SOLICITATION FOR QUALIFICATIONS

JOB ORDER MASTER AGREEMENT:

PARK DEVELOPMENT SERVICES

TUCSON, ARIZONA

December 8, 2021

Pima County Procurement Department
Design & Construction Division
150 West Congress Street, Fifth Floor
Tucson, Arizona 85701
(520) 724-3727

Solicitation No.
SFQ-PO-2200007
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NOTICE OF SOLICITATION FOR QUALIFICATIONS

SOLICITATION FOR QUALIFICATIONS NO. SFQ-PO-2200007

JOB ORDER MASTER AGREEMENT:
PARK DEVELOPMENT SERVICES

Pima County is seeking Statements of Qualifications (SOQ) from contractors qualified to perform a variety of Park Development Services required on an as-needed basis throughout Pima County.

The anticipated range of services includes, but is not limited to include all labor, materials, management, supervision, services and coordination required to provide a full range of park development services. See Exhibit A - Scope of Work for additional scope description.

The intent of this solicitation is to award a shared indefinite delivery/indefinite quantity Job Order Master Agreement in the annual amount of $3,000,000.00 with up to five (5) qualified Contractors. The initial term of the Job Order Master Agreement (MA) will be one year from the date of award by the Board of Supervisors. The agreement(s) will include an option to renew for up to four (4) additional one-year terms. There is no minimum guarantee of work or that the renewal options will be exercised.

Individual Job Orders may not exceed $1,500,000.00 including all change orders. Appropriate payment and performance bonding per project and/or annually shall be required.

An overall Small Business Enterprise (SBE) goal of eight percent (8%) is set for this Contract. See solicitation for SBE requirements.

Minimum Qualifications: Contractors performing work under the Job Order Contracts must hold the proper license issued by the State of Arizona Registrar of Contractors to perform these services.

Information regarding the submittal requirements of this Solicitation for Qualifications (SFQ) may be obtained at the Design and Construction Division of the Procurement Department located at 150 W. Congress Street, 5TH Floor, Tucson, AZ, 85701. Contact Ms. Judy Cooper regarding documents at (520) 724-3727, FAX: (520) 724-3646; Email: Judy.Cooper@pima.gov. The entire information package can be downloaded from the Pima County website: Pima County Vendor Self Service Portal. Pima County reserves the right to reject any and all Statements of Qualifications or to withhold the award for any reason.

SOQ DUE DATE/TIME: January 6, 2022, at or before 4:00 PM Local Tucson Time
LOCATION: Procurement Department, 150 W. Congress Street, 5th Floor, Tucson, AZ 85701

PRE-SUBMITTAL MEETING: December 15, 2021, 10:30 AM Local Tucson Time
MICROSOFT TEAMS LINK: Click here to join the meeting
tel:+16026490382,,781812137# United States, Phoenix
Phone Conference ID: 781 812 137#

DIRECT QUESTIONS IN WRITING TO: Dawn Dargan, Procurement Officer
E-mail: Dawn.Dargan2@pima.gov

PUBLISH: The Daily Territorial: December 8, 9, 10, and 13, 2021
The Arizona Daily Star December 8 and 22, 2021
1. **SCOPE OF SERVICES:** Pima County is seeking Statements of Qualifications (SOQ) from qualified firms or individuals for the establishment of a Job Order Master Agreement for Park Development Services in Pima County on an as-needed basis for various County properties. See Exhibit A - Scope of Work.

2. **REQUIRED SUBCONTRACTOR SELECTION 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 Subcontractor Selection Plan shall cause for 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 intent of this solicitation is to award a shared indefinite delivery/indefinite quantity Job Order Master Agreement in the annual amount of $3,000,000.00 with up to five (5) qualified Contractors. The initial term of the Job Order Master Agreement (MA) will be one (1) year from the date of award by the Board of Supervisors. The Agreement will include an option to renew for up to four (4) additional one-year terms. There is no minimum guarantee of work or that the renewal options will be exercised.

   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 Master Agreement and associated documents, including the General Conditions, Special Conditions, and Appendices to the Master Agreement, 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.

   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 Master Agreement. Bonds may be submitted on an annual basis for the full value of all construction reasonably anticipated during the Master Agreement 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:** These services are subject to the Pima County Code, Title 20, and Chapter 20.04, pertaining to participation of subcontractors. The Pima County SBE Program is a race and gender neutral program established to encourage contracting with all small businesses. A minimum goal of **eight percent (8%)** for participation by Small Business Enterprises (SBEs) of the total amount of the annual agreement applies to each Job Order Contractor individually. Only firms listed on the **City of Tucson Small Business Enterprise Certified Business Directory** are eligible to meet the SBE goal. The current list of certified SBE firms can be located on the City of Tucson Business Enterprise Program Certification & Compliance System.
The Contractor shall supply a year-to-date subcontractor and SBE utilization report covering the entire master agreement to date to the Pima County Procurement Department, Business Enterprise Program Coordinator on a quarterly basis. If the Contractor has experienced difficulties in achieving the SBE goal, they may present a Certificate of Good Faith Effort/Request for Waiver at that time.

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 Master Agreement; after Master Agreement 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 Dawn.Dargan2@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:

   Dawn Dargan – Procurement Officer  
   Pima County Procurement Department, Design & Construction Division  
   150 W. Congress, 5th Floor  
   Tucson, AZ 85701  
   Dawn.Dargan2@pima.gov

8. **CLARIFICATIONS / AMENDMENTS:** Any clarifications or interpretations of this SFQ that materially affect or change the scope or intent will be issued via amendment https://vendors.pima.gov/. Oral statements or clarifications shall be non-binding and without legal effect. The County will make an effort to notify respondents of the posting of amendment(s); 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 amendment(s) and to obtain this information in a timely manner. Failure to include acknowledgment of all amendment(s) may be cause for rejection of the SOQ. No oral interpretations shall be made to any respondent as to the meaning of any of the solicitation documents, or be effective to modify any of the provisions of the solicitation documents. Oral interpretations of the solicitation documents are not binding on the County.

9. **MICROSOFT TEAMS PRE-SUBMITTAL MEETING:** The date and time of a pre-submittal meeting, if applicable, is indicated on the Notice of Solicitation for Qualifications page of this document. The purpose of this meeting will be to clarify the contents of this solicitation in order to prevent any misunderstandings of Pima County’s position. Any questions regarding this solicitation should be presented to Pima County at this meeting.

10. **DUE DATE AND LOCATION FOR SUBMISSION:** Submittals must be received and time stamped at the Procurement Department, Design & Construction Division, 150 W. Congress Street, 5th Floor, Tucson, AZ 85701, at or before the time and date indicated on the Notice of Solicitation for Qualifications page of this document. Late submittals will NOT be accepted.
11. **SUBMISSION INSTRUCTIONS:** The Submission will consist of two (2) parts, each in a separate sealed envelope as follows:

A. **Part 1 – Evaluation Criteria:** This solicitation includes evaluation criteria found on pages 10-13. Respondents shall submit one (1) hardcopy original, seven (7) hardcopies, and one (1) electronic copy in a sealed envelope. Failure to use or complete the provided forms in this section may result in rejection. The hardcopy originals shall be delivered in a sealed envelope and clearly marked with the Firm’s Name, Name and Number of the SFQ, Due Date, and Time addressed to: Pima County Procurement Department, Design & Construction Division, Attn: Dawn Dargan, Procurement Officer, 150 W. Congress Street, 5th Floor, Tucson, AZ 85701.

   “Attachment 1 – Project Information Sheet” is available for download in a Microsoft Word format from [https://vendors.pima.gov/](https://vendors.pima.gov/). Use of this form is at respondent's discretion. Should changes be made to this exhibit by amendment, respondent is responsible for incorporating changes into their response.

