Sahuarita ARIZONA TOWN COUNCIL MEETING AGENDA

Pursuant to A.R.S. § 38-431.02 notice is hereby given to the public that the Sahuarita Town Council will hold a regular meeting at the date and time specified below at the Sahuarita Town Hall Council Chambers, 375 West Sahuarita Center Way, Sahuarita, Arizona. Members of the Town of Sahuarita Council will attend either in person or by telephone conference call.

To better serve our community, the Council Chambers is wheelchair accessible. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Town Clerk's Office at 520-822-8801. Requests should be made no later than three working days prior to the meeting to arrange the accommodation.

ADDENDUM
August 22, 2016
REGULAR MEETING
AT OR AFTER 6:30 P.M.

1. **Adoption of Resolution No. 2016-0482, authorizing the Town to enter into Amendment One to Contract No. 170010, an Intergovernmental Agreement between the Town of Sahuarita and Pima County for administration of the Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) Programs by Pima County.**

Action may be taken by the Town Council on any item listed on this agenda. Council may vote to go into executive session pursuant to A.R.S. § 38-431.03 (A) (3) for discussion or consultation for legal advice with the Town Attorney concerning any matter listed on this agenda.

TOWN COUNCIL AGENDA COMMUNICATION

MEETING DATE: August 22, 2016 ***DATE PREPARED:*** August 18, 2016

AGENDA ITEM: **Addendum 1**

TO: Honorable Mayor and Council

FROM: Sarah S. More, Planning and Building Director

SUBJECT: **Adoption of Resolution No. 2016-0482, authorizing the Town to enter into an amendment to Contract No. 170010, Amendment One to Intergovernmental Agreement between the Town of Sahuarita and Pima County for the Community Development Block Grant Program and the Homeownership Partnership Program.**

☐ **Economic Development** ☐ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☒ **Quality of Life** ☐ **Other**

GOALS/OTHER:

FINANCIAL / BUDGET SUMMARY

1. Fund(s) Impacted: None
2. Available Budget/Project Capacity ($): Not applicable

STAFF RECOMMENDATION

Staff recommends adoption of Resolution No. 2016-0482.

SUGGESTED MOTION

I move to adopt Resolution No. 2016-0482.

DISCUSSION

On June 27, 2016, the Town Council approved a Cooperative Agreement to meet the requirements of the Housing and Community Development Act of 1974 and subsequent amendments (the Act) to participate as an Urban County in order to obtain federal funding for the Community Development Block Grant Program (CDBG) and the HOME Investment Partnership Program (HOME) for federal fiscal years 2017, 2018 and 2019.

HUD has informed Pima County that, while no substantive changes are necessary to the document, they require that the language be amended. This change is necessary to secure funding for CBDG projects in the Sahuarita area, projected to be approximately $400,000 over the next three years. HUD has required that the revised agreement be sent to them by September 7, 2016.

ATTACHMENTS

1. Resolution No. 2016-0482

SAHUARITA RESOLUTION NO. 2016-0482

A RESOLUTION OF THE TOWN OF SAHUARITA, ARIZONA, AUTHORIZING THE TOWN TO ENTER INTO AMENDMENT ONE TO SAHUARITA CONTRACT NO. 170010, AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF SAHUARITA AND PIMA COUNTY FOR ADMINISTRATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP (HOME) PROGRAMS BY PIMA COUNTY.

WHEREAS, the Town of Sahuarita ("Town") and Pima County ("County") desire to engage in housing and community development activities as authorized under the Housing and Community Development Act of 1974 and subsequent amendments; and

WHEREAS, it is necessary for the parties to enter into an Intergovernmental Cooperative Agreement in order to meet the requirements of the Housing and Community Development Act of 1974 and subsequent amendments; and

WHEREAS, the Town and the County are public agencies under the provisions of A.R.S. §11-952 *et seq.,* and each is authorized by law to enter into joint powers agreements; and

WHEREAS, the Town and County are individually authorized by law to engage in housing and community development activities; and

WHEREAS, by adoption of Resolution No. 2016-0472 on June 27, 2016, the Town entered into Sahuarita Contract No. 170010, the IGA between the Town of Sahuarita and Pima County for administration of Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) programs by Pima County; and

WHEREAS, the County wishes to amend the IGA to change the term date and insert language required by HUD by adoption of Amendment One to Sahuarita Contract No. 170010, a copy of which amendment is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the Mayor and Council have determined that amending this IGA is in the best interest of the Town and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Sahuarita, Arizona, as follows:

Section 1. The Town is hereby authorized to enter into Amendment One to Sahuarita Contract No. 170010, the IGA between the Town of Sahuarita and Pima County for administration of Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) programs by Pima County, a copy of which amendment is attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2. The Mayor of the Town of Sahuarita is hereby authorized and directed to take all steps necessary to implement said Agreement and give it effect.

Section 3. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution and sections of the Town Code.

Section 4. All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the council in conflict with the provisions of this Resolution are hereby repealed, effective as of the effective date of this Resolution. All internal references within the Town Code to any affected provision are hereby updated.

Section 5. If any section, subsection, sentence, clause phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Sahuarita, Arizona, this 22nd day of August, 2016.

_____
Mayor Duane Blumberg

APPROVED AS TO FORM:

_____
Daniel J. Hochuli
Town Attorney

ATTEST:

_____
Lisa Cole, MMC
Town Clerk

EXHIBIT “A”

Amendment One to Sahuarita Contract No. 170010, an Intergovernmental Agreement Between the Town of Sahuarita and Pima County For Community Development Block Grant (CDBG) And Home Investment Partnership (HOME) Program Administration by Pima County

APPROVED
Town of Sahuarita
Department of Law

Town of Sahuarita Contract No. 170010

PIMA COUNTY COMMUNITY DEVELOPMENT AND NEIGHBORHOOD CONSERVATION DEPARTMENT

Program/Project Name:	Community Development Block Grant and HOME Investment Partnership Cooperative Agreement
Awardee:	Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, AZ 85629
DUNS No.:	
Contract Term:	July 1, 2016 – June 30, 2019
Amount:	No Cost
Funding:	U.S. Department of Housing and Urban Development
Federal Contract No.	N/A
Award Date:	N/A
Pima County Contract No.	CTN-CD-16*189

Pima County, a body politic and corporate of the State of Arizona ("County") and the Town of Marana, AZ, a municipal corporation in the State of Arizona ("Town") entered into the above-referenced Agreement to acknowledge and comply the requirements established by the U.S. Department of Housing and Urban Development ("HUD") for a Cooperative Agreement between jurisdictions of an Urban County.

AMENDMENT ONE

RECITALS

A. On June 21, 2016, County and Town submitted the Intergovernmental Agreement ("IGA" or "Agreement") to HUD seeking approval as an Urban County for receipt of Community Development Block Grant ("CDBG") and HOME Investment Partnership Program ("HOME") funds for federal fiscal years 2017, 2018 and 2019.

B. HUD reviewed the Agreement and did not approve the Agreement as written and executed by County and Town.

C. In order to receive HUD approval of the Agreement and, therefore, receive funding as an Urban County, it is necessary to amend the Agreement to include specific language requested by HUD.

NOW, THEREFORE, the parties agree to amend the IGA as follows:

1. **SECTION 1.0, TERM, EXTENSIONS AND AMENDMENTS**, is amended as follows:

   1.1. Paragraph 1.1 is amended to change the term of the Agreement:

   FROM: July 1, 2016 through June 30, 2019

   TO: July 1, 2017 through June 30, 2020

1.2. Paragraph 1.5 is deleted in its entirety and replaced with the following:

This Agreement will remain in full force and effect until the CDBG and/or HOME funds, and program income received (with respect to activities carried our during the three-year term of this Agreement, and any successive qualification periods) are expended and the funded activities completed. Neither County nor Town may terminate or withdraw from this Agreement while it remains in effect.

1.3. Paragraph 1.3 is amended to add:

Periodically, statutory or regulatory changes may require the Parties to amend this Agreement to add new provisions. The Parties may draft a separate amendment to this Agreement to include the new provision(s) rather than drafting a new cooperation agreement that contains the new provisions.

2. **SECTION 2.0, SCOPE OF SERVICES**, Paragraph 2.4.5 is added to read:

2.4.5. Town and County agree to:

2.4.5.1. Cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities;

2.4.5.2. Take all actions necessary to assure compliance with the urban county's certification under section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively furthering fair housing; and

2.4.5.3. Comply with Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975,

3. **SECTION 3.0, FUNDING** is amended as follows:

3.1 Paragraph 3.5 is added to read:

3.5 CDBG or HOME funds provided to the urban county may not be used for activities in, or in support of, any cooperation unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with the county's fair housing certification. Failure to comply with this provision may provide cause for funding sanctions or other remedial actions by HUD.

3.2 Paragraph 3.6 is added to read:

3.6 Town may not sell, trade, or otherwise transfer all or any portion of such funds to another such metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations. CDBG funds must be used for activities eligible under title I of the Act (*see* Consolidated and Further Continuing Appropriations Act, 2015, Pub.L. 113-235.)

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

4. **SECTION 11.0, NON-APPROPRIATION**, is amended to change "Notwithstanding any other provision in this Agreement" in the first sentence to read;

"Except as provided in Paragraph 1.5,"

All other provisions of the Agreement, not specifically changed by this amendment, shall remain in effect and be binding upon the parties.

THIS AGREEMENT MAY BE EXECUTED IN COUNTPARTS

PIMA COUNTY

_____
Chair, Board of Supervisors

Date: _____

ATTEST

_____
Clerk of the Board

Date: _____

APPROVED AS TO CONTENT:

_____
Director, Community Development
and Neighborhood Conservation

APPROVED AS TO FORM:

_____
Karen S. Friar, Deputy County Attorney

TOWN OF SAHUARITA

_____
Duane Blumberg, Mayor

Date: _____

ATTEST

_____
Town Clerk

_____
Legal Counsel, Town of Sahuarita

Town Council Meeting Agenda

Pursuant to A.R.S. § 38-431.02 notice is hereby given to the public that the Sahuarita Town Council will hold a regular meeting at the date and time specified below at the Sahuarita Town Hall Council Chambers, 375 West Sahuarita Center Way, Sahuarita, Arizona. Members of the Town of Sahuarita Council will attend either in person or by telephone conference call.

To better serve our community, the Council Chambers is wheelchair accessible. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Town Clerk's Office at 520-822-8801. Requests should be made no later than three working days prior to the meeting to arrange the accommodation.

August 22, 2016
REGULAR MEETING
AT OR AFTER 6:30 P.M.

1. **Call to Order**

2. **Pledge of Allegiance**

   The Pledge of Allegiance will be led by Anya Patton, a second grade student at Sahuarita Primary School.

3. **Invocation**

   The Invocation will be given by Pastor Steve Patton from Gracepoint Lutheran Church.

   Our invocations are provided by volunteers, and presenters will be accepted and welcomed regardless of religious affiliation. Interested parties may contact the Town Clerk.

4. **Roll Call**

5. **Approval of Agenda**

6. **Call to the Public**

   At this time, any member of the public is invited to address the Town Council on any issue which is on tonight's Consent Agenda or on any issue which the Town Council can lawfully act upon at a future meeting. Written comments regarding any item on the agenda or on any issue which the Town Council can lawfully act upon may be submitted prior to the beginning of the council meeting for distribution to the Town Council. Pursuant to the Arizona Open Meeting Laws, the Council may not discuss the items, but individual members of the Council may respond to criticism made by those who have addressed the Council, may ask staff to review the matter, or may ask that the matter be placed on a future agenda.

