agreement, CONTRACTOR shall name the RTA as a beneficiary in any payment and performance related assurances in addition to COUNTY.

**END OF EXHIBIT 'E' - SUPPLEMENTAL PROVISIONS FOR REGIONAL TRANSPORTATION  
AUTHORITY FUNDED CONSTRUCTION CONTRACTS**

**ATTACHMENT 1 TO EXHIBIT "C"**  
**PERFORMANCE EVALUATION FORM**  
**(CONSTRUCTION)**

# ATTACHMENT 1 TO EXHIBIT "C"

<b>PERFORMANCE EVALUATION (CONSTRUCTION)</b>		1. CONTRACT NUMBER	
		2. CEC NUMBER	
<b>IMPORTANT:</b> Be sure to complete Part III - Evaluation of Performance Elements on reverse.			
<b>PART I - GENERAL CONTRACT DATA</b>			
3. TYPE OF EVALUATION ( <i>X one</i> )		4. TERMINATED FOR DEFAULT	
<input type="checkbox"/> INTERIM ( <i>List percentage _____ %</i> ) <input type="checkbox"/> FINAL		<input type="checkbox"/> AMENDED	
5. CONTRACTOR ( <i>Name, Address, and ZIP Code</i> )		6.a. PROCUREMENT METHOD ( <i>X one</i> )	
		<input type="checkbox"/> SEALED BID <input type="checkbox"/> NEGOTIATED	
		b. TYPE OF CONTRACT ( <i>X one</i> )	
		<input type="checkbox"/> FIRM FIXED PRICE <input type="checkbox"/> COST REIMBURSEMENT	
		<input type="checkbox"/> OTHER ( <i>Specify</i> )	
7. DESCRIPTION AND LOCATION OF WORK			
8. TYPE AND PERCENT OF SUBCONTRACTING			
9. FISCAL DATA		a. AMOUNT OF BASIC CONTRACT	b. TOTAL AMOUNT OF MODIFICATIONS
		\$	\$
		c. LIQUIDATED DAMAGES ASSESSED	d. NET AMOUNT PAID CONTRACTOR
		\$	\$
10. SIGNIFICANT DATES		a. DATE OF AWARD	b. ORIGINAL CONTRACT COMPLETION DATE
		c. REVISED CONTRACT COMPLETION DATE	d. DATE WORK ACCEPTED
<b>PART II - PERFORMANCE EVALUATION OF CONTRACTOR</b>			
11. OVERALL RATING ( <i>X appropriate block</i> )			
<input type="checkbox"/> OUTSTANDING <input type="checkbox"/> ABOVE AVERAGE <input type="checkbox"/> SATISFACTORY <input type="checkbox"/> MARGINAL <input type="checkbox"/> UNSATISFACTORY ( <i>Explain in Item 20 on reverse</i> )			
12. EVALUATED BY			
a. ORGANIZATION ( <i>Name and Address (include ZIP Code)</i> )		b. TELEPHONE NUMBER ( <i>Include Area Code</i> )	
c. NAME AND TITLE		d. SIGNATURE	e. DATE
13. EVALUATION REVIEWED BY			
a. ORGANIZATION ( <i>Name and Address (include ZIP Code)</i> )		b. TELEPHONE NUMBER ( <i>Include Area Code</i> )	
c. NAME AND TITLE		d. SIGNATURE	e. DATE
14. AGENCY USE ( <i>Distribution, etc.</i> )			

**FOR OFFICIAL USE ONLY (WHEN COMPLETED)**

**PART III - EVALUATION OF PERFORMANCE ELEMENTS**

N/A = NOT APPLICABLE O = OUTSTANDING A = ABOVE AVERAGE S = SATISFACTORY M = MARGINAL U = UNSATISFACTORY

<b>15. QUALITY CONTROL</b>							<b>16. EFFECTIVENESS OF MANAGEMENT</b>						
N/A	O	A	S	M	U		N/A	O	A	S	M	U	
a. QUALITY OF WORKMANSHIP							a. COOPERATION AND RESPONSIVENESS						
b. ADEQUACY OF THE CQC PLAN							b. MANAGEMENT OF RESOURCES/ PERSONNEL						
c. IMPLEMENTATION OF THE CQC PLAN							c. COORDINATION AND CONTROL OF SUBCONTRACTOR(S)						
d. QUALITY OF QC DOCUMENTATION							d. ADEQUACY OF SITE CLEAN-UP						
e. STORAGE OF MATERIALS							e. EFFECTIVENESS OF JOB-SITE SUPERVISION						
f. ADEQUACY OF MATERIALS							f. COMPLIANCE WITH LAWS AND REGULATIONS						
g. ADEQUACY OF SUBMITTALS							g. PROFESSIONAL CONDUCT						
h. ADEQUACY OF QC TESTING							h. REVIEW/RESOLUTION OF SUBCONTRACTOR'S ISSUES						
i. ADEQUACY OF AS-BUILTS							i. IMPLEMENTATION OF SUBCONTRACTING PLAN						
j. USE OF SPECIFIED MATERIALS													
k. IDENTIFICATION/CORRECTION OF DEFICIENT WORK IN A TIMELY MANNER													
<b>17. TIMELY PERFORMANCE</b>							<b>18. COMPLIANCE WITH LABOR STANDARDS</b>						
a. ADEQUACY OF INITIAL PROGRESS SCHEDULE							a. CORRECTION OF NOTED DEFICIENCIES						
b. ADHERENCE TO APPROVED SCHEDULE							b. PAYROLLS PROPERLY COMPLETED AND SUBMITTED						
c. RESOLUTION OF DELAYS							c. COMPLIANCE WITH LABOR LAWS AND REGULATIONS WITH SPECIFIC ATTENTION TO THE DAVIS-BACON ACT AND EEO REQUIREMENTS						
d. SUBMISSION OF REQUIRED DOCUMENTATION													
e. COMPLETION OF PUNCHLIST ITEMS							<b>19. COMPLIANCE WITH SAFETY STANDARDS</b>						
f. SUBMISSION OF UPDATED AND REVISED PROGRESS SCHEDULES							a. ADEQUACY OF SAFETY PLAN						
g. WARRANTY RESPONSE							b. IMPLEMENTATION OF SAFETY PLAN						
							c. CORRECTION OF NOTED DEFICIENCIES						

**20. REMARKS** (Explanation of unsatisfactory evaluation is required. Other comments are optional. Provide facts concerning specific events or actions to justify the evaluation. These data must be in sufficient detail to assist contracting officers in determining the contractor's responsibility. Continue on separate sheet(s), if needed.)