B. **Part 2 – Subcontractor Selection Plan:** In this envelope, respondents shall submit to the same address one (1) hardcopy original and three (3) hardcopies and one (1) electronic copy of a Subcontractor Selection Plan as described on Page 14. The Subcontractor Selection Plan shall bear a cover sheet with the name and address of the firm submitting the plan and shall be captioned as Subcontractor Selection Plan submitted in Response to Pima County Solicitation No. SFQ-PO-2200007 - Job Order Master Agreement: Park Development Services. **One (1) original coversheet must be signed by the person signing the proposal.**

SOQs received after the due date and time as noted on the Notice of Solicitation for Qualifications page of this document will be returned to the respondent unopened. No late submittals of SOQs 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. Failure to follow SFQ submittal guidelines and instructions shall result in the SOQ rejection.

**Mandatory Face Mask:**

County requires the use of face masks in accordance with Administrative Procedure 3-35. This Administrative Procedure is designed to improve public and employee safety during the COVID-19 pandemic. Everyone is required to wear a mask in all County facilities including common areas, lobbies, and elevators; in areas where proper physical distancing is not possible (less than six (6) feet); in areas where there is not a protective barrier; masks are not required in parking garages if the appropriate physical distancing is maintained. Anyone accessing County facilities may request a mask and the County will provide one.

12. **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. §34-604. 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 of the Capital Program Office Department, the Flood Control District, the Facilities Management Department, the Natural Resources Parks and Recreation Department, and a senior management employee of a licensed contractor. A Procurement Officer from the Pima County Procurement Department, Design & Construction Division will act as the non-scoring Chair of the selection committee.

C. This committee will evaluate SOQs based upon evaluation of the stated selection criteria and relative weight of the selection criteria published in this SFQ, conduct interviews with short-listed firms for which the interview selection criteria and weighting of the selection criteria will be communicated to interviewing firms in the interview notice, and, based on the combined results of both the interview process and the evaluation of SOQs submitted in response the SFQ, recommend the most qualified firm(s) for award. The selection committee may not consider fees, price, man-hours or any other cost information in the selection or order of preference.

D. The respondents to whom awards shall be made will be required to execute the Amendment in counterparts and return it to the Pima County Procurement Department, Design and Construction
Division, within ten (10) days after receipt. Failure or neglect to do so may result in withdrawal of Master Agreement Award.

E. County will make an award recommendation based on the evaluation scores. The recommendation will be emailed to each participating firm prior to the award by the Board of Supervisors.

F. The rights and obligations provided for in the Agreement shall become effective and binding upon the parties only with its formal execution by County. Selection of Contractor(s) shall be at the discretion of County, and County reserves the right to reject any or all qualification statements.

G. Contractor shall file payment and performance bonds with County, as required by A.R.S. § 34-610 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 Agreement 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.

13. **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 Procurement Officer immediately.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-Submittal Meeting</td>
<td>December 15, 2021 at 10:30 a.m. local Tucson time.</td>
</tr>
<tr>
<td>Statements of Qualifications (SOQ) due</td>
<td>January 6, 2022 at or before 4:00 p.m.</td>
</tr>
<tr>
<td>Interviews (tentatively):</td>
<td>Week of January 17, 2022</td>
</tr>
<tr>
<td>Award (tentatively):</td>
<td>March 2022</td>
</tr>
</tbody>
</table>

14. **COUNTY’S RESERVATION OF RIGHTS:** County may evaluate the SOQs based on the anticipated completion of all or any portion of the Project. 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.

15. **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.

16. **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.

17. **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.

18. **ELIGIBLE RESPONDENTS:** Only individual firms or lawfully formed business organizations may apply. (This does not preclude a respondent from using consultants.) County will contract only with the individual firm or formal organization that submits an SOQ.

19. **JOINT VENTURES:** Respondents that submit an SOQ as a Joint Venture must include a copy of any Joint Venture Agreement at the time of submittal naming Pima County as a third party beneficiary of the Joint Venture Agreement. The Joint Venture must be validly formed as an Arizona corporation, partnership, or other separate legal entity (a “Joint Venture Entity”) with the Joint Venture Entity registered as a Vendor with Pima County at the time of contract award. The SOQ Questionnaire must be executed by all of the Joint Venture participants or by one Joint Venture participant with a letter of authorization from the other Joint Venture participants. The Joint Venture Agreement is NOT included in the suggested 20 page-count limitation. In the event the Joint Venture is the highest-ranked bidder and is awarded the
project, but the Joint Venture has failed to validly form a Joint Venture Entity with the Joint Venture Entity registered as a Vendor with Pima County at the time of contract award, the Joint Venture participants will execute a single Contract with Pima County with each Joint Venture participant as a separate Contractor under the Contract. Each such Contractor will be jointly and severally liable for performance under the contract.

20. **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.

21. **PROTESTS:** An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award. Protests must be in accordance with the Pima County Procurement Code, Section 11.20.010.

22. **VENDOR REGISTRATION:** County’s internet-based vendor registration system is VSS (Vendor Self Service Portal). This system allows Vendors to create and maintain their own Vendor record online using a standard internet browser. The internet link for County’s Vendor Registration is located on the Procurement Department’s website at vendors.pima.gov. The selected CONTRACTOR(s) must register in County’s VSS.

23. **NON-COLLUSION:** Each respondent, by submitting an SOQ, is certifying that the respondent has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free and open competition in connection with this Solicitation.

24. **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 (1 page)

The submittal will consist of 2 parts, each in a separate sealed envelope as follows:

**Part 1 - Evaluation Criteria:**
Respondents are to complete Part “1” Evaluation Criteria submit one (1) original (marked as ‘original’), seven (7) copies, and one (1) exact digital copy in a sealed envelope labeled, addressed and deliver to:

SOLICITATION No. 2200007, JOB ORDER MASTER AGREEMENT: PARK DEVELOPMENT SERVICES
Pima County Procurement Department, Design & Construction Division
Attn: Dawn Dargan - Procurement Officer
150 W. Congress Street, 5th Floor
Tucson, AZ  85701

Responses to the SFQ should be bound on the left side and have front and back covers. The submittal pages shall not exceed 8.5 X 11 inches. 11 x 17 inch sheets may be used as required to depict organizational charts, Attachment 1 – Project Information Sheets, prior project experience tables, or project schedule diagrams only, and shall be folded to 8 ½ x 11-inches. The copy marked “Original” shall be printed single sided only. The additional copies may be duplexed at Respondent's discretion. Additional attachments beyond those requested will count in the overall page count. Responses should be kept concise, and it is suggested that SOQs not exceed twenty (20) pages in length, not including the front and back covers, table of contents, indexes, or joint venture agreements. Clear, concise responses that are under the suggested maximum page limit are preferred to unclear responses that use the maximum number of pages. Failure to follow the outline of required information or submission of material other than that requested shall result in rejection of the proposal.

The evaluation criteria is found on pages 10-13 and will be evaluated and scored utilizing the following criteria:
- SOQ Questionnaire (No Points)
- Qualifications and Experience of the Project Team (50 points)
- Qualifications and Experience of the Firm (60 points)
- General Project Approach (50 points)
- Professionalism of Written Statement (up to negative 5 points)

**Total Possible Points in Response to Part 1 – Evaluation Criteria: 160 Points**

**Part 2 - Subcontractor Selection Plan:**
A.R.S. § 34-604(C)(2)(e)(i) states that Subcontractor Selection Plans must select subcontractors based on qualifications alone or on a combination of qualifications and price and **shall not** select subcontractors based on price alone. Respondents are to submit one (1) original (marked as ‘original’), three (3) copies and one (1) electronic copy of the Part “2” Subcontractor Selection Plan (the "Plan"). It is suggested that the Plan not exceed four (4) pages. The Plan shall be submitted to the same address listed above, in a separate envelope with the caption:

SOLICITATION No. 2200007, JOB ORDER MASTER AGREEMENT: PARK DEVELOPMENT SERVICES
SUBCONTRACTOR SELECTION PLAN

The Subcontractor Selection Plan criteria begins on page 14 and will be evaluated and scored utilizing the following criteria:
- Qualifications-Based Selection (9 points)
- Utilization of Small Business Enterprises (5 points)
- Subcontractor Assistance Development (6 points)

**Total Possible Points to Part 2 – Subcontractor Selection Plan Points: 20 Points**

**TOTAL POSSIBLE SOQ POINTS: 180 Points**
PART 1 – EVALUATION CRITERIA (4 pages)

SOQ Questionnaire (No Points)
Park Development Services – SFQ # 2200007

To submit a Statement of Qualifications, complete the following questionnaire and the following qualifications submittal, and deliver **one (1) SIGNED original, seven (7) copies, and one (1) electronic copy** in a sealed envelope to the Pima County Procurement Design and Construction Division at 150 W. Congress Street, 5th Floor, Tucson, AZ 85701 Attn: Dawn Dargan on or before the Submittal Due Date and Time. Typed responses are preferred. Illegible responses may negatively affect the evaluation and scoring.