7. **Consent Agenda**

   A. **Approval of the June 27, 2016 Regular, Special and Executive (Public Portion) Meeting Minutes.**

B. **Adoption of Resolution No. 2016-0468, amending the Town's Personnel Policy Manual by amending portions of Section 2-4-3 of Chapter 2 "Wages," for the purpose of correcting an oversight to this chapter made when the May 9, 2016, amendments were adopted, and making the proposed amended text consistent with previously amended text.**

C. **Adoption of Resolution No. 2016-0479, authorizing the Town to enter into Contract No. 170015, an Intergovernmental Agreement with Pima County for the purpose of setting forth the terms for incarceration of the Town's prisoners by Pima County.**

D. **Adoption of Resolution No. 2016-0480, authorizing the Town to enter into a modification to an Intergovernmental Agreement with The Arizona Department of Revenue, Sahuarita Contract No. 160010, for the collection of taxes.**

E. **Approval of Contract No. 170013, for Emergency Food Services with the Community Food Bank in Green Valley - Sahuarita Food Bank in the amount of $42,000, for the term of one (1) year, commencing August 23, 2016 and terminating August 22, 2017.**

F. **Approval of Cooperative Purchasing Contract Nos. 170019, Underwood Bros., Inc. dba/AAA Landscape; 170020, M. Anderson Construction Corporation; 170021, Northwest Landscaping, LLC; and 170022, Santa Rita Landscaping, Inc. for Landscape Construction Services; all commencing August 24, 2016 and terminating September 30, 2017, each not to exceed $100,000.**

8. **Staff presentation on the findings of the Camino Rancheria/Rancho Sahuarita Boulevard Intersection Alternatives Study and approval of Professional Services Contract No. 170018 with Psomas, Inc., for Rancho Sahuarita Boulevard Turn Lanes; not-to-exceed $58,975, commencing August 23, 2016 and terminating March 31, 2017.**

9. **Council and Town Manager Reports and Requests**

10. **Adjournment**

Action may be taken by the Town Council on any item listed on this agenda. Council may vote to go into executive session pursuant to A.R.S. § 38-431.03 (A) (3) for discussion or consultation for legal advice with the Town Attorney concerning any matter listed on this agenda.

Town Council Agenda Communication

MEETING DATE: August 22, 2016 ***DATE PREPARED:*** August 10, 2016

AGENDA ITEM **7A**

TO: Honorable Mayor and Council

FROM: Lisa Cole, MMC, Town Clerk

SUBJECT: **Approval of the June 27, 2016 Regular, Special and Executive Meeting (Public Portion) Minutes.**

☐ **Economic Development** ☐ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☐ **Quality of Life** ☒ **Other**

GOALS/OTHER: Sahuarita Town Code 2.15.040 (Consent Agenda)

FINANCIAL / BUDGET SUMMARY

1. Fund(s) Impacted:
2. Available Budget/Project Capacity ($):

STAFF RECOMMENDATION

Staff recommends approval of the attached minutes.

SUGGESTED MOTION

I move to approve the minutes as submitted (or amended).

DISCUSSION

Draft minutes submitted for Town Council approval.

ATTACHMENTS

1. June 27, 2016 Regular, Special and Executive Meeting (Public Portion) Minutes Draft

REGULAR, SPECIAL and EXECUTIVE SESSION (PUBLIC PORTION) MINUTES
JUNE 27, 2016

The Mayor and Council of the Town of Sahuarita met in the Town Hall Council Chambers, 375 West Sahuarita Center Way, Sahuarita, Arizona on Monday, June 27, 2016.

1. **Call to Order**

   Mayor Blumberg called the meeting to order at approximately 6:32 p.m.

2. **Pledge of Allegiance**

   The Pledge of Allegiance was led by Analeiha Contreras, an eighth grade student at Anza Trail Elementary School.

3. **Invocation**

   The invocation was given by Officer Michael Blevins, Chaplain from the Sahuarita Police Department.

4. **Roll Call**

   PRESENT: Council Members Kara Egbert, Gil Lusk, Tom Murphy, Lynne Skelton, Vice Mayor Bill Bracco and Mayor Duane Blumberg

   ABSENT: Council Member Melissa Hicks

   ALSO PRESENT: Town Manager L. Kelly Udall, Deputy Town Attorney Jessica Silva and Town Clerk Lisa Cole

   Mayor Blumberg welcomed House of Representative, District 2, J. Christopher Ackerley.

5. **Presentations**

   Mayor Blumberg declared July 1-31, 2016 as Parks and Recreation Month.

6. **Approval of Agenda**

   MOTION was made by Council Member Skelton, seconded by Council Member Murphy to approve the agenda. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

DRAFT

7. Call to the Public

Jay Karlik, Captain/Public Information Officer for Rural Metro Fire Department, gave a brief update on community events Rural Metro has participated in with the citizens of the Town of Sahuarita.

A copy of the community events was distributed during the meeting.

8. Consent Agenda

A. Approval of the June 13, 2016 Regular and Executive (Public Portion) Meeting Minutes.

B. Adoption of Resolution No. 2016-0471, authorizing the town to enter into Amendment No. 01 to Sahuarita Contract No. CO14-0032, an Intergovernmental Agreement between the Town of Sahuarita and Pima County providing for Animal Control Services to be provided by the county to the town.

C. Adoption of Resolution No. 2016-0472, authorizing the town to enter into contract No. 170010, an Intergovernmental Agreement between the Town of Sahuarita and Pima County for the Community Development Block Grant Program and the Homeownership Partnership Program.

D. Adoption of Resolution No. 2016-0477, extinguishing right-of-way easements (private streets) established by the Final Plat for Entrada La Villita, Lots 1 through 74 and Common Areas "A" (Private Streets), "B" (Signage, Landscaping, Parks, Recreation & Public Utilities) and "C" (Drainage, Public Sewer & Public Utilities), recorded in Pima County at Book 62, Page 14, Sequence Number 20070120346.

E. Approval of the Amended Final Plat for Entrada La Villita (Case No. SA12-14-00004).

F. Approval of Amendment No. Two (2) for Contract No. 160005 with New Image Building Services, LLC, for custodial services for the municipal buildings at Town Hall, Police Department, Courts, Wastewater and Parks & Recreation for a total not-to-exceed $87,478.08; commencing July 1, 2016 and terminating June 30, 2017.

G. Approval of Amendment One (1) to Contract No. 160015 with Western Refining Southwest, Inc., for fleet card services from July 9, 2016 through July 8, 2017 at an annual cost not-to-exceed $184,700.00.

H. Approval of the Amended Final Plat for Quail Creek II, Unit 22 (Case No. SA12-14-00006).

I. Approval of the Final Plat for Quail Creek II, Unit 33B (Case No. SA12-14-00001).

DRAFT

J. **Authorization for the Town Manager to enter into Contracts, including those exceeding $25,000.00, with the approval of the Mayor, through August 21, 2016.**

K. **Adoption of Resolution No. 2016-0474, extinguishing easements established by the Final Plat for Madera Highlands Villages 1-10 and 15, recorded in Pima County at Book 62, Page 62, Sequence Number 20070990398**

MOTION was made by Council Member Murphy, seconded by Council Member Skelton to adopt the consent agenda. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

9. Discussion and overview of the Tucson Electric Power (TEP) Rate Case Filing by Larry Lucero, Senior Director of Government Relations and Economic Development for TEP.

Mr. Lucero briefed the council on TEP's rate design and the proposed plan for new electrical rates and fees that was submitted to the Arizona Corporation Commission for approval. Mr. Lucero responded to comments and questions from the council.

A handout was distributed during the meeting.

10. Discussion and possible appointments to the Town of Sahuarita Public Safety Personnel Retirement System Board, Planning and Zoning Commission, Board of Adjustment and Parks and Recreation Commission.

Mayor Blumberg introduced Clark Munger and nominated Mr. Munger for reappointment to the PSPRS Board for a four year term to expire on June 30, 2020.

MOTION was made by Mayor Blumberg, seconded by Council Member Murphy to reappoint Clark M. Munger to the Public Safety Personnel Retirement System Board. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

Vice Mayor Bracco introduced and nominated Lee Cornelison to the Planning and Zoning Commission, Fermin Samorano (absent) to the Board of Adjustment and Patti Woolley to the Parks and Recreation Commission for four year terms to expire on June 30, 2020.

MOTION was made by Vice Mayor Bracco, seconded by Council Member Lusk to reappoint Lee Cornelison to the Planning and Zoning Commission, Fermin Samorano to the Board of Adjustment and Patti Woolley to the Parks and Recreation Commission. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

Council Member Skelton nominated Tim Trosper to the Planning and Zoning Commission, Nubia Bertsch to the Board of Adjustment and Sergio Arellano to the Parks and Recreation Commission.

Council Member Skelton on behalf of Council Member Hicks nominated Ken Woodward to the Planning and Zoning Commission, Charles Oldham to the Board of Adjustment and Vincent Luna to the Parks and Recreation Commission for four year terms to expire on June 30, 2020.

DRAFT

MOTION was made by Council Member Skelton, seconded by Council Member Murphy to reappoint Tim Trosper to the Planning and Zoning Commission, Nubia Bertsch to the Board of Adjustment and Sergio Arellano to the Parks and Recreation Commission and to reappoint Ken Woodward to the Planning and Zoning Commission, Charles Oldham to the Board of Adjustment and Vincent Luna to the Parks and Recreation Commission. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

Council Member Lusk introduced and nominated Sheldon **"**Shel" Zatkin to the Parks and Recreation Commission and Cathy Maghran to the Planning and Zoning Commission for four year terms to expire June 30, 2020.

MOTION was made by Council Member Lusk, seconded by Council Member Murphy to reappoint Sheldon **"**Shel" Zatkin to the Parks and Recreation Commission and to appoint Cathy Maghran to the Planning and Zoning Commission. **MOTION CARRIED UNANIMOUSLY,**(Council Member Hicks absent).

11. Discussion and possible adoption of Resolution No. 2016-0473, updating and amending the Town's Financial and Budgetary Policies.

A.C. Marriotti, Finance Director, highlighted the changes to the Town's Financial and Budgetary Policies.

Mr. Marriotti responded to the Council's questions.

MOTION was made by Council Member Egbert, seconded by Vice Mayor Bracco to adopt Resolution No. 2016-0473. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

Mayor Blumberg announced the suspension of the Regular Meeting at approximately 7:24 p.m.

SPECIAL MEETING

12. Public hearing, discussion and possible adoption of Resolution No. 2016-0476, adopting the Fiscal Year 2017 Budget in the amount of $50,976,230.00.

A.C. Marriotti, Finance Director, presented a brief summary of the Fiscal Year 2017 Budget in the amount of $50,976,230.00.

Mr. Marriotti responded to the Council's questions.

Mayor Blumberg opened the public hearing and seeing no motion, closed the public hearing.

MOTION was made by Vice Mayor Bracco, seconded by Council Member Murphy to adopt Resolution No. 2016-0476. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

DRAFT

A copy of the presentation was distributed during the meeting.

13. **Discussion and possible adoption of Resolution No. 2016-0475, adopting the Capital Improvement Plan for the Fiscal Years 2017-2021 in the amount of $17,455,330.00.**

A.C. Marriotti, Finance Director, gave an overview of the Capital Improvement Plan for the Fiscal Years 2017-2021 in the amount of $ 17,455,330.00.

Mr. Marriotti responded to the Council's questions.

Mayor Blumberg opened the public hearing and seeing no motion, closed the public hearing.

MOTION was made by Council Member Murphy, seconded by Council Member Lusk to adopt Resolution No. 2016-0475. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

A copy of the presentation was distributed during the meeting.

CONTINUATION OF REGULAR MEETING

Mayor Blumberg reconvened the regular meeting at approximately 7:42 p.m.

14. **Discussion and possible approval for the authorization to procure six (6) police patrol vehicles from Ford utilizing Arizona State Contract No. ADSPO13-038802 and the services of Creative Communications to install emergency equipment, radios and computer terminals on the vehicles in an amount not-to-exceed $280,000.00.**

Mr. Udall introduced the item and explained that the item was included in the Fiscal Year 2017 Budget.

MOTION was made by Vice Mayor Bracco, seconded by Council Member Murphy, to authorize the procurement of six (6) police patrol vehicles in an amount not-to-exceed $280,000.00. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

15. **Discussion and overview on the Quail Crossing Boulevard Extension Project, CIP Project No. 05P01.**

Mayor Blumberg introduced the item and explained it was for discussion only and no action would be taken.

Sheila Bowen, Public Works Director and Town Engineer, provided a high level overview of the Quail Crossing Boulevard Extension Project and a brief history of the project which included, funding sources and availability; evidence for community support; the probability of improved medical emergency response times and proposed costs for the project.

Ms. Bowen responded to the Council's questions.

Mayor Blumberg opened the item for public comment.

DRAFT

Larry Hyde, a resident from Quail Creek, voiced his concerns regarding the proposed Quail Creek Boulevard in conjunction with the railroad crossing and accidents. In addition, Mr. Hyde expressed his concerns that the funds for the project could be used elsewhere.

L. Kelly Udall, Town Manager, clarified the funds for this project could be used only for the Quail Creek Boulevard Extension Project.

Mayor Blumberg requested that Mr. Hyde's concerns be addressed in the Town's future plans.

Mike Loomis, a resident from Madera Highlands, spoke in support of the Quail Creek Boulevard Extension Project.

Marlene Walker requested confirmation that the map of the proposed road published in the Green Valley News was the proposed alignment for the road.

No action was taken on this item.

16. **Discussion and possible approval of the submission of the Economic Development Administration Pre-Application for a grant for the proposed Sahuarita Advanced Manufacturing and Technology Center.**

Victor Gonzalez, Economic Development Manager, presented an overview of the proposed Project (SAMTEC) and steps staff completed to develop the project and prepare the Economic Development Grant Pre-application.

Mr. Gonzalez responded to the Council's questions.

Vice Mayor Bracco left at 8:11 p.m. and returned at 8:13 p.m.

MOTION was made by Vice Mayor Bracco, seconded by Council Member Skelton, to approve the submission of the Economic Development Administration Pre-Application. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

17. **Council and Town Manager Reports and Requests**

The Council and Town Manager reported on current events.

MOTION was made by Council Member Murphy, seconded by Vice Mayor Bracco, to convene in Executive Session. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

The Town Council, Town Manager, Deputy Town Attorney, Town Clerk and Economic Development Manager, were invited to join the Executive Session.

EXECUTIVE SESSION

18. **Executive session pursuant to A.R.S. § 38-431.03 (7), for discussion and consultation with the Town's representatives in order to consider its position and instruct its representatives**

regarding negotiations for the purchase of real property related to the Sahuarita Advanced Manufacturing and Technology Center.

The Council convened in Executive Session at approximately 8:44 p.m.

MOTION was made by Council Member Lusk, seconded by Council Member Murphy, to reconvene the regular meeting. **MOTION CARRIED UNANIMOUSLY,** (Council Member Hicks absent).

The regular meeting was reconvened at approximately 9:23 p.m.

19. Adjournment

Mayor Blumberg adjourned the meeting at approximately 9:23 p.m.

_____
Mayor Duane Blumberg

ATTEST:

_____
Lisa Cole, MMC
Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Meeting of the Town Council of the Town of Sahuarita held on the 27th day of June 2016. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 22nd of August, 2016.

_____
Lisa Cole, MMC
Town Clerk
LC:lc

DRAFT

Town Council Agenda Communication

MEETING DATE: August 22, 2016 **DATE PREPARED:** August 8, 2016

AGENDA ITEM: 7B

TO: Honorable Mayor and Council

FROM: Michelle Malott, Human Resources Director

SUBJECT: **Adoption of Resolution No. 2016-0468, amending the Town's Personnel Policy Manual by amending portions of Section 2-4-3 of Chapter 2 "Wages," for the purpose of correcting an oversight to this chapter made when the May 9, 2016, amendments were adopted, and making the proposed amended text consistent with previously amended text.**

☐ **Economic Development** ☐ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☐ **Quality of Life** ☒ **Other**

GOALS/OTHER:

FINANCIAL / BUDGET SUMMARY

1. Fund(s) Impacted: Not Applicable
2. Available Budget/Project Capacity ($): Not Applicable

STAFF RECOMMENDATION

Staff recommends adoption of Resolution No. 2016-0468.

SUGGESTED MOTION

I move to adopt Resolution No. 2016-0468.

DISCUSSION

Revisions to the Personnel Policy Manual reflect a change to Chapter 2 – Wages, Article 2-4 Overtime Pay, Section 2-4-3(B) pertaining to compensatory time.

The Mayor and Council previously amended Chapter 2, Article 2-4, Section 2-4-3(A), pertaining to compensatory time, but at the time of the amendment Section 2-4-3(B), also pertaining to compensatory time, was inadvertently excluded from the amendment.

The reason to further amend the policy is to make all portions of Section 2-4-3 consistent with the previously adopted text, which text was amended as a result of the negotiations with the Sahuarita Police Officers Association. Adoption of the proposed amendment to this portion will make Section 2-4-3 consistent throughout, and that the amendment is in the best interest of the Town, its residents and employees.

ATTACHMENTS

1. Resolution No. 2016-0468

SAHUARITA RESOLUTION NO. 2016-0468

A RESOLUTION OF THE TOWN OF SAHUARITA, ARIZONA, AMENDING THE TOWN'S PERSONNEL POLICY MANUAL BY AMENDING PORTIONS OF SECTION 2-4-3 OF CHAPTER 2 "WAGES," FOR THE PURPOSE OF CORRECTING AN OVERSIGHT TO THIS CHAPTER MADE WHEN THE MAY 9, 2016, AMENDMENTS WERE ADOPTED, AND MAKING THE PROPOSED AMENDED TEXT CONSISTENT WITH PREVIOUSLY AMENDED TEXT.

WHEREAS, the Town has determined that it is necessary for the efficient administration of the Town, and is in the best interests of its employees, to have a comprehensive personnel policy manual (the "Manual"); and

WHEREAS, Chapter 2 "Wages," of the Manual provides for the pay plans, merit increase and, among other things, overtime pay for employees; and

WHEREAS, on May 9, 2016, by adoption of Resolution No. 2016-0463, Mayor and Council amended Section 2-4-3(A) (pertaining to compensatory time) of Chapter 2 of the Manual; and

WHEREAS, at the time of the amendment, Section 2-4-3(B), also pertaining to compensatory time, was inadvertently excluded from the amendment; and

WHEREAS, the Mayor and Council wish to further amend the Manual in order to make all portions of Section 2-4-3 consistent with the previously adopted text, which text was amended a result of the negotiations with the Sahuarita Police Officers Association; and

WHEREAS, the Mayor and Council have reviewed Section 2-4-3(B) of Article 2-4 "Overtime Pay," attached here to as Exhibit "A," and find that adoption of the proposed amendment to this portion will make Section 2-4-3 consistent throughout, and that the amendment is in the best interest of the Town, its residents and employees; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Sahuarita, Arizona, as follows:

Section 1. The changes to all portions of the Personnel Policy Manual attached hereto are made with deleted language shown by ~~strikeout~~ and added language shown in **BOLDED, ALL CAPS** text.

Section 2. The amendments to Section 2-4-3(B) of Article 2-4 "Overtime Pay," of Chapter 2 "Wages," as set forth in Exhibit "A," attached hereto, are hereby adopted and incorporated herein by this reference.

Section 3. The various Town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

Section 4. All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the council in conflict with the provisions of this Resolution are hereby repealed, effective as of the effective date of this Resolution.

Section 5. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Sahuarita, Arizona, this 22th day of August, 2016.

_____
Mayor Duane Blumberg

APPROVED AS TO FORM:

_____
Daniel J. Hochuli
Town Attorney

ATTEST:

_____
Lisa Cole, MMC
Town Clerk

EXHIBIT "A"

TOWN OF SAHUARITA
PERSONNEL POLICY MANUAL
CHAPTER 2 – WAGES

...

ARTICLE 2-4 OVERTIME PAY

...

Section 2-4-3 B. When such employee has used a portion of the sixty (60) hours~~, one hundred (100) hours for sworn police department employees,~~ of compensatory time, he/she shall then regain the option of accumulating compensatory time, with the approval of the Personnel Director, until he/she has once again accumulated sixty (60) hours.~~ (one hundred (100) hours for sworn police department employees).~~

Town Council Agenda Communication

MEETING DATE: August 22, 2016 **DATE PREPARED:** August 8, 2016

AGENDA ITEM: 7C

TO: Honorable Mayor and Council

FROM: John Noland, Chief of Police

SUBJECT: **Adoption of Resolution No. 2016-0479, authorizing the Town to enter into Contract No. 170015, an Intergovernmental Agreement with Pima County for the purpose of setting forth the terms for incarceration of the Town's prisoners by Pima County.**

☐ **Economic Development** ☐ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☒ **Quality of Life** ☐ **Other**

GOALS/OTHER: Goal 1 – Assure the Town continues to be a safe community.

FINANCIAL / BUDGET SUMMARY

1. Fund(s) Impacted: Police Department General Budget Funds
2. Available Budget/Project Capacity: Police Department General Budget Funds

STAFF RECOMMENDATION

Staff recommends approval of Resolution No. 2016-0479.

SUGGESTED MOTION

I move to adopt Resolution No. 2016-0479.

DISCUSSION

The Sahuarita Police Department requests Town Council approval to enter into Contract No. 170015 with Pima County, which will allow the Police Department to continue to use the Pima County Jail for the incarceration of the Town's prisoners.

Charges by the County to the Town for the first day of incarceration services has increased from $279.51 to $299.53, an increase of $20.02 for the first day, and has increased for subsequent days of incarceration from $85.15 to $89.02, an increase of $3.87 per day for subsequent days

ATTACHMENTS

1. Resolution No. 2016-0479

SAHUARITA RESOLUTION NO. 2016-0479

A RESOLUTION OF THE TOWN OF SAHUARITA, ARIZONA, AUTHORIZING THE TOWN TO ENTER INTO TOWN OF SAHUARITA CONTRACT NO. 170015, AN INTERGOVERNMENTAL AGREEMENT WITH PIMA COUNTY, FOR THE PURPOSE OF SETTING FORTH THE TERMS FOR INCARCERATION OF THE TOWN'S PRISONERS BY PIMA COUNTY.