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?

<table>
<thead>
<tr>
<th>Previous Name</th>
<th>Length of Time in Business Under Name</th>
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<tr>
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</table>

What was the total amount of Park Development Services related work your firm has completed in the following calendar years?

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Contracts</th>
<th>Total Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td></td>
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</tbody>
</table>

By dollar value, approximately what percentage of your work is: Commercial ____% Public/Government____%

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

<table>
<thead>
<tr>
<th>License Number</th>
<th>Class</th>
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RESPONDENT SHALL SIGNIFY RECEIPT OF AMENDMENT (IF ANY). Failure to Acknowledge Receipt of any Material Amendment may result in rejection of the SOQ as non-responsive.

<table>
<thead>
<tr>
<th>Amendment #</th>
<th>By (Name)</th>
<th>Date</th>
<th>Amendment #</th>
<th>By (Name)</th>
<th>Date</th>
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</table>

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
1. Qualifications and Experience of the Project Team: (50 Total Points)
   a. Identify the Project Manager/Team leader who will coordinate all pre-construction phase and construction phase work and be the main point of contact for the County. Include his or her unique qualifications, industry certifications and experience, and number of years with the firm. Identify similar projects managed, including any JOC projects. (20 points)
   b. Identify the lead Field Superintendent. Include his or her unique qualifications, industry certifications and experience, and number of years with the firm. Identify similar projects managed, including any JOC projects. (20 points)
   c. Identify your Safety Manager. Include his or her unique qualifications, industry certifications and experience, and number of years with the firm. (10 points)

2. Qualifications and Experience of the Firm: (60 Total Points)
   a. Provide a table of previous projects valued less than $250,000 that were completed in the last three (3) to five (5) years where the firm and/or proposed Project Team provided services that are similar in scope to those anticipated in this solicitation. State the project name, the client’s name, type(s) of services provided, the assigned Project Manager’s name, date completed, and project dollar amount. (20 points)
   b. Select two (2) representative projects from those listed in the table provided above and complete a Project Information Sheet, Attachment 1, for each project. A copy of this table in Word.doc format is available for download from the Procurement Departments webpage under the heading for this solicitation. (20 points total, 10 points each representative project)

   Completion of all fields in Attachment 1 – Project Information Sheet provided will comply with the required submission items above. Pima County reserves the right to contact the Owner, Design, and/or Engineering Firm listed on Attachment 1 – Project Information Sheet for a performance evaluation
   c. Describe your company’s safety philosophy and performance. (10 points)
   d. Describe any special experience or qualifications specifically related to recreational facilities construction, such as sports fields, swimming pools, playgrounds or other pertinent scope elements. (7 points)
   e. In a separate Appendix (not included in the suggested page count), include the following information, documented and verified from your Worker’s Compensation provider, Surety Provider, and submitted OSHA documentation:
     - Experience Modification Rate (EMR) for the past three years (1 point)
       - If any of the above EMR numbers are greater than 1.0, please describe safety incidents that occurred resulting in a higher than average rate and subsequent actions taken to remedy this higher than average rate.
     - OSHA Form 300 – Log of Work-Related Injuries and Illnesses and OSHA Form 300A - Summary of Work-Related Injuries and Illnesses for the past three (3) completed calendar years (Please omit any individual’s names listed on forms). (1 point)
     - Total Bonding Capacity - Single Limit and Aggregate Limit, and current backlog (1 point)

3. General Project Approach (50 Total Points)
   a. Describe your firm’s overall commitment to responding to the County’s requests for services. (10 points)
   b. Describe your firm’s approach to design partnering and ensuring project success in design/pre-construction. (10 points)
c. 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? (10 points)

d. Describe your method of approach with Job Order Contracting for Pima County and/or other public agencies in the past three (3) years. Provide examples of lessons learned or suggestions for improvement. If no prior Job Order Contracting experience, describe how your firm envisions the Job Order process would work between your firm and County. (10 points)

e. Discuss in detail the firm’s capacity to take on multiple Job Orders at the same time and the commitment to the County to complete these projects in a timely manner. Also, what resources does the Contractor have at its disposal to remain committed to this master agreement, should the Contractor pick up outside work (outside of this JOC contract). Provide the Firm’s current work capacity and discuss all jobs currently in progress. (10 points)

4. Professionalism of Written Statement (0 to –5 deductive points for deficiencies)

   All statements are expected to be prepared in a professional manner. This includes organization, formatting, readability and accuracy of spelling and grammar. Evaluation points may be deducted for less than professional work.

5. Interviews

   a. Interviews will be held pursuant to A.R.S. §34-604. Before interviews are held, firms selected for interviews will be provided with the selection criteria and relative weights of the selection criteria to be used in selection.

   b. Firm’s selected for interviews should be prepared to present to the Selection Committee. The Procurement Department will advise the invited firms of the definitive date, time and place on or about seven (7) calendar days prior to interviews.

   c. The County will provide an agenda or outline in advance of the interview covering any additional requirements to be addressed by the invited firms.

   End of Part 1 – Evaluation Criteria
PART 2 – SUBCONTRACTOR SELECTION PLAN (1 page)

In a separate sealed submittal as instructed above, respondent shall address their method of approach in selecting subcontractors pursuant to A.R.S. § 34-604(C)(2)(e)(i), subcontractors must be selected on the basis of qualifications or qualifications and price—but not price alone. The assessment of qualifications may include safety, management, capacity, capability, or such other factors as the Contractor deems appropriate. The factors should be identified and discussed. Not all factors need be applied to all trades/specialties. If the selection is based on a combination of qualifications and price, the selection need not be made in one step.

Proposals shall be evaluated based on the following criteria:

- **Subcontractor Selection Plan (20 points)**
  - Qualifications based selection – 9 points
  - Utilization of Small Business Enterprises (SBE’s) – 5 points
  - Subcontractor/Supplier Assistance Development - 6 points

**Qualifications-Based Selection**

- Describe your firm’s method of approach to the qualifications-based selection of subcontractors per A.R.S. § 34-604(C)(2)(c). *(3 points)*
- Identify the following to rate subcontractors in your selection:
  - The criteria used; what are the three (3) to five (5) most important factors to you in selecting a subcontractor and why? *(1 point)*
  - The scoring methodology and relative weights used to rate respondents. *(1 point)*
  - If price is a factor, how much weight is given to price? *(1 point)*
- Include an example questionnaire(s) and/or form(s), as an appendix, used in your selection process. *(3 points)*

**Utilization of Small Business Enterprises (SBE’s)**

An overall SBE goal of eight percent (8%) is set for this project. Furthermore, the Contractor shall submit a Quarterly Utilization Report with each pay request, listing all subcontractors, commencing with the initial pay request. Respondent shall address the following:

- Describe your firm’s approach and commitment to achieving or exceeding the overall goal and the utilization of available Small Business Enterprises. *(3 points)*
- List any subcontracting areas you have preliminarily identified for possible SBE utilization for these services. *(2 points)*

**Subcontractor/Supplier Assistance/Development**

Describe your firm’s approach to the following:

- Assisting and/or mentoring or training subcontractors to improve skills and support their qualification. Identify specific instances where your firm has utilized these approaches on past projects. List any assistance/development areas you have preliminarily identified for these services. *(2 points)*
- How are subcontractors managed before, during and after the job? When and how are critical performance and risk issues communicated? *(2 points)*
- Describe situations in the past where your company mentored subcontractors in meeting your company’s quality standards. *(2 points)*

End of Part 2 – Subcontractor Selection Plan
ATTACHMENT 1 – PROJECT INFORMATION SHEET (1 page)

Provide a listing of projects of similar size and scope to this project the firm has completed or is currently constructing. Additional copies may be made as necessary for respondent to provide a complete response. A copy of this table in Word .doc format is available for download from the Procurement Departments webpage under the heading for this solicitation.