WHEREAS, the Town of Sahuarita requires the use of an appropriate facility for incarceration of its prisoners; and

WHEREAS, the Mayor and Council of the Town of Sahuarita have determined that the Pima County Jail, owned and operated by Pima County, Arizona, will fulfill the Town's needs; and

WHEREAS, A.R.S. 11-952 grants the Town of Sahuarita the authority to enter into intergovernmental agreements; and

WHEREAS, the Town of Sahuarita and Pima County are currently parties to an intergovernmental agreement providing for the incarceration of the Town's prisoners; and

WHEREAS, said intergovernmental agreement expires on June 30, 2016; and

WHEREAS, the amount charged by the County to the Town for the first day of incarceration services has increased from $279.51 to $299.53, an increase of $20.02 for the first day, and has increased for subsequent days of incarceration from $85.15 to $89.02, an increase of $3.87 per day for subsequent days; and

WHEREAS, the Mayor and Council have determined that approval of Town of Sahuarita Contract No. 170015, the Intergovernmental Agreement between the Town of Sahuarita and Pima County for payment for the Incarceration of Municipal Prisoners, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is in the best interest of the Town and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Sahuarita, Arizona, as follows:

Section 1. The Town is hereby authorized to enter into Town of Sahuarita Contract No. 170015, the Intergovernmental Agreement between Pima County, Arizona and the Town of Sahuarita for Incarceration of Municipal Prisoners, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor of the Town of Sahuarita is hereby authorized to execute said Agreement on behalf of the Town of Sahuarita, and the Town staff is hereby authorized and directed to take all steps necessary to implement said Agreement and give it effect.

Section 3. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to implement said Intergovernmental Agreement and give it effect.

Section 4. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution and sections of the Town Code.

Section 5. All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the council in conflict with the provisions of this Resolution are hereby repealed, effective as of the date of this Resolution. All internal references within the Town Code to any affected provision are hereby updated.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Sahuarita, Arizona, this 22nd day of August, 2016.

_____
Mayor Duane Blumberg

APPROVED AS TO FORM:

_____
Daniel J. Hochuli,
Town Attorney

ATTEST:

_____
Lisa Cole, MMC
Town Clerk

EXHIBIT "A"

Town of Sahuarita Contract No. 170015
Intergovernmental Agreement Between the Town of Sahuarita, Arizona,
And Pima County, Arizona, for Incarceration of Municipal Prisoners.

APPROVED
Town of Sahuarita
Department of Law

Town of Sahuarita Contract No. 170015

INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND TOWN OF SAHUARITA FOR PAYMENT FOR THE INCARCERATION OF MUNICIPAL PRISONERS

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("County") and the Town of Sahuarita, a municipal corporation ("Town") pursuant to A.R.S. § 11-952.

Recitals

County and Town may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.

County and Town desire to enter into an agreement to incarcerate Town's municipal prisoners in the Pima County Adult Detention Complex ("PCADC").

NOW, THEREFORE, County and Town, pursuant to the above, mutually agree as follows:

Agreement

I. Purpose

This IGA sets forth the terms and conditions under which Town's municipal prisoners shall be incarcerated in the PCADC.

II. Scope

County shall receive and detain all Town municipal prisoners who are medically fit to be incarcerated by County. County shall provide booking services, and after booking provide for the care, feeding and medical care of said prisoners.

"Town municipal prisoner" shall mean any person who has been incarcerated as a result of a charge pending in the Town of Sahuarita Court, or as a result of an agreement between the Town and another jurisdiction to allow the person to serve his sentence locally, or has been sentenced pursuant to an order of the Sahuarita Town Court and for whom the Town has the legal obligation to provide or pay for prisoner housing. A prisoner arrested by Town of

Sahuarita Police Department solely on another governmental entity's warrant is not a Town prisoner.

In regard to booking and related services and procedures, upon submission of the completed booking document to the PCADC Intake Support Specialist, County will immediately accept into custody all Town arrestees that present no obvious health issues that make the prisoner medically unacceptable for booking. Town agrees that such conditional acceptance will shorten the time officers spend in the booking process and benefit the Town. Within the initial ninety (90) minutes, County medical providers shall make a determination as to the prisoner's medical condition. Town agrees that if the prisoner presents a serious, emergent medical problem requiring hospital examination or medical rejection for booking within ninety (90) minutes of the time of conditional acceptance, Town shall send an officer to the PCADC to transport the prisoner for such medical examination or care as may be medically required as soon as possible. If a prisoner is taken from the PCADC for medical evaluation and returned to be incarcerated, Town shall not be charged twice for the first day billing rate of $299.53. By conditionally accepting the prisoner for the initial ninety (90) minute evaluation period, County does not in any way accept responsibility for the cost of medical care to be provided to that prisoner should it be determined by County that the prisoner requires hospitalization or that the prisoner is medically unacceptable for booking.

Transportation of prisoners to Town of Sahuarita Court or other locations, only as ordered by Town of Sahuarita Court, shall be the responsibility of the Town. County shall be responsible for transportation of prisoners for medical care after the prisoner has been in PCADC custody for ninety (90) minutes or more.

III. Financing

Town shall pay a first day billing rate of $299.53 to cover booking and intake expenditures. For each billable day following the first day, Town shall pay $89.02 per day. The two rates are applicable to the period July 1, 2016 through June 30, 2017. The billing day as defined herein applies to each Town prisoner who is an inmate in, or under the control of the PCADC.

A. Criteria and Rules Governing Billing:

1. A "billable day" means that period commencing at 0000 hours and ending as 2359 hours that same day, or any fractional part thereof, of any day the Town prisoner is in the custody or control of the PCADC.

2. A "modified billable day" means a billable day which is modified to reduce billing to one billable day at the first rate. "Modified billable days" are only applicable when applied to pretrial Town defendants who are booked between 1800-2359 hours one day and released on the Town charge at the first AM initial appearance the following day.

3. "Local limited jurisdiction courts" means those courts whose criminal jurisdiction is limited to misdemeanor offenses.

B. Criteria for Assessment of Billing:

1. The costs of incarceration of Town prisoners shall commence on the day the prisoner is booked or held based on a Town charge into, or sentenced by, Town of Sahuarita Court. Costs for incarceration shall cease under the guidelines established under the definition of "billable day." For Town pretrial defendants booked between 1800 and 2400 hours one day and released on all Town charges at or by the AM initial appearance the following morning, the Town shall be billed according to the guidelines established under the definition of "modified billable day."

2. When a prisoner is in custody for a charge or sentence from more than one local limited jurisdiction court, the billing charges for days of joint custody shall be apportioned. Costs for incarceration for days of joint custody shall be apportioned evenly based on the guidelines established under the definition of "billable day" among those jurisdictions from which the joint custody arises.

3. A Town prisoner who is subsequently charged into Pima County Superior Court and held in-custody on felony charges will cease to accrue billing charges after 2359 hours on the date that custody for felony charges is established. Felony custody shall take effect on the date when charging information is received in the PCADC Records Section and the prisoner is actually being held in-custody on the felony charges.

4. In the event of an escape, billing charges will cease to accrue after 2359 hours on the day of escape. In the event of a failure to report from authorized leave, billing charges will cease after 2359 hours of the last day of custody. Billing charges will begin again on the day the prisoner is recaptured or returned to custody and is actually being held in the PCADC.

County will submit a statement of Town prisoner charges on a monthly basis. This statement shall provide information in alphabetical order as follows: name of prisoner, booking date, release date, indication of booking day billing or subsequent day billing, billing period, daily rates, total billing days, and the total bill.

Any individual prisoner charges disputed shall be made known to the County within thirty (30) days after receipt of the monthly billing. If Town notifies County of a dispute within thirty (30) days of receipt of the monthly billing, Town may withhold payment on those specific prisoners for whom billing is disputed until the dispute is resolved. No dispute will be accepted

if not made within thirty (30) days after receipt of the monthly billing. Disputes about the billing statement shall be jointly reviewed by both parties and satisfactorily resolved within forty-five (45) days of the monthly billing. All charges shall be paid within sixty (60) days of receipt of the monthly billing, excluding disputed charges. Disputed charges shall be paid within thirty (30) days of resolution of the dispute. Charges remaining unresolved after the sixty (60) day period may be arbitrated by a mutually accepted third party. Town agrees to pay interest on outstanding charges beginning on the tenth day after resolution of the billing at a rate of 10% per annum until paid. Town agrees that when a check is sent to County in payment of a previously disputed charge, Town will attach an invoice detailing what specific charges are being paid. Town agrees that when funds are withheld due to a disputed charge, the specific charge disputed and the amount of payment being withheld will be specified on an invoice attached to the payment check for the period in which the disputed charge was included. Town agrees to attach to each check submitted to County an invoice indicating the dates for which that check is to be applied.

Neither Party shall be obligated to the other for any costs incurred pursuant to this IGA except as proved herein.

IV. Term

This IGA is for the period July 1, 2016 through June 30, 2017 and shall be effective upon execution by the governing boards of the Parties. The Parties shall have the option of extending this IGA for four (4) additional one-year periods or any portion thereof. Any revisions or extensions of this IGA shall be by written amendment executed by the governing boards of the Parties.

V. Termination

Either Party may at any time and without cause terminate this IGA by providing the other Party ninety (90) days written notice of intent to terminate.

VI. Jurisdiction

Nothing in this IGA shall be construed as either limiting or extending the statutory jurisdiction of the Parties.

VII. Indemnification

To the extent permitted by law, each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

VIII. Insurance

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

a) Commercial General Liability in the amount of $1,000,000.00 combined single limit Bodily Injury and Property Damage.

b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of $1,000,000.00 combined single limit or $1,000,000.00 Bodily Injury, $1,000,000.00 Property Damage.

c) If required by law, workers' compensation coverage including employees' liability coverage.

Parties to this IGA shall provide thirty (30) days written notice to all other Parties of cancellation, non-renewal or material change of coverage.

The above requirement may be alternatively met through self insurance pursuant to A.R.S. §§ 11-261 and 11-981 (or if a school district, § 15-382) or participation in an insurance risk pool under A.R.S. § 11.952.01 (if a school district, § 15-382), at no less than the minimal coverage levels set forth in this article. Parties to this agreement shall provide thirty (30) days written notice to all other Parties of cancellation, non-renewal or material change of coverage.

IX. Compliance With Laws

The Parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this IGA. The laws and regulations of the State of Arizona shall govern the rights of the Parties, the performance of this IGA and any disputes hereunder. Any action relating to this IGA shall be brought in an Arizona court in Pima County.

X. Arbitration

The Parties agree to be bound by arbitration, as provided by in Arizona Revised Statutes § 12-1501 *et. seq.*, to resolve disputes arising out of this IGA where the sole relief sought is monetary damages not in excess of the jurisdictional limit set by the Pima County Superior Court.

XI. Non-Discrimination

The Parties shall not discriminate against any County or Town employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex,

disability or national origin in the course of carrying out their duties pursuant to this IGA. The Parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this IGA by reference, as if set forth in full herein.

XII. ADA

The Parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

XIII. Severability

If any provision of this IGA, or any application thereof to the Parties or any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this IGA which can be given effect, without the invalid provision or application and to this end the provisions of this IGA are declared to be severable.

XIV. Conflict of Interest

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

XV. Non-Appropriation

Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, County shall have no further obligation to Town other than for payment for services rendered prior to cancellation.

XVI. Legal Authority

Neither Party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either Party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, shall be null and void, and no recovery may be had by either Party against the other for lack of performance or otherwise.

XVII. Worker's Compensation

Each Party shall comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each Party is solely responsible for the payment of worker's compensation benefits for its employees.

XVIII. No Joint Venture

It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between County and any Town employees, or between Town and any County employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

XIX. No Third Party Beneficiaries

Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affects the legal liability of either Party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

XX. Notices

Any notice required or permitted to be given under this IGA shall be in writing and shall be served by delivery or by certified mail upon the other Party as follows (or at such other address as may be identified by a party in writing to the other party):

County:

Pima County Sheriff's Department
Corrections Bureau Chief
1750 E. Benson Hwy.
Tucson, AZ 85714

Town:

TOWN OF SAHUARITA
315 West Sahuarita Center Way
Sahuarita, AZ 85629

With copies to:

County Administrator
130 West Congress Street, 10th Floor
Tucson, Arizona 85701

Clerk of the Board
130 West Congress, 5th Floor
Tucson, Arizona 85701

XXI. Entire Agreement

This document constitutes the entire Agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This IGA shall not be modified, amended, altered or extended except through a written amendment signed by the Parties.

In Witness Whereof, County has caused this Intergovernmental Agreement to be executed by the Chair of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board, and Town has caused this Intergovernmental Agreement to be executed by the Mayor upon resolution of the Town Council and attested to by the Town Clerk:

PIMA COUNTY:	**TOWN OF SAHUARITA**
_____	_____
Chair, Board of Supervisors	Mayor
_____	_____
Date	Date
_____	_____
Clerk, Board of Supervisors	Town of Sahuarita Clerk
_____	_____
Date	Date

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the Town of Sahuarita has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

PIMA COUNTY:

Deputy County Attorney

TOWN OF SAHUARITA

Town of Sahuarita Attorney

TOWN COUNCIL AGENDA COMMUNICATION

MEETING DATE: August 22, 2016 ***DATE PREPARED:*** August 9, 2016

AGENDA ITEM: **7D**

TO: Honorable Mayor and Council

FROM: A.C. Marriotti, Finance Director

SUBJECT: **Adoption of Resolution No. 2016-0480, authorizing the Town to enter into a modification to an Intergovernmental Agreement with The Arizona Department of Revenue, Sahuarita Contract No. 160010, for the collection of taxes.**

☐ **Economic Development** ☐ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☐ **Quality of Life** ☒ **Other**

GOALS/OTHER: Contractual

FINANCIAL / BUDGET SUMMARY

1. Fund(s) Impacted: Not Applicable
2. Available Budget/Project Capacity ($): Not Applicable

STAFF RECOMMENDATION

Staff recommends adoption of Resolution No. 2016-0480.

SUGGESTED MOTION

I move to adopt Resolution No. 2016-0480.

DISCUSSION

Last summer all cities and towns entered into a new Intergovernmental Agreement (IGA) with the Department of Revenue for the administration of Transaction Privilege Tax, as required under A.R.S. § 42-6001. The IGA allowed for the parties to modify the agreement if necessary by mutual agreement. Several issues were presented over the course of the past year that did indeed need to be addressed, so a review process was initiated by the Finance Department working with the League of Arizona Cities and Towns and key city and town representatives. The IGA amendment is the result of this review effort. The League of Arizona Cities and the Town have prepared a summary of changes that provides an explanation/justification of the proposed amendments.

This "Modification to Intergovernmental Agreement Between The State of Arizona and City/Town" constitutes an extension of the existing agreement with the noted changes, effective from and after July 1, 2016.

ATTACHMENTS

1. Resolution No. 2016-0480
2. Summary of changes

SAHUARITA RESOLUTION NO. 2016-0480

A RESOLUTION OF THE TOWN OF SAHUARITA, ARIZONA, AUTHORIZING THE TOWN TO ENTER INTO A MODIFICATION TO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF REVENUE, SAHUARITA CONTRACT NO. 160010, FOR THE COLLECTION OF TAXES.

WHEREAS, pursuant to A.R.S. § 11-952, public entities are authorized to enter into intergovernmental agreements to contract for services; and

WHEREAS, pursuant to A.R.S. § 42-6001, the Arizona Department of Revenue may collect and administer any transaction privilege license tax or use tax imposed by a city or town; and

WHEREAS, on June 22, 2015, the Town entered into an intergovernmental agreement with the Arizona Department of Revenue for the collection and administration of its transaction privilege license and use tax as imposed pursuant to the Sahuarita Town Code; and

WHEREAS, the parties desire to modify the terms of the intergovernmental agreement as set forth on Exhibit "A," attached here to and incorporated herein; and

WHEREAS, the adoption of such intergovernmental agreement would be in the best interest of the Town and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Sahuarita, Arizona, as follows:

Section 1. The Town is hereby authorized to enter into Modification to the Intergovernmental Agreement with the Arizona Department of Revenue for collection of taxes, Sahuarita Contract No. 160010, attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor of the Town of Sahuarita is hereby authorized to execute said intergovernmental agreement.

Section 3. The Town staff is hereby authorized to take all steps necessary to implement said intergovernmental agreement and give it effect.

Section 4. The various town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution and sections of the Town Code.

Section 5. All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the council in conflict with the provisions of this Resolution are hereby repealed, effective as of the effective date of this Resolution. All internal references within the Town Code to any affected provision are hereby updated.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Sahuarita, Arizona, this 22nd day of August, 2016.

_____
Mayor Duane Blumberg

ATTEST:

_____
Lisa Cole, MMC
Town Clerk

APPROVED AS TO FORM:

_____
Daniel J. Hochuli
Town Attorney

Exhibit "A"

Intergovernmental Agreement Between the Arizona Department of Revenue and The Town of Sahuarita, Sahuarita Contract No. 160010

APPROVED
Town of Sahuarita
Department of Law

Town of Sahuarita Contract No. 160010

MODIFICATION TO INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE TOWN OF SAHUARITA

WHEREAS, The Arizona Department of Revenue, hereinafter referred to as Department of Revenue and the Town of Sahuarita, hereinafter referred to as Town, have entered into an Intergovernmental Agreement regarding the administration of taxes imposed by the State or Town dated June 22, 2015, hereinafter referred to as the IGA, and

WHEREAS, the Department of Revenue and the Town intend to continue with the IGA for an additional one year term in order to determine whether the general terms of the IGA meet the parties' needs, with the exception of the modifications set forth below.

The parties agree to modify the IGA as follows effective July 1, 2016:

1. Add the following new subsection to Section 9, Collection of Municipal Taxes:

   9.6 Adjustments to Reported Taxes: If the Department of Revenue determines that a payment remitted by a taxpayer incorrectly identifies the city or town to which the payment should be made, the Department of Revenue may temporarily hold the payment until the distribution of the payment is corrected so that the appropriate city or town receives the payment.

2. Add the following new subsection to Section 9, Collection of Municipal Taxes:

   9.7 Taxpayer Rulings and Uniformity: Recognizing taxpayer written requests for interpretation of the statutes and/or the Model City Tax Code, as well as guidance regarding uniform application and interpretation of the statutes and the Model City Tax Code impact all taxing jurisdictions, and further recognizing responsibility for such rulings and interpretation of the Model City Tax Code had previously been the sole domain of the municipalities, the Department shall include at least two representatives of the municipalities as regular members of any group established to respond to such taxpayer ruling requests and to issue such uniform interpretations and guidance promulgated by the Department. Participation by the two representatives of the municipalities on any such group is limited to instances when there is an issue raised that solely involves the Model City Tax Code and/or presents an issue of first impression, including requests for private taxpayer rulings. The municipal representatives may also be consulted by the Department on information letters, or when issuing statements of general guidance. Written requests involving common questions or issues that have previously been addressed, whether unique to the Model City Tax Code or not, may be handled in the regular course of Department processes without consulting the representatives of the municipalities.

3. Amend Section 10, Financing Collection of Taxes as follows:

10. Financing Collection of Taxes.

The costs incurred by the Department in administering this Agreement shall be financed through the State general fund appropriation to the Department. This provision does not relieve the Town of any financial obligation imposed by statute.

4. Amend subsection 28.1 of Section 28, Duration, relating to automatic renewal of the agreement as follows:

28.1 The term of this Agreement shall be from July 1 through June 30 of each year. This Agreement shall automatically be renewed for successive one year terms thereafter unless either party shall terminate this Agreement by notice, in writing, no later than sixty calendar days prior to the expiration of the term then in effect. Any agreed upon modifications to the terms and conditions of this agreement shall be incorporated to be effective during the term identified by the review committee provided for in section 28.5.

5. Amend subsection 28.5 of Section 28, Duration, relating to annual review of the agreement as follows:

28.5 During the term of this Agreement, the terms and conditions of this Agreement will undergo an annual review to be initiated no later than June 1st of each year. The review will be performed by a committee made up of equal parts representatives of the Department and representatives of the municipal taxing jurisdictions entering into an IGA with the Department for the administration and collection of Municipal Taxes.

Signature Authority.

By signing below, the signer certifies that he or she has the authority to enter into this Agreement and has read the foregoing and agrees to accept the provisions herein. This modification may be executed in counterparts.

Signature Date	Signature Date Mayor Duane Blumberg
Typed Name and Title	Typed Name and Title Town of Sahuarita
Entity Name	Entity Name

RESERVED FOR THE ATTORNEY GENERAL:	RESERVED FOR TOWN ATTORNEY:
Attorney General no. _____, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Department of Revenue represented by the Attorney General. **MARK BRNOVICH** The Attorney General _____ Signature Assistant Attorney General Date: _____	APPROVED AS TO FORM AND AUTHORITY: BY:_____ TOWN ATTORNEY Date: _____

SUMMARY OF CHANGES TO THE IGA FOR TRANSACTION PRIVILEGE TAX COLLECTION BY THE ARIZONA DEPARTMENT OF REVENUE

The attached "Modification to Intergovernmental Agreement Between the State of Arizona And City/Town" incorporates five agreed upon changes into the existing intergovernmental agreement between the city/town and the Department related to the collection of the city/town transaction privilege tax. Below is a summary of the intent and impact of each change by section.

1) 9.6 Adjustments to Reported Taxes

The addition of this new section addresses an issue that came up during the past year. In some cases, the Department knew there was an error by the taxpayer in identifying which city or town was supposed to receive the tax, but there was no mechanism allowing them to hold the distribution while the error was being corrected. As a result there were instances when the DOR had to send funds to a city or town knowing it was incorrect, only to pull those funds back in a subsequent distribution after the error had been resolved. This change allows the Department to avoid these incorrect distributions and recoveries when they are aware of a problem from the outset.

2) 9.7 Taxpayer Rulings and Uniformity

The addition of this new section provides for municipal input in the drafting of rulings and interpretations that impact the Model City Tax Code, including interpretations of State statute that flow through to the MCTC because the Model language matches the State language. Under current statute, the DOR is responsible for addressing all taxpayer written requests for rulings, even when the question is based on the Model City Tax Code. This section allows the cities to have some influence over issues raised by taxpayers that have a direct impact on local tax imposition and interpretation, without disrupting the normal course of business within the Department on routine matters.

3) 10. Financing Collection of Taxes

This section is being amended by adding the second sentence. This addition recognizes that the cities and towns have agreed to a statutory financial obligation to contribute to the State for the operation of the DOR, and this obligation is not in conflict with the Department's TPT collection and administration efforts being financed through the State general fund appropriation.