<table>
<thead>
<tr>
<th>Project Name/Description – include Delivery Method (JOC, CMAR, DB, or DBB)</th>
<th>Project Photo</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Original Construction Cost (or final cost model if CMAR or DB*)</th>
<th>Final Construction Cost (or final GMP amount*)</th>
<th>Agency/Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>Name: Phone, and Fax or Email:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Original Scheduled Completion Date</th>
<th>Actual Completion Date</th>
<th>Designer/Engineering Firm</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name:</td>
<td>Phone, and Fax or Email:</td>
</tr>
</tbody>
</table>

Reasoning for any differences between Original Construction Cost and Final Construction Cost, and/or Original Completion Date and Actual Completion Date:

Major Risk Items Identified and Solutions Offered/Utilized:

Value added Options or Differentiators (what you did that other firms would not):

*(do not include any Pre or Post-Construction Services costs)
ATTACHMENT 2 – MASTER AGREEMENT (13 pages)

PIMA COUNTY CAPITAL PROJECTS OFFICE

PROJECT: Job Order Master Agreement: Park Development Services

CONTRACTORS: <Contractor Name>
              <Contractor Address>
              <City, State Zip>

CONTRACT NO.: 

AMOUNT: $3,000,000

FUNDING: VARIOUS FUNDS

JOB ORDER MASTER AGREEMENT

1. Parties, Background and Purpose.

1.1. Parties. This Agreement is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called County, and Contractors, hereinafter called Contractor in the singular, Contractors in the plural, and collectively referred to as the Parties.

1.2. Authority. County has a need to establish an Agreement with up to five (5) Job Order Contractors for Park Development Services.

1.3. Qualifications Based Solicitation. County conducted a competitive qualifications-based procurement pursuant to A.R.S. §34-604, for Job Order Contractors under SFQ-PO-2200007 based on an evaluation of the respondents’ representations of their qualifications and necessary due diligence, County selected the xxx (x) highest qualified Contractors as Job Order Contractors. The Job Order Contractors have agreed to be bound by and adhere to the requirements of this Agreement.

2. Basic Terms, Renewals, Extensions and Revisions.

2.1. Initial Term. This Master Agreement (Agreement), as approved by the Board of Supervisors, commences on ____________, and terminates on ____________, 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.

2.2. Extension Options. 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 acknowledgment of the Contractors and the Board of Supervisors’ or the Procurement Director’s approval pursuant to Board of Supervisor Policy D29.4. Contract extensions, renewals, or revisions will occur through the issuance by County to Contractor of a revised Agreement document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms, conditions, scope modifications and/or specifications within 10 calendar days of issuance by County will signify acceptance of all such changes by Contractor and the revision will be binding upon the Parties.

2.3. Individual Job Orders. Individual job orders will be implemented by issuing a Delivery Order (DO) to the selected Job Order Contractor to perform the work. Each DO will be an independent contract that will incorporate and be subject to the terms of this Agreement. The terms “DO”, “Job Order”, and “Contract” are used interchangeably in this Agreement.
2.3.1. Competition Thresholds.

2.3.1.1. For projects less than $250,000 and during emergency situations, County may select a Contractor based on availability, specialty, or such other basis as County may determine in its sole discretion. During emergency situations requiring immediate attention by County (i.e. Flooding or other disaster prevention) County reserves the right to select a Job Order Contractor on a non-competitive basis for the work. In addition, the requirement that a Job Order Contract be in place prior to the initiation of work is waived during such an event. During such an emergency, a Contractor may be contacted and given instructions by a County Project Manager to perform the work immediately without an approved Job Order. It is understood that County will prepare a Job Order as soon as practicable following said instructions.

2.3.1.2. For projects of $250,000 or more, Contractor will compete on the basis of cost or cost and schedule through a request for quotation. Price may be either a fixed cost or a guaranteed maximum price.

2.3.1.3. All federally funded Job Orders will be competitively bid among all Contractors.

2.3.1.4. No individual Job Order may exceed $1,500,000 including change orders.

2.3.2. Small Business Enterprise. These services are subject to the Pima County Code, Title 20, and Chapter 20.04, pertaining to participation of subcontractors. The Pima County SBE Program is a race and gender neutral program established to encourage contracting with all small businesses. A minimum goal of eight percent (8%) for participation by Small Business Enterprises (SBEs) of the total amount of the annual agreement applies to each Job Order Contractor individually. Only firms listed on the City of Tucson Small Business Enterprise Certified Business Directory are eligible to meet the SBE goal. The current list of certified SBE firms can be located on the City of Tucson’s Procurement Website, City of Tucson Business Enterprise Program Certification & Compliance System.

2.3.2.1. Contractor shall supply a year-to-date subcontractor and SBE utilization report covering the entire Master Agreement to date to the Pima County Procurement Department, Business Enterprise Program Coordinator on a quarterly basis. If the Contractor has experienced difficulties in achieving the SBE goal, they may present Certificate of Good Faith Effort/Request for Waiver at that time.

2.3.2.2. For projects that are federally-funded, a Disadvantaged Business Enterprise (DBE) goal pursuant to Pima County Code Title 20, must be established for the individual Job Order and does not apply toward the eight percent (8%) SBE goal.

2.3.3. Construction Completion Time: Work performed under this Agreement will be as stated in Individual Job Orders issued under this Agreement. County will assess Liquidated damages against Contractor based upon the construction completion time, if so specified in a Job Order.

2.3.4. SubContractors: SubContractors will be selected in accordance with Contractor’s SubContractor Selection Plan, incorporated herein by reference.

3. Scope of Services. Contractor will provide County all labor, materials and equipment necessary to complete the project as described in Exhibit A – Scope of Work (2 Pages) incorporated into this Agreement. All work will be done per specifications called for in the bid documents as contained in Pima County Solicitation Number SFQ-PO-2200007, Exhibit B - General Conditions to the Contract (10 pages), Exhibit C - Special Conditions – Multiple Award Job Order Contract (13 pages), Exhibit D – Supplemental Provisions for Federal Aid Contracts (17 Pages), Exhibit E - Supplemental Provisions for Regional Transportation Authority (RTA) Funded Construction contracts (1 Page), and other documents incorporated into this Agreement.

4.1 Compensation. County will pay Contractor as specified.

4.1.1 Invoices. Contractor will provide detailed documentation in support of requested payment. The Contractor must cite the Delivery Order number on all invoices. Payments will be made in accordance with ARS § 34-609.

4.1.1.1 For the period of record retention required under Article 25, County reserves the right to question any payment made under this Article and to require reimbursement by setoff or otherwise for payments determined to be improper or contrary to the Agreement or law.

5. Federal Funding. County and Contractor understand the Job Orders under this Agreement may be funded partially or entirely through a federal grant or other source of federal funding.

5.1. Federal Labor Standards. Federal Labor Standards are applicable for Job Orders identified as being federally funded.

5.2. Additional Requirements. Federal forms will be attached to the Job Order, and Contractor agrees to be bound by all requirements.


5.2.2. Davis Bacon (AZ, Wage Decision). Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions, and the Work Hour and Safety Standards Act related to overtime pay and safety.

5.3. Subcontracting. Contractor will not subcontract on any federally-funded Job Order with any firm or person listed in the Federal Government’s System for Award Management (SAM) system (https://sam.gov/content/home) with an active exclusion.

6. Insurance. The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

6.1. Ratings. Contractor’s insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an “A.M. Best” rating of not less than A- VII. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.2. Insurance Coverages and Limits.