4) 28.1 (relating to automatic annual renewal of the agreement)

This section has been changed to remove the specific years in the original document, so this section will not need to be changed annually. Also, this section added a provision stating any agreed upon changes that arise from the annual review in Section 28.5 are retroactive to July 1st of each year. The agreement automatically renews without any action unless there are modifications agreed upon in any given year, and if so, you only need to adopt the modifications.

5) 28.5 (relating to annual review of the IGA)

This section has been changed to state the review period begins on June 1st, rather than requiring the review being completed by March 1st. The March 1st deadline was simply unrealistic given the legislative session responsibilities of many of the typical reviewers.

TOWN COUNCIL AGENDA COMMUNICATION

MEETING DATE: August 22, 2016 ***DATE PREPARED:*** August 3, 2016

AGENDA ITEM: **7E**

TO: Honorable Mayor and Council

FROM: L. Kelly Udall, Town Manager
Teri Bankhead, Assistant to the Town Manager

SUBJECT: **Award of 2016-2017 Human Services Funding – Contract No. 170013 for Emergency Food Services in the amount of $42,000, for the term of one (1) year, commencing August 23, 2016 and terminating August 22, 2017.**

☐ **Economic Development** ☐ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☒ **Quality of Life** ☐ **Other**

GOALS/OTHER: Goal 2: Provide Events and Programs that Foster Community Engagement and Enhance the Lives of Residents; g) Collaborate with regional partners in providing programs that address social service needs of residents, such as emergency housing, shelter, food sustenance, and victim witness services.

FINANCIAL / BUDGET SUMMARY

1. Fund(s) Impacted: General Fund
2. Available Budget/Project Capacity ($): $42,000 out of 92,000 Budgeted

STAFF RECOMMENDATION

Staff recommends awarding funding of $42,000 for provision of Emergency Food Services to the Community Food Bank in Green Valley and Sahuarita Food Bank.

SUGGESTED MOTION

I move to approve Contract No. 170013 to award $42,000 to the Community Food Bank in Green Valley and Sahuarita Food Bank for the provision of emergency food services.

DISCUSSION

The Sahuarita Town Council adopted the following policy at the January 25, 2010 meeting:
The Sahuarita Town Council is of the opinion that it is in the best interest of the community to help provide for certain basic human service(s), which are currently not provided by the Town government and that for reasons of efficiency, the cost effective way to provide these service(s) is by contracting with existing outside agencies, which already have experience in providing these service(s).
Each fiscal year, the Town Council will:

1. Decide how much money, if any, to allocate.
2. Determine basic human services of interest.
3. Identify what percentage of the available funding will be provided to each service.

Funding of $92,000 for Human Services needs of emergency housing and shelter services and emergency food services was adopted by the Town Council in the Fiscal Year 2017 Budget. The Request for Qualifications and Proposal was published on the Town website and a press release was released July 13, 2016. A deadline of Monday, July 29, 2016 was established for submissions. Only one proposal was received, from the Community Food Bank in Green Valley and Sahuarita Food Bank.

No proposals were received for emergency housing and shelter. Due to a change in direction of service provision, the prior contractor did not submit a proposal. The one proposal received for emergency food services was evaluated August 1, 2016 by a Human Services Review Committee, staffed by Town employees from the Town Manager and Finance departments. Staff recommends award of this contract.

ATTACHMENTS

1. Contract No. 170013

APPROVED
Town of Sahuarita
Department of Law

CONTRACT
FOR HUMAN SERVICES

Town of Sahuarita, Arizona

Department: Town Manager
Agency: **Community Food Bank in Green Valley/Sahuarita Food Bank**
Project Name: Provision of Emergency Food Services
Project Number:
Contract Dates: Start: 8/23/2016 End: 8/22/2017
Contract Number: 170013
Amount: $42,000
Funding Source: General Fund

TOWN COUNCIL MEMBERS
Mayor Duane Blumberg
Vice Mayor Bill Bracco
Kara Egbert
Melissa L. Hicks
Gil Lusk
Tom Murphy
Lynne Skelton

TOWN MANAGEMENT
L. Kelly Udall, Town Manager

THIS CONTRACT is entered into between the Town of Sahuarita, Arizona, an Arizona municipal corporation (hereinafter "Town"), and Community Food Bank in Green Valley/Sahuarita Food Bank, an Arizona Corporation, (hereinafter "Agency").

W I T N E S S E T H

Whereas, the Sahuarita Town Council has determined that it is in the best interest of the community to help provide for certain basic human services, which are currently not provided by the Town government; and

Whereas, for reasons of efficiency, the most effective way to provide these services is by contracting with existing outside agencies, which already have experience in providing these services; and

Whereas, the Mayor and Council have determined that financial participation in the provision of emergency food services to residents of the Town facing emergency situations is a public purpose in that the activities confer benefits of a general character to a significant part of the public; and

Whereas, the parties wish to enter into a Contract for the Town to provide funds to the Agency for the provision of emergency food services to residents of the Town of Sahuarita, Arizona.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter provided, it is agreed between the Town and the Agency as follows:

1 Effective Date; Term; Renewal.

1.1 This Contract shall commence on 8/23/2016 ("Effective Date"), and shall terminate on 8/22/2017 ("Termination Date").

1.2 Any modification or extension to this Contract shall be by formal written amendment executed by the parties hereto.

2 SCOPE OF SERVICES.

2.1 The Agency shall provide the services of emergency food services to residents of Sahuarita, Arizona as described in Exhibit 1 Agency Proposal.

2.2 The purpose of the Town of Sahuarita funding is to increase the number of residents of the Town that can be served by an agency, and not to replace other funding streams designated for assisting Town residents with emergency food services.

3 DISTRIBUTION OF FUNDS. Two separate, equal distributions of funds shall be made to the Agency by the Town as follows:

3.1 Within thirty days of the Effective Date of this Contract, the Agency shall submit to the Town, in a form acceptable to the Town, a request for payment in the amount of Twenty-one Thousand Dollars ($21,000.00).

3.2 Six months from the Effective Date of this Contract, the Agency shall submit to the Town, in a form acceptable to the Town, a request for payment of the second and final distribution in the amount of Twenty-one Thousand Dollars ($21,000.00).

3.3 All payment requests must be received by the Town by the end of the Town's fiscal year. All contracted funds must be utilized by the Agency as specified by the Termination Date of this Contract. The Agency shall return all funds that were provided by the Town but not utilized by the Termination Date.

3.4 Any and all remaining balances will be retained by the Town and will be unavailable to the Agency.

4 PAYMENT WITHHELD. The Town reserves the right, in its sole and absolute discretion, to withhold payment of any amounts in the event that the Town determines that services are not being provided to the Town's residents in a manner acceptable to the Town. In the event that payment is withheld due to a deficiency in the method or manner of delivery of services, the Agency will

have 30 days to correct such deficiency. If, in the sole determination of the Town, the deficiency is remedied in a manner acceptable to the Town, payment may be issued at that time.

5 **RECORDS**. The Agency shall maintain and retain thorough records of all project business transactions and activities for at least four years from the end of the contract year in which the transactions, activities, and expenditures took place. It shall give the Town, through any authorized representatives, access to and the right to examine and copy all records, books, papers or documents relating to or arising from all Agency operations funded in whole or in part under the Contract, during the term of this Contract and for a period of four years following the termination of this Contract.

6 **REPORTS**. The Agency shall provide the Town with bi-annual written Performance Measurement Reports due on or prior to the 15th of January and June, during the term of this contract, as well as a final Performance Measurement Report 30 days after the contract has terminated. The Performance Measurement Report Template for the Agency is shown in Exhibit C and is subject to change by the Town with the Agency's input. In addition to the performance measures in Exhibit C, the Agency may also provide a report of agency observations or client successes.

7 **MONITORING**. The Town shall have the authority to monitor Agency to ensure compliance with applicable federal, state and local requirements and achievement of program performance goals, and the Agency shall take all reasonable measures and efforts to cooperate with the Town its efforts to monitor contract compliance and service delivery.

8 **INFORMATION**. Subject to such rules, regulations and restrictions of confidentiality that may apply by law to the parties and their personnel and clients, the Town shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, materials or other information prepared under or in conjunction with this Contract.

9 **AUDIT**. The Agency shall provide the Town with a copy of any financial audit of the subject program, or portion thereof. This provision shall survive the termination of this Contract.

10 **CONFLICT OF INTEREST.** This Contract is subject to the provisions of A.R.S. § 38-511, which provides in pertinent part:

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

The Agency shall establish safeguards to prohibit its employees, board members, advisors and agents from using their positions for any purposes that are or give the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties. Said safeguards should be substantially designed and executed to prevent actual violations of applicable conflicts of interest laws. The Agency shall disclose in writing to the Town any conflict of interest or potential conflict of interest described above, immediately upon discovery of such.

11 **INDEPENDENT CONTRACTOR**. For the purpose of this Contract, it is understood that the parties are independent contractors and no employee or agent of one is, for any purpose of this Contract, an employee or agent of the other. Nothing contained herein, or any of the obligations of the parties hereunder, shall in any manner inure to the benefit of third parties, unless otherwise agreed to in writing by authorized officers of the parties.

12 **INDEMNIFICATION**. The Agency agrees and covenants to hold the Town harmless, indemnify and defend it and its officers and agents of and from any and all claims of loss, damages, death or injury sustained by any person or damage to any property and all expenses, including reasonable attorney's fees incurred or thereby arising from the performance of the Agency's principals, staff, agents, contractors, subcontractors or employees under the provisions of this Contract.

13 **INSURANCE.** Agency agrees to obtain insurance coverage of the types, terms and amounts required in Exhibit "A" to this Contract, and keep such insurance coverage in force throughout the life of this Contract. If a certificate of insurance is submitted as verification of coverage as required in Exhibit "A," the Town shall reasonably rely upon the certificate of insurance as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, it shall be Agency's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. This Contract shall be of no force or effect until a copy of an appropriate and sufficient subject insurance policy or certificate thereof is delivered to the Town.

14 **INCORPORATED BY REFERENCE.** The Human Services Provider Request for Qualifications & Proposal for Emergency Food Services for Residents in the Town of Sahuarita, Arizona and Proposal in response thereto submitted by the Agency, are hereby incorporated herein by this reference.

15 **TERMINATION.** Town may terminate this Contract at any time by giving written notice to Agency of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In the event the Town terminates this Contract due to the Agency's failure to cure any default, breach or violation as provided herein above or due to the Agency's breach or violation of any covenant, Contract or assurance herein, the Town may, at its option, make written demand for repayment of, and the Agency shall immediately upon receipt of such written demand of the Town, repay all sums received by the Agency from the Town under this Contract, plus interest thereon at the legal rate plus all expenses incurred by the Town, including reasonable attorney's fees incurred in recovering said sums.

16 **OFFSETTING CLAIM.** Notwithstanding any provision appearing to the contrary, the Agency shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Contract by the Agency, its officers, agents, managers or employees. The Town may withhold payment of funding to the Agency for the purpose of an offsetting claim, until such time as the full amount of damage incurred by the Town which is then due from the Agency is determined and paid.

17 **INTEGRATED DOCUMENT.** This Contract, and the following referenced and/or attached Exhibits including attachments and references thereto, embody the entire Contract between the Town and the Agency for the scope of services and their terms and conditions: Human Services Provider Request for Qualifications & Proposal for Emergency Food Services for Residents in the Town of Sahuarita, Arizona and all exhibits thereto, and the Agency's response thereto. No verbal contracts or conversation with any officer, agent or employee of the Town prior to or after the execution of this Contract shall affect or modify any of the terms or obligations contained in any documents comprising this Contract. Any such verbal contract shall be considered as unofficial information and in no way binding upon the Town.

18 **NON-ASSIGNABILITY.** The Agency shall not assign any rights, obligations or other interests in this Contract, and shall not transfer any interest in this Contract, without prior written consent of the Town thereto.

19 **SUCCESSORS.** The Agency covenants that the provisions of this Contract shall be binding upon its heirs, successors, subcontractors, representatives and agents.

20 **NON-DISCRIMINATION.** The Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/680 which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

21 **COMPLIANCE WITH FEDERAL AND STATE LAWS.** The Agency shall comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract.

21.1 The Agency understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1988. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

21.2 Under the provisions of A.R.S. §41-4401, Agency hereby warrants to the Town that the Agency and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Agency Immigration Warranty").

A breach of the Agency Immigration Warranty shall constitute a material breach of this Contract and shall subject the Agency to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Agency or Subcontractor employee who works on this Contract to ensure that the Agency or Subcontractor is complying with the Agency Immigration Warranty. Agency agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Agency and any subcontractor to ensure compliance with Agency's Immigration Warranty. Agency agrees to assist the Town in regard to any random verification performed.

Neither the Agency nor any Subcontractor shall be deemed to have materially breached the Agency Immigration Warranty if the Agency or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Agency enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

22 **NOTICES.** Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as provided in Exhibit "B" to this Contract.

23 **NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Sahuarita Town Council does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, Town shall have no further obligation to Agency, other than for services rendered prior to termination.

24 **APPLICABLE LAW.** This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Pima County, State of Arizona.

25 **ENTIRE CONTRACT.** This document constitutes the entire Contract between the parties and shall not be modified, amended, altered or changed except through a written amendment signed by the parties.

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

TOWN OF SAHUARITA, ARIZONA

_____
Duane Blumberg
Mayor

Date: _____

_____
ATTEST:

_____
Lisa Cole, MMC, Town Clerk

TOWN OF SAHUARITA, ARIZONA

_____
L. Kelly Udall, Town Manager

APPROVED AS TO FORM:

_____
Daniel J. Hochuli, Town Attorney

Federal Tax ID Number: 86-0777111
D-U-N-S Number: 963704101

AGENCY

_____
Name:
Title:

Date: _____

Federal Tax ID Number: _____
D-U-N-S Number: _____

EXHIBIT A
INSURANCE REQUIREMENTS

COVERAGE AFFORDED	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Commercial General Liability Insurance Including:	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

A. Products & Completed Operations
B. Blanket Contractual
C. Premises-Operations-Personal Injury

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which require automobile travel by Agency.

Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

SPECIAL CONDITIONS:

1. THE TOWN OF SAHUARITA WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the Town.
3. Deductibles will be stated on the certificate of insurance and are subject to the review and approval of the Town.
4. Agency shall provide Town with proof of compliance with the insurance provisions and requirements within ten (10) days of the date this Contract is executed by all parties by providing a current certificate of insurance and the associated endorsement to the policy. Failure of Agency to comply with the insurance requirements at any time shall result in a breach of this Contract, and shall, among other things, allow immediate termination of this Contract.
5. Agencies performing any portion of a Project that shall acquire funding from the Regional Transportation Authority (RTA) shall name the RTA as additional insured and additional indemnitee. The RTA shall be identified as an additional insured with respect to insurance policies for general liability, automobile liability and defects in design. Agency is also required to name the RTA as an additional beneficiary in any performance and payment related assurances posted for the Project.

EXHIBIT B
LEGAL NOTICES

TOWN: L. Kelly Udall, Town Manager Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **with a copy to:** Daniel J. Hochuli, Town Attorney Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629	**AGENCY:** Mary Jane Goodrick, Executive Director Community Food Bank in Green Valley 250 East Continental Road Green Valley, Arizona 85614 **With a copy to:** None

EXHIBIT C
PERFORMANCE MEASURES

Exhibit C

2016/17 Contract for Human Services
Exhibit C - Performance Measure Report Template

Please provide written Performance Measurement Reports on the 15th (or the following working day) of January and June during the term of the contract and one final written report due 30 days after contract termination.

Performance Measures	8/23/16 thru 12/31/16 **Due: 1/15/17**	1/1/17 thru 6/14/17 **Due: 6/15/17**	Final Report Totals **Due: 9/22/17**
Total Number of unduplicated Sahuarita Town Households served:			
Number of Egg Cartons provided to Sahuarita Town Households:			
Number of Gallons of Milk provided to Sahuarita Town Households:			
Number of Holiday Turkeys provided to Sahuarita Town Households:			
Number of Food Boxes provided to Sahuarita Town Households:			
Expenditures for Eggs:			
Expenditures for Milk:			
Expenditures for Holiday Turkeys:			
Expenditures for Food Boxes:			

Agency Observations /Client Successes:

FORM 1
PROJECT PROPOSAL SUMMARY SHEET

Emergency Food Services

1. Agency Name: Community Food Bank in Green Valley and Sahuarita Food Bank

2. Agency Address: 250 East Continental Road, Green Valley, AZ 85614 and 17750 S La Canada Drive, Sahuarita, AZ 85629 ZIP: 85614 and 85629

3. Project Title: Emergency Food Assistance Program - Sahuarita

4. Contact Person *(for this proposal)* Mary Jane Goodrick Phone #: (520) 625-5252

Fax #: (520) 625-5692 Email: mjgoodrick@communityfoodbank.org

5. Agency Executive Director: Mary Jane Goodrick, ED; Michael McDonald, CEO

6. Federal Tax ID#: 51-0192519 Date of Incorporation: 1975
(New applicants must submit IRS tax exemption request letter with completed application)

7. Service Address(s): Community Food Bank in Green Valley: 250 East Continental Drive, Green Valley, 85614; and Sahuarita Food Bank: 17550 S. La Canada Drive, Sahuarita, AZ 85629 ZIP: 85614 and 85629

If location is unknown, explain how site(s) will be selected _____

_____.

8. Has this project been funded by the Town previously? [X] Yes [ ] No

9. Briefly describe the project: Vulnerable community members in southern Arizona rely on the Community Food Bank in Green Valley (CFB-GV) and the Sahuarita Food Bank (SFB) for programs designed to meet their hunger needs. With the generous support of the Town of Sahuarita, we will continue to distribute food boxes at both CFB-GV and SFB up to twice a month at no cost to low-income individuals and households in need of short-term hunger relief. Those we serve include the elderly, children, working families and the homeless. Emergency food boxes are comprised of surplus USDA commodities, donated food items and purchased food. Clients are also offered milk, eggs, bread, and fresh produce when available. _____

FORM 2

PROPOSAL NARRATIVE – REFER TO PAGE 2 & 3

(FORM IS CONTINUOUS – 4 PAGES MAXIMUM, 12PT., 1" MARGINS ON ALL SIDES)

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1. **Qualifications**

The Community Food Bank in Green Valley (CFB-GV) was established as a branch bank of the Community Food Bank of Southern Arizona (CFB) in 1983 in order to meet the needs of hungry people residing in the Green Valley-Sahuarita community. The mission is to *change lives in the communities we serve by feeding the hungry today and building a healthy, hunger-free tomorrow*.

In collaboration with our Sahuarita-based non-profit partners, the CFB-GV distributes over 18,000 food boxes each year, many of these to Sahuarita residents. With the Town of Sahuarita's support we are able to operate our non-profit partner program which provides additional food resources to the hungry in Sahuarita. Our partners include the Sahuarita Food Bank (SFB), Genesis House Domestic Violence Shelter and Sahuarita Schools LINK afterschool Program. Volunteers contributed a total of 22,793 hours in 2015.

The SFB was established in 2009 as a partner agency of the CFB to assist in the distribution of emergency food to vulnerable populations experiencing a hunger crisis in the Sahuarita community. It is an all-volunteer, tax-exempt not-for-profit food bank serving the communities of Sahuarita and southern Tucson. Volunteers contributed a total of 12,100 hours in FY 2016. It is presently hosted by the Good Shepherd United Church of Christ. The mission is to *provide basic emergency nutritional foods to those in need.* This includes emergency weekend food for school children through the BackPack Program.

SFB has partnerships with Pima County, United Community Health Care, United Way of Southern AZ, and Sahuarita Unified School District. They currently conduct outreach efforts for First Things First Early Childhood programs and CareMore. Over the past year they have developed extensive connections with other local social-service organizations, local foundations and local businesses and civic organizations.

The CFB-GV and SFB have established multiple emergency food programs for adults, youth, seniors, and families to meet the emergency hunger needs of the community:

- The Emergency Food Assistance Program (TEFAP): Both food banks offer this **USDA program** that provides nonperishable items including cereal, canned fruits and vegetables, tomato products, beans and rice to individuals and families experiencing a food crisis. TEFAP food boxes consist of government donated commodities, Eligible participants may receive a TEFAP food box once per month.
- Feeding America BackPack Program: The SFB offers this program, which in FY 2016 provided **weekend emergency food** to 196 low-income students, including 76 in Sahuarita, who qualify for the Federal Free and Reduced-Price Lunch Program.

- Supplemental Emergency Food Box Program: Sahuarita clients experiencing extreme hunger may receive a second food box. Both food banks offer this supplemental food box, which includes especially nutritious items such **as milk and eggs, fresh bread, produce, and peanut butter.** This program is available because of the generous support of local donors, including the Town of Sahuarita.
- Food Plus (Commodity Supplemental Food Program): The CFB-GV offers this USDA program which provides **high-protein foods to senior citizens**. Participants in this program are verified by the Pima County Health Department and qualify to receive a Food Plus food box once per month.

Location of Service Delivery:

Community Food Bank in Green Valley
250 East Continental Road
Green Valley, Arizona 85614

Sahuarita Food Bank
17750 S La Canada Drive
Sahuarita, AZ 85629

The CFB has 41 years of experience providing emergency food relief to the community. The CFB is a 501(c)(3) nonprofit organization based in Tucson providing food and food-related services in a 23,000 square-mile region of southern Arizona including Pima, Cochise, Graham, Greenlee and Santa Cruz counties. We were established in 1976 and have gone from distributing food for 500 meals a day to over 65,000 meals a day. We have a long history of consistent, reliable program delivery, providing southern Arizona with a multitude of food-related programs and services including emergency food distribution, child hunger programs, home and community gardening, farmers' markets, job training and SNAP (food stamp) application assistance.

Besides Green Valley, the CFB also has branch bank facilities in Amado, Nogales, Marana, Willcox, and our Caridad Community Kitchen in Tucson that distributes up to 14,000 hot meals monthly. Sahuarita residents have the option of receiving emergency food at any of these locations. However, due to proximity, the CFB-GV and the SFB serve the vast majority of clients from the Town of Sahuarita.

The SFB is currently hosted by The Good Shepherd Church. The food bank is a nonprofit with experienced and dedicated volunteer leadership including a former Executive Director of a Meals on Wheels program, a retired Executive Director of a community action program serving four counties, and individuals with extensive local charitable development experience. In addition to emergency food assistance, the SFB offers a **BackPack program** which provides low-income children with emergency food on the weekends during the school year. In many cases

these children would not have enough to eat over the weekend if they did not receive this support.