6.2.1. Minimum Scope and Limits of Insurance: Contractor will procure and maintain at its own expense insurance policies (the “Required Insurance”) satisfying the below requirements (the “Insurance Requirements”) until all of its obligations under this Agreement have been met. The below Insurance Requirements are minimum requirements for this Agreement and in no way limit Contractor’s indemnity obligations under this Agreement. 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 Agreement. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

6.2.1.1. Commercial General Liability (CGL) – Occurrence Form with limits of $2,000,000 Each Occurrence and $2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, personal and advertising injury and products – completed operations.
6.2.1.2. **Business Automobile Liability** – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Agreement with a Combined Single Limit (CSL) of $1,000,000 each accident.

6.2.1.3. **Workers’ Compensation and Employers’ Liability** - Statutory requirements and benefits for Workers’ Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer’s Liability coverage- $1,000,000 each accident and each person - disease.

6.2.1.4. **Builder’s Risk Insurance** – Insurance applies to this Agreement. Contractor is required to maintain throughout the course of construction Builder’s Risk Insurance in a dollar amount equal to the full insurable value under contract, which shall include “All Risk” coverage. Pima County shall be named as a “Loss Payee”. Contractor is responsible for equipment, materials, and supplies until completion of the project and acceptance by County.

6.2.1.5. **Claims-Made Coverage**. Claim-Made Insurance 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 Agreement, and Contractor must maintain such coverage for a period of not less than three years following Agreement expiration, termination or cancellation.

6.3. **Additional Insurance Requirements**:

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

6.3.1 **Additional Insured**: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, and the RTA, 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.

6.3.2 **Subrogation**: The General Liability, Business Automobile Liability and Workers’ Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County, its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Contractor.

6.3.3 **Primary Insurance**: The Contractor’s policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by County, its agents, officials, or employees shall be excess and not contributory insurance.

6.3.4 Insurance provided by Contractor shall not limit Contractor’s liability assumed under the indemnification provisions of this Contract.

6.4 **Notice of Cancellation**:

Each Required Insurance policy must provide, and certificates specify, County will receive not less than 30 days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice shall include the County project or Agreement number and project description.

6.5 **Verification of Coverage**:

Contractor will furnish County with certificates of insurance as required by this Contract. An authorized representative of the insurer will sign the certificates.
6.5.1 All certificates and endorsements, as required by this Agreement, are to be received and approved by County before work commences. Each insurance policy required by this Agreement must be in effect at, or prior to, commencement of work under this Agreement. Failure to maintain the insurance coverages or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of Agreement.

6.5.2 All certificates required by this Agreement shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.6 Approval and Modifications:

County’s Risk Management Department 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.

7. Indemnification

7.1. To the fullest extent permitted by law, Contractor indemnifies, defends, and holds harmless County, and the RTA, 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 Agreement. The obligations under this Article do not extend to the negligence of County or the RTA, their agents, employees or indemnities.

7.2. All warranty and indemnification obligations under this Agreement 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 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.

7.3. 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.

8. Bonding Requirements. Contractor will file payment and performance bonds with County, as required by A.R.S. §§ 34-610 and 34-611, no later than the time of agreement on the price (or Guaranteed Maximum Price) for any construction under this Agreement.

8.1. Bonds will be submitted on an annual basis for the full value of all construction reasonably anticipated during the Agreement 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.

8.1.1. 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 prior to release of the Delivery Order.

8.2. At no time will 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.
9. Laws and Regulations.

9.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement.

9.2. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights of the parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement will be brought and maintained in Superior Court in Pima County.

10. Status of Independent Contractor. Contractor is an independent Contractor and Contractor is not an employee of County and is not entitled to receive any of the fringe benefits associated with County employment, and will not be subject to the provisions of the County’s merit system. Contractor is responsible for payment of all Federal, State and Local taxes associated with the compensation received by Contractor from County. Contractor is responsible for program development and operation without supervision by County.


11.1. Performance. Contractor will perform the work 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 Agreement. Prior to changing any key personnel, especially those key personnel County relied upon in making this Agreement, Contractor will obtain County’s approval.

11.2. Responsibility. 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 Agreement. 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 Agreement, 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.

11.3. SubContractor License. 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 Agreement. 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.

11.4. Subcontractor Acts and Omissions. Contractor will be fully responsible for all acts and omissions of its SubContractor(s) and of persons directly or indirectly employed by SubContractor and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement creates any obligation on the part of County to pay any SubContractor, except as may be required by law.

11.5. SubContractor List. Contractor must use the SubContractor’s named on Contractor’s SubContractor List submitted with the bid. No SubContractor may be added or changed without the prior written approval of County subsequent to review and approval by the Administering Department Director and Procurement Director. Substitution of non-SBE SubContractors may be approved at the discretion of County for reasons including but not limited to, availability, insolvency or any other reason deemed to be in the best interest of County. Approval for substitution of SBE SubContractors that are listed on the Bidders Statement of Proposed SBE Utilization submitted with the bid will only be granted if the provisions of Section 20.28.050 of the Pima County Code have been met.

12. Assignment. Contractor will not assign its rights or obligations under this Agreement in whole or in part, without County’s prior written approval. County may withhold approval at its sole discretion.
13. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any SubContractors. During the performance of this Agreement, 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.

14. **Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

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

16. **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 Agreement 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.

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

18. **Termination of Contract for Default.**

18.1. Upon a failure by Contractor to cure a default under this Agreement within 10 days of receipt of notice from County of the default, County may, in its sole discretion, terminate this Agreement 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.

18.2. **Default Events.** The following constitutes an event of default:

18.2.1. 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 Agreement, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;

18.2.2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;

18.2.3. Failure to provide competent supervision at the site;

18.2.4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or to remove any defective or deficient material;

18.2.5. Failure to make prompt payment to SubContractors or suppliers for material or labor;

18.2.6. 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 Agreement;

18.2.7. Disregard of laws, ordinances, or the instructions of County or its representatives, or any otherwise substantial violation of any provision of the Agreement; or
18.2.8. 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.

18.3. Termination. In the event of a termination for default:

18.3.1. 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 business days after the effective date of the termination;

18.3.2. 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

18.3.3. Subject to the immediately preceding subparagraph 18.3.2, 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.

18.4. Non-Termination. County will not terminate the Agreement nor any Job Order issued under this Agreement for default or charge Contractor with damages under this Article if:

18.4.1. Except for subparagraph 18.2.8 in subsection 18.2 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:

18.4.1.1. Acts of God or of the public enemy,

18.4.1.2. Acts of County in either its sovereign or contractual capacity,

18.4.1.3. Acts of another Contractor in the performance of a contract with County,

18.4.1.4. Fires,

18.4.1.5. Floods,

18.4.1.6. Epidemics,

18.4.1.7. Quarantine restrictions,

18.4.1.8. Strikes,

18.4.1.9. Freight embargoes,

18.4.1.10. Unusually severe weather, or

18.4.1.11. 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 SubContractor(s) or suppliers; and

18.4.2. Contractor, within three 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.
18.5. **Receipt of Notice.** For the purposes of subsection 18.1 above, “receipt of notice” includes receipt by hand by Contractor’s onsite project manager, by facsimile transmission, or under the Notices clause of this Agreement.

18.6. **Excusable.** If, after termination of the Agreement for default, County determines 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 County had terminated the Contract for convenience as set forth in Article 17.

18.7. **Rights and Remedies.** 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 Agreement.

19. **Termination for Convenience of County.** County may terminate this Agreement at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least 15 days before the effective date of such termination. In that event, all finished or unfinished materials and other materials will, at the option of County, become its property. If County terminates the Agreement 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.

20. **Non-Appropriation of Funds.** Notwithstanding any other provision in this Agreement, County may terminate this Agreement if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such termination, County has no further obligation to Contractor, other than payment for services rendered prior to termination.

21. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and be served by delivery or by certified mail upon the other party as follows:

**COUNTY:**
Procurement Department
150 W Congress 5th Floor
Tucson, AZ 85701
520-724-3727

**CONTRACTOR:**
< Contact, Position>
< Name>
< Address>
<City, State Zip>
<Tel: (XXX) XXX-XXXX>

22. **Non-Exclusive Agreement.** 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.

23. **Agreement Documents.**

23.1. **Incorporation of Documents:** Contractor and County in entering into this Agreement have relied upon information provided in Solicitation No. SFQ-PO-2200007 - PARK DEVELOPMENT SERVICES Exhibit A – Scope of Work, Bonds (Bid, Payment, and Performance Bonds), Exhibit B – General Conditions to the Contract, Exhibit C - Special Conditions – Multiple Award Job Order Contract, Exhibit D - Supplemental Provisions for Federal-Aid Construction Contracts, Exhibit E - Supplemental Provisions for Regional Transportation Authority (RTA) Funded Construction contracts, Special Provisions, Technical Specifications and Plans, Construction Documents, Drawings and Specifications, Amendment, and on information provided in Contractor’s response to this Solicitation. These documents are hereby incorporated into and made a part of this Agreement by reference as if set forth in full herein.

*(The remainder of this page intentionally left blank)*
23.2. **Order of Precedence:** In the event of a conflict or inconsistency between or among the Agreement documents, the documents shall take precedence in the following order:

23.2.1. This Agreement
23.2.2. Exhibit B – General Conditions
23.2.3. Special Provisions, Technical Specifications, and Plans
23.2.4. Contractor Response to the Solicitation
23.2.5. Instructions to Bidders
23.2.6. Invitation to Bid

23.3. **Deviation:** The parties may, by written mutual agreement, deviate from this order of precedence in resolving inconsistencies between or among contract documents. Any such agreement interpreting the documents shall be incorporated into the Agreement by amendment.

23.4. **Conflict:** In the event of any conflict between any provision in the Special Conditions, and any provision of the General Conditions, or any other incorporated document, the provision in the Special Conditions shall take precedence.

24. **Ownership of Documents.** Ownership of 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 Agreement vests in and become the property of the County and will be delivered to County upon completion or termination of the services, but Contractor may retain record copies thereof.

25. **Books and Records.**

25.1. **Maintenance.** 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.

25.2. **Retention.** Contractor will retain all records relating to this Agreement at least five 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.

26. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Agreement, provided, however, that the procedures in Article 29 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 Agreement.

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

28. **Delays.** Neither party will be considered in default in the performance of its obligations 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.

29. **Disputes.**

29.1. **Resolving Dispute.** In the event of a dispute between County and Contractor regarding any part of this Agreement 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 Agreement and Contractor’s counterpart official, such meeting to be held within one 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.
29.2. **Performance.** The Parties will continue performance of their respective obligations under this Agreement notwithstanding the existence of any dispute.

30. **Public Records.**

30.1. **Disclosure.** 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 Agreement, 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.

30.2. **Records Marked Confidential.**

30.2.1. Any information submitted related to this Agreement 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 must not include any information considered confidential.

30.2.2. 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 10 business days after the date of notice to the Contractor of the request for release, unless Contractor has, within the 10 day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction in Arizona, 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 shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential, nor shall County be in any way financially responsible for any costs associated with securing such an order.

31. **Legal Arizona Workers Act Compliance.**

31.1. **Compliance with Immigration Laws.** Contractor warrants that it will at all times during the term of this Agreement 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 Agreement likewise complies with the State and Federal Immigration Laws.

31.2. **Books & Records.** 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.

31.3. **Remedies for Breach of Warranty.** 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 Agreement subjecting Contractor to penalties up to and including suspension or termination of this Agreement. 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.

31.4. **SubContractors.** 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 ensure that Contractor 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.”

31.5. Costs. 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.

32. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of $100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

33. **Cooperative Use of Resulting Agreement.** Reserved.

34. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Facsimile or other electronically delivered copies of signature pages to this Agreement shall be treated between the Parties as original signatures for all purposes.

35. **Amendment.** Except for the amendment provision above in Article 2, this Contract may be modified, amended, altered or extended only by a written amendment signed by the Parties.

36. **Entire Agreement.** This document constitutes the entire agreement between the parties and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

*(The remainder of this page intentionally left blank)*
37. **Effectiveness and Date.** This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date the Agreement is signed by the last party to sign it (as indicated by the date associated with that party’s signature).

Each Party is signing this Contract on the date below that Party’s signature.

**PIMA COUNTY:**

__________________________
Chair, Board of Supervisors

__________________________
Date

**CONTRACTOR:**

__________________________
Signature

__________________________
Name and Title (Please Print)

__________________________
Date

**ATTEST:**

__________________________
Clerk of the Board

__________________________
Date

**APPROVED AS TO FORM:**

__________________________
Deputy County Attorney

__________________________
Name (Please Print)

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

KNOW ALL MEN BY THESE PRESENTS THAT:

[NAME OF CONTRACTOR]

(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 [AMT OF CONTRACT], 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 the [CONTRACT AWARD DATE] for:

Solicitation No. SFQ-PO-2200007: Job Order Master Agreement – Park Development Services

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____.

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

_____________________________________________ By: ______________________________________
Principal

_____________________________________________ By: ______________________________________
Surety
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:

[NAME OF CONTRACTOR]

(hereinafter "Principal"), as Principal, and ________________________________

(hereinafter "Surety"), a corporation organized and existing under the laws of the State of ____________, with its
principal office in the City of __________________, holding a certificate of authority to transact surety business in
Arizona issued by the Director of Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are
held and firmly bound unto Pima County (hereinafter "Obligee") in the amount of [AMT OF CONTRACT], 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 the, [CONTRACT
AWARD DATE] for:

Solicitation No. SFQ-PO-2200007: Job Order Master Agreement – Park Development Services

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length
herein.

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal promptly pays all
monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the
prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and
effect.

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

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

Witness our hands this ________ day of ____________, 20____.

_____________________________________________By: ______________________________________
Principal

_____________________________________________By: ______________________________________
Surety
This is an indefinite quantity job order contract under which the Contractor will provide all labor, materials, management, supervision, services, and coordination required to provide a full range of park development services, such work to be requested by the County from time to time by issuance of an individual job order for each individual project. Services are primarily for the County’s department of Natural Resources, Parks & Recreation (NRPR); however, other County departments may also utilize the services.

**General Scope:** Scope of work will include construction, improvement and maintenance of new and existing County owned commercial buildings, structures, and facilities.

**Services:**

The following services are examples of typical services to be performed at various locations throughout Pima County, and may or may not include all of the services required to meet the general scope of work needs, which will vary based on individual project conditions. They are not meant to restrict or exclude other types of work or areas under this contract.

It is the intention of County, from time to time, to have more than one project or a grouping of projects in design or construction at one time. This will facilitate meeting the requirements of both bond scheduling and the needs of the public. County will work with the contractor to determine priorities and scheduling.

1. **Design Services:** A State Registered architect/engineer will design the extent of work to meet NRPR’s scope and goals, with all design elements engineered to all current and applicable code requirements, including the Dark Sky Ordinance or other applicable codes. NRPR Standard Specifications and Details 2016, PAG Standard Specifications and Details 2015, COT Park Electrical Specifications 2013 as well as all individual site requirements will be coordinated by the registrant with County development staff. The engineer and contractor will work together to design the most efficient design for both installation and lifetime costs. The contractor is responsible for working with the registrant to obtain all of the necessary reviews and permits with the applicable review parties (such as Pima County Development Services, Regional Flood Control District, etc.).

2. **Utility Service:** The contractor and engineer will review the current utilities, and as needed, coordinate new service or upgrades to existing service to meet the project requirements. All coordination with approval agencies is to be coordinated in a timely manner to meet the project timelines.

3. **When requested by County, Contractor will provide pre-construction services.**

4. **Typical projects may include, but are not limited to the following:**

   - Sports fields construction, including but not limited to soccer, baseball and softball fields, tennis and basketball courts, fencing including backstops, batting cages and dugouts, and electrical improvements related to the fields and courts.

   - Placement of concrete and asphalt pavements and poured in place forms including rough and finish grading and base preparation. Resurfacing or painting as needed for maintenance of existing pavement improvements and sports courts (e.g., basketball, tennis).

   - Landscaping and large-scale irrigation system installation and improvements including reclaimed and potable water systems, erosion control elements, or water harvesting/ LID components.
• Erection of pre-fabricated or site-constructed buildings and structures including comfort stations, maintenance buildings, playground equipment (with safety surfacing), shade sails and ramadas.

• Masonry work including structural, retaining and screen walls, shade structures, seating and unit pavements.

• Electrical work including small structure service and wiring, park path and landscape lighting, parking lot and security lighting, and sports field lighting/lighting control systems.

• Commercial plumbing systems including small building service, back flow prevention, drinking fountains and water features. Work may include connections to public sewer, installation of septic service, or dry well applications.

• Security fencing, temporary fencing, permanent fencing, post and cable installation, bollards, electronic gates, steel gates, or other fencing accessories as needed to meet the parks security needs.

• Swimming pool and splash pad construction and improvements, including but not limited to shotcrete, plaster, tile, decking, plumbing, heaters, pool pumps and related equipment, electrical and lighting.

5. Post Construction Services: The contractor and engineer shall supply all warranty and manufacturer’s information to the NRPR staff at the completion of project. As-builts for the project, including location of all pertinent project elements installed as a part of the project.

END EXHIBIT A - SCOPE OF WORK
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 Contactor 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 Contactor and its Surety as a guarantee on the part of Contactor 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 Capital Program Office Department.

**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 PAG Standard Specifications for Public Improvements 2015 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 Contactor 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 Contactor, 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**

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

Contactor 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 Contactor’s normal progress toward completion of this project, County may, at its option, authorize Contactor to relocate said conflicting utilities by Force Account.

It is the responsibility of Contactor 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, Contactor 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** -- Contactor 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 Contactor or by Contactor's employees.

b. **Permits and Licenses** -- Contactor will procure all County building permits, and sewer connection fees. Contactor will post required permits on site and give all notices necessary and incidental to the due and lawful prosecution of the work. Contactor will procure and pay for all other permits, fees, and applications for water, gas, electric and other utilities.

c. **Sanitary Provisions** -- Contactor 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 --** Contactor 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, Warning Lights, and Detour Signs --** Contactor 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 --** Contactor 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 Contactor, Contactor 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. **Contactor's Responsibility for Work --** Until written final acceptance of the work by County, Contactor 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 Contactor 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, Contactor 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 Contactor, 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**

Contactor 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.
Contactor 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, Contactor will report the accident immediately by telephone or messenger to both County and the Board.

If any claim is made by anyone against Contactor or any Subcontractor on account of any accident, Contactor 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.

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 Contactor, two complete sets of code approved construction documents in non-reproducible form.

County will provide, at no cost to Contactor, 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 Contactor’s responsibility to ensure that any modifications called for as a result of the permit process are transferred to the bid sets.

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

ARTICLE 10. ORDER OF COMPLETION

Contactor will submit at such times as may be requested by County, schedules which will show the order in which Contactor proposes to carry on the work with dates at which Contactor 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

Contactor 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

Contactor 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, Contactor 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. Contactor will, if required, furnish satisfactory evidence as to the kind and quality of materials.

Contactor 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 Contactor assigns to that person.

ARTICLE 15. ROYALTIES AND PATENTS

Contactor will pay all royalties and license fees. Contactor 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 Contactor 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. Contactor 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.

Contactor 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 Contactor 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 Contactor 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

Contactor 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, Contactor, without special instruction or authorization from County, is hereby permitted to act at his discretion, to prevent such threatened loss or injury, and Contactor will so act, without appeal, if so instructed or authorized. Any compensation claimed by Contactor on account of emergency work will be determined by County.

Contactor 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 Contactor 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, Contactor 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 Contactor's expense.

Re-examination of questioned work may be ordered by County and if so ordered the work must be uncovered by Contactor. 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, Contactor will pay such cost.

ARTICLE 19. SUPERINTENDENCE - SUPERVISION

Contactor 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 Contactor and ceases to be in its employ. The Superintendent will represent Contactor in its absence and all directions given to it will be as binding as if given to Contactor. Contactor will give efficient supervision to the work using its best skill and attention.
If Contactor, 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 Contactor's risk.

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

ARTICLE 20. RESERVED

ARTICLE 21. CLAIMS FOR EXTRA COST FOR ADDITIONAL WORK

If Contactor 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. 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.

Contactor 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 Contactor 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 Contactor 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 Contactor. If Contactor 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 Contactor.

ARTICLE 23. SUSPENSION OF WORK

County may at any time suspend the work, or any part thereof by giving three (3) days’ notice to Contactor 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. Contactor will resume the work within ten (10) days after the date fixed in the written notice from County to Contactor to do so.

ARTICLE 24. COUNTY’S RIGHT TO DO WORK

If Contactor 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 Contactor, 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 Contactor.

ARTICLE 25. COUNTY’S RIGHT TO TERMINATE CONTRACT

If Contactor 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 Contactor ten (10) days written notice, terminate the employment of Contactor 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 Contactor 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 Contactor. If such expense will exceed such unpaid balance, Contactor will pay the difference to County. County will certify the expense incurred by County as herein provided, and the damage incurred through the Contactor’s default.

ARTICLE 26. REMOVAL OF EQUIPMENT

In any case of annulment or termination of this Contract before completion from any cause whatever, Contactor, 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 Contactor.

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, Contactor 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 Contactor 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 Contactor.

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

ARTICLE 29. WARRANTY

Contactor 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. Contactor 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 Contactor 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 Contactor 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, Contactor 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. Contactor 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 Contactor's work depends upon proper execution or results of the work of any other contractor, Contactor 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, Contactor will measure work already in place and will 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.

Contactor 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 Contactor. The submission to County with respect to any such claim, demand, dispute, controversy or difference will be a condition precedent to any exercise by Contactor of such rights or remedies as Contactor 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 Contactor 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

Contactor 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 Contactor 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 Contactor 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”.

ARTICLE 41. WASTE DISPOSAL FACILITIES

Contactor 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

Contactor 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

ARTICLE 44. BUILDER’S RISK

Contactor will be responsible for equipment, materials, and supplies until completion of the project and acceptance by County.

END OF EXHIBIT B - GENERAL CONDITIONS
ARTICLE 1 – OVERVIEW AND DEFINITIONS

A. **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.

The Contract Price for each Job Order shall not exceed $1,500,000.00, 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.

B. **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 Preconstruction 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.

“Preconstruction 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 Preconstruction 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 $250,000.00, and during emergency situations 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. In the event of an emergency, the requirement that a Job Order Contract be in place prior to the initiation of work is waived. During such an emergency, a Contractor may be contacted and given instructions by a County Project Manager to perform the work immediately without an approved Job Order. It is understood that the County will prepare a Job Order as soon as practicable following said instructions.

B. For Projects estimated at $250,000.00 or greater, the County will notify all Job Order Contractors under contract to County. The request shall advise all Contractors of the nature of the Work to be done and include the selection criteria and methodologies County 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 Contractor’s best estimating practices to develop a fixed, lump sum or not-to-exceed Guaranteed Maximum Contract Price to complete the Work, including any additional Preconstruction Services (if necessary). See Article 3 for a description of required proposal items. Quotes will be in letter format including an attached table listing major construction components (i.e. Mobilization, grade control structures, soil cement bank protection, excavation, clearing/grubbing, subgrade prep., etc.) with quantities, unit cost, total cost as columns in the table. 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 Contractor’s 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. Quotations must be reasonably prepare, accurately describing the work including the types of materials used, quantities and other cost elements. In the instance the quotation is deemed to be unreasonable or inaccurate, the Project Manager can exercise the option to reject the bid (even if it is the lower bid) or request a revised quotation. An alternative Contractor will be chosen for the work.

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 Preconstruction 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;


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

A. Job Order Pricing – 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.

B. Preconstruction Services (if any) – If Contractor is providing Preconstruction 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

A. 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.

1. 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.

2. 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.

3. 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.

B. Reporting

1. 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.

2. 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

A. 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. 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

A. 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.

B. 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.).

C. 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

A. 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 Exhibit C to these SPECIAL CONDITIONS.
B. **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.

C. **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.

D. **Consideration of 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

A. **Subcontractor Selection** – Contractor will select Subcontractors in accordance with the Subcontractor Selection Plan incorporated into this Contract by reference.

B. **Subcontracts**

1. 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. 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.

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

C. **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.

A. **Cause for Termination** – In addition to the termination rights of the County in **ARTICLE 18 – TERMINATION OF CONTRACT 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:

1. 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;

2. 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;

3. If Contractor persistently fails to supply sufficient skilled workmen or suitable materials or equipment for the Work under any Job Order;

4. 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;

5. If Contractor fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

6. If, as to any Job Order, Contractor fails to follow any reasonable instructions by the County, which are consistent with the Construction Documents;

7. 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

8. 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.

B. **Notice and Cure Period** – If County determines that one or more events of default described in Article 10(A) 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.

C. **Completion of Terminated Work**

1. 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. 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. 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.

2. If any Job Order is terminated, the County may demand that Contractor's surety take over and
complete the Work under the Job Order. 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.

3. 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.

4. 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.

D. Payment for Terminated Work

1. 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 Contractor 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, Contractor shall immediately upon demand pay the difference to the County or
the County may set off 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.

2. 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.

E. 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.
F. **Erroneous Termination for Cause** – If any Job Order or participation in the overall Agreement is terminated under this Article 10, and it is determined for any reason that there was no default under Article 10, the termination shall be deemed a Termination for Convenience of the County.

**ARTICLE 11 – TERMINATION FOR CONVENIENCE OF THE COUNTY**

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.

(The remainder of this page intentionally left blank)
**ATTACHMENT 1 TO EXHIBIT C (2 pages)**

**PERFORMANCE EVALUATION FORM**

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

<table>
<thead>
<tr>
<th>PERFORMANCE EVALUATION (CONSTRUCTION)</th>
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<tbody>
<tr>
<td><strong>1. CONTRACT NUMBER</strong></td>
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<td><strong>2. CEC NUMBER</strong></td>
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**PART I - GENERAL CONTRACT DATA**

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<tr>
<td>INTERIM</td>
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<td><strong>4. TERMINATED FOR DEFAULT</strong></td>
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<td><strong>5. CONTRACTOR</strong> (Name, Address, and ZIP Code)</td>
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<td><strong>6. PROCUREMENT METHOD (X one)</strong></td>
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<td>SEAL BID</td>
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<td><strong>7. DESCRIPTION AND LOCATION OF WORK</strong></td>
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**PART II - PERFORMANCE EVALUATION OF CONTRACTOR**

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<thead>
<tr>
<th>8. TYPE AND PERCENT OF SUBCONTRACTING</th>
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<tr>
<td><strong>9. FISCAL DATA</strong></td>
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<tr>
<td>a. AMOUNT OF BASIC CONTRACT</td>
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<td><strong>10. SIGNIFICANT DATES</strong></td>
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<td>a. DATE OF AWARD</td>
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<td><strong>11. OVERALL RATING</strong> (X appropriate block)</td>
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<td>OUTSTANDING</td>
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<td>a. ORGANIZATION (Name and Address (Include ZIP Code))</td>
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<td>b. TELEPHONE NUMBER (Include Area Code)</td>
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<td>c. NAME AND TITLE</td>
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<td><strong>14. AGENCY USE</strong> (Distribution, etc.)</td>
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**DD FORM 2626, JUN 94**

**EXCEPTION TO SF 1420 APPROVED BY GSA/RWA 8-84**

**Adobe Professional 7.0**
### PART III - EVALUATION OF PERFORMANCE ELEMENTS

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### 20. REMARKS
(Preparation 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.)
EXHIBIT D (17 pages)
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” (Attachment 1 to Exhibit D), into each FHWA funded Job Order’s terms and conditions. Furthermore, 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. Contractor shall provide to 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. 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, 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.

NOTE: The following ARTICLE 4 – INSURANCE clause applies to projects NOT in or adjacent to the ADOT right of way:

ARTICLE 4 – INSURANCE

In order for County to enter into a Contract with a Contractor for services, Contractor shall meet the insurance requirements prior to the execution of the Contract as evidenced by a Certificate of Insurance with the required endorsements.

1. Contractor shall have the capability and experience to perform and be responsible for negligent acts which may occur in the course and scope of the Contractor’s performance under the Contract.
2. Contractor is responsible for certifying that any Subcontractor, included as part of their Contract, meet the insurance requirements outlined in the Contract. Any variations to current insurance requirements shall be submitted to County and the State of Arizona, for review and approval.
3. An “indemnification” clause will be included in the Contract which will be signed by Contractor, to protect County, State of Arizona, ADOT, FHWA and their employees (see Article 5).

Contractor’s insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an—A.M. Best rating of not less than A-VII. County in no way warrants that the above-required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency.
Contractor and all Subcontractors 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 Contractor, its agents, representatives, employees or Subcontractors.

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 Contractor from liabilities that might arise out of the performance of the work under this Contract by Contractor, its agents, representatives, employees or Subcontractors, and the 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 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:
Contractor will 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 Contractor that is exempt under A.R.S. § 23-901, and when such Contractor executes the appropriate County Sole Proprietor or Independent Contractor 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 Pima County, State of Arizona, Arizona Department of Transportation, FHWA, 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, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Contractor.

   a. Primary Insurance Endorsement: 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, or FHWA will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

   b. 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 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, 150 W. Congress, 5th 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. An insurance certificate submitted to County representing insurance coverage must 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 County. 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:

Pima 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 24 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 24 of the Master Agreement, 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, County 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. County will notify Contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to Contractor will be allowed unless Contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

(2) Suspensions of work ordered by County.

(i) If the performance of all or any portion of the work is suspended or delayed by County in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, Contractor shall submit to County 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, County will evaluate Contractor’s request. If County 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 Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, County will make an
adjustment (excluding profit) and modify the contract in writing accordingly. Contractor will be notified of County’s determination whether or not an adjustment of the Contract is warranted.

(iii) No contract adjustment will be allowed unless 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) County 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 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 Contractor in such amount as County 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.

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EXHIBIT D – ATTACHMENT 1 (12 pages)

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION 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).

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.

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-build contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

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

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 supervision and to all work performed on the contract by piecework, station work, or by subcontract.

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.

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.

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, 220, and 632.

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.

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 regarding 29 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and 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, 220, and 632.

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

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 (29 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 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 ensure 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
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., apprenticeships, 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, through independent recruitment efforts, shall ensure employment vacancies without regard to race, color, religion, sex, national origin, age or disability. Making full efforts to obtain qualified and/or qualified 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 non-discrimination 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 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 shall 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-1291. The staffing data should represent the project's 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 not 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 conforming under paragraph 1(b) of this section by and the Davis-Bacon Act) 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 rates, including any bona fide fringe benefits, bear 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.1(2) or 1.b.3(2) 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, within a reasonable time, 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)(ii)(B) 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)(iii), 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 the payroll. The ‘Statement of Compliance’ shall be a Statement that the payroll submitted contains the information required to be provided under §5.5(a)(3)(iii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(a)(3)(iii) of Regulations, 29 CFR part 5, and that such information is correct and complete.

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

(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.

EXHIBIT D – SUPPLEMENTAL PROVISIONS FOR FEDERAL AID CONTRACTS
(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 16 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 journeyman 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 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 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: deman. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for deman 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 Act 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 standard provisions of this contract shall not be subject to the general dispute 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).


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 laborer and mechanic 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 paid in accordance with the Davis-Bacon and related Acts, 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 laborer or mechanic 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 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 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 required by 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 635.113).

   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 payroll, 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 subject specifications, 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. 356), 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 applicable, 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 503 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 IX 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. Failure, whether 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.

2. 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 other prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epis.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.

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 contractor). "Lower Tier Covered Transaction" 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.epds.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.

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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.

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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. 1552. 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 1986.

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 DOA 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 regularly 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.

END OF EXHIBIT D SUPPLEMENTAL PROVISIONS FOR FEDERAL AID 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 5 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 6 of the Master Agreement, 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 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 7 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