2. **Community Need**

According to Feeding America's latest hunger report, Arizona ranks 3rd in the nation for childhood food insecurity. One in four children (nearly 500,000) in southern Arizona are living in poverty and don't know where their next meal will come from. According to the US Census Bureau, while Sahuarita as a whole is an affluent community, 10 percent of people under 18 and 22 percent of female-headed households live near or below the poverty level. In addition to the working poor who constitute the expected clientele of a food bank, we have served a number of families who have temporarily fallen on hard times due to job loss, family tragedies, or other unforeseen circumstances. This estimate of poverty is corroborated by the shockingly number of Sahuarita students eligible for enrollment in the USDA Free or Reduced Lunch Program; according to the Arizona Department of Education 3,256 students in Sahuarita Elementary, Sahuarita Primary, and Sahuarita High School qualify.

Collectively, last fiscal year we served approximately 2,500 unduplicated *Town of Sahuarita* residents through our emergency food programs.

3. **Proposed Plan of Action**

We will dedicate funding from the Town of Sahuarita to purchase food for the distribution of food boxes through the TEFAP, Supplemental Emergency Food Box, and Backpacks programs. Clients who reside in Sahuarita can receive up to two food boxes per month, each box containing two- to three-days' worth of food. The second boxes are for clients who have already received a box and are still in need of emergency food assistance that month. This second food box often contains milk and eggs and other highly nutritious foods, when available. Funding from the Town of Sahuarita will be used to supplement the USDA commodities and donations we receive and fill those boxes and backpacks with healthy, nutritious food. In the past, Town of Sahuarita funds have been used to purchase peanut butter, milk, eggs, additional produce and holiday foods such as turkeys.

To be eligible for emergency food assistance, residents must self-declare that their household income does not exceed 185% of the federal poverty level. We use software to track the number of clients served, demographics, and boxes distributed. In addition, poundage, food received, purchased, donated, and distributed by the food bank and its partnering agencies is tracked by food bank staff. This tracking system allows us to identify clients as Sahuarita residents based on the address information they provide.

4. **Goal and Objectives**

The goal of *The Emergency Food Assistance Program – Sahuarita* is to provide basic emergency food services to reduce hunger within the Sahuarita community, and ultimately southern Arizona as a whole. We will measure the alleviation of hunger through tracking the amount of

emergency food assistance provided to children, seniors, homeless, and the working poor families of Sahuarita who find themselves in need with nowhere else to turn to for help.

5. **Performance Output**

We expect an approximate 2% increase in clients this fiscal year. Collectively, we plan to serve 2,550 unduplicated Town of Sahuarita residents in fiscal year 2016-2017, and to distribute 3,542 emergency food boxes to Sahuarita residents during fiscal year 2016-2017.

Our computer systems track and measure the demographics of our clients as well as the amount of food we receive and distribute. Additionally, we collect reports from our non-profit partners regarding demographics and the number of clients they serve. In this way, we can accurately measure and report upon the total number of Sahuarita residents we are serving at our respective locations and through our non-profit partners.

6. **Organization Budget Capacity**

Funds will be used to purchase supplemental nutritious food items to be added to TEFAP and the Supplemental Emergency food boxes received by Town of Sahuarita residents. These food items may include milk, eggs, meat, and produce among other items. Eligibility will be determined by respective food bank staff based on previous certification and verification that the client's address is within the Town of Sahuarita. All funding from the Town of Sahuarita will be used to provide emergency food to Town of Sahuarita residents. After funds are secured from the Town of Sahuarita, the CFB will create a memorandum of understanding with the SFB, dividing the funds according to unduplicated number of clients served.

7. **Identification of Responsible Person**

Mary Jane Goodrick, Executive Director of the CFB-GV and Community Food Bank in Amado, will be responsible for overseeing the management of all the Scope of Services for this application.

Contact Information:
Mary Jane Goodrick, Executive Director
Community Food Bank in Green Valley
250 East Continental Road
Green Valley, Arizona 85614

Phone: 520.625.5252
Email: MJGoodrick@communityfoodbank.org

FORM 3

GRANTEE BUDGET

As part of the evaluation process, the Town would like to develop an understanding of the overall function of potential grantees. Please complete the following schedule including the applicant's total funding sources and total projected expenditures of services for FY 2016/2017. This data should not include any potential grant from the Town.

Column 1

AGENCY FUNDING SOURCES	PROJECTED BUDGET FY 2016/17
Pima County:	
County CDBG	
County General Fund	10,320
Pima Health Systems (Title XX)	
County ESG	
Self-generated Funds:	
Contributions/Donor Designations	448,952
Client Fees/Dues	
Fundraising	43,500
Investment Income	
Other:	
Special Events	
State:	
Federal:	
Donated Commodities	420,000
Foundations:	65,000
Other:	
Donated food: individuals & corporate	1,505,746
Total Funding Sources:	2,493,518

Column 2

AGENCY EXPENSES	PROJECTED EXPENDITURES FY 2016/17
Staff Salaries and Benefits	309,303
Other Operating Expenses	199,252
Direct Assistance to Individuals	
Food Assistance	1,999,424
Total Expenses:	2,507,979

FORM 4
Activity Data and Proposed Budget – Town of Sahuarita Funding
Emergency Food Services

Number of total individuals served during FY 2015/16: 14,511

Out of that number, how many Town of Sahuarita resident individuals were served during FY 2015/16: 2,500

Number of total individuals projected to be served during FY 2016/17: 14,801

Out of that number, how many Town of Sahuarita individuals do you project to be served during FY 2016/17: 2,550

Type of Activity	Projected Number of Town of Sahuarita Residents to be Served for period of: 8/22/16 – 8/21/17	Project Amount Requested for period of: 8/22/16 – 8/21/17
Rental Assistance:		
Utility Assistance:		
Vouchers for Emergency Shelter:		
Other:		
1. Food		**$42,000**
2.		
3.		
4.		
5.		
		Total: $42,000

COMMUNITY FOOD BANK, INC.

Audited Financial Statements

For the years ended June 30, 2015 and 2014

COMMUNITY FOOD BANK, INC.

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LUDWIG KLEWER & CO. PLLC
Certified Public Accountants & Consultants

INDEPENDENT AUDITORS' REPORT

To the Boards of Directors
Community Food Bank, Inc.

We have audited the accompanying financial statements of Community Food Bank, Inc. (a nonprofit organization), which comprise the statements of financial position as of June 30, 2015 and 2014, and the related statements of activities, functional expenses and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Community Food Bank, Inc. as of June 30, 2015 and 2014, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Chris Wm. Ludwig, CPA Julie S. Klewer, CPA, MBA Eric S. Rudner, CPA

4783 East Camp Lowell Drive Tucson, Arizona 85712
telephone 520 545 0500 facsimile 520 545 0555 www.ludwigklewer.com

Other Matters

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated November 4, 2015 on our consideration of Community Food Bank, Inc.'s internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering Community Food Bank, Inc.'s internal control over financial reporting and compliance.

LUDWIG KLEMER + CO., PLLC

November 4, 2015

COMMUNITY FOOD BANK, INC.

STATEMENTS OF FINANCIAL POSITION
June 30, 2015 and 2014

ASSETS

	2015	2014
Current assets:		
Cash and cash equivalents	$ 4,036,632	$ 7,418,669
Grants and accounts receivable	295,036	441,636
Investments - other, current portion	350,193	10,040
Food and commodities inventory	4,449,544	3,697,202
Prepaid expenses and other current assets	119,655	86,325
Total current assets	9,251,060	11,653,872
Investments	4,829,362	726,766
Investments - other, non-current portion	530,254	186,289
Property and equipment, net	6,728,634	5,845,188
Total assets	$ 21,339,310	$ 18,412,115

LIABILITIES AND NET ASSETS

Current liabilities:		
Accounts payable	$ 318,770	$ 218,905
Accrued expenses	496,079	464,320
Deferred revenue	2,913,437	2,130,644
Gift annuities	100,275	108,117
Total current liabilities	3,828,561	2,921,986
Total liabilities	3,828,561	2,921,986
Net assets:		
Unrestricted:		
Undesignated	3,382,916	3,963,927
Board-designated	6,940,854	5,161,634
Investment in property and equipment	6,728,634	5,845,188
Total unrestricted net assets	17,052,404	14,970,749
Temporarily restricted	164,435	227,470
Permanently restricted	293,910	291,910
Total net assets	17,510,749	15,490,129
Total liabilities and net assets	$ 21,339,310	$ 18,412,115

See independent auditors' report and accompanying notes.

COMMUNITY FOOD BANK, INC.

STATEMENT OF ACTIVITIES
For the year ended June 30, 2015

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Support and revenue:				
Donated food	$ 41,826,079	$ -	$ -	$ 41,826,079
Contributions	10,113,212	158,823	2,000	10,274,035
Government grants	2,380,486	-	-	2,380,486
Bequests	828,671	-	-	828,671
Community food resource center	208,693	-	-	208,693
United Way	115,760	-	-	115,760
In-kind contributions	108,408	-	-	108,408
Special events, net	96,121	-	-	96,121
Miscellaneous	51,215	-	-	51,215
Multi-service center rent income	27,405	-	-	27,405
Loss on disposal of property and equipment	(23,802)	-	-	(23,802)
Investment loss, net	(43,222)	2,821	-	(40,401)
Net assets released from restrictions:				
Satisfaction of restrictions	224,679	(224,679)	-	-
Total support and revenue	55,913,705	(63,035)	2,000	55,852,670
Expenses:				
Program services:				
TEFAP	26,377,171	-	-	26,377,171
Agency partnerships	17,094,451	-	-	17,094,451
CSFP	4,535,409	-	-	4,535,409
Community food resource center	1,972,955	-	-	1,972,955
Caridad community kitchen	868,641	-	-	868,641
Child nutrition program	794,558	-	-	794,558
Multi-service center program	43,030	-	-	43,030
Total program services	51,686,215	-	-	51,686,215
Supporting services:				
Fund-raising	1,539,886	-	-	1,539,886
Management and general	605,949	-	-	605,949
Total expenses	53,832,050	-	-	53,832,050
Change in net assets	2,081,655	(63,035)	2,000	2,020,620
Net assets, beginning of year	14,970,749	227,470	291,910	15,490,129
Net assets, end of year	$ 17,052,404	$ 164,435	$ 293,910	$ 17,510,749

See independent auditors' report and accompanying notes.

COMMUNITY FOOD BANK, INC.

STATEMENT OF ACTIVITIES
For the year ended June 30, 2014

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Support and revenue:				
Donated food	$ 46,378,471	$ -	$ -	$ 46,378,471
Contributions	8,175,378	323,138	2,000	8,500,516
Government grants	2,174,705	-	-	2,174,705
Bequests	492,406	-	-	492,406
Miscellaneous	154,801	-	-	154,801
Investment income, net	103,943	31,904	-	135,847
Community food resource center	129,164	-	-	129,164
In-kind contributions	124,465	-	-	124,465
Special events, net	112,543	-	-	112,543
United Way	108,073	-	-	108,073
Multi-service center rent income	76,896	-	-	76,896
Loss on disposal of property and equipment	(1,733)	-	-	(1,733)
Net assets released from restrictions:				
Satisfaction of restrictions	373,481	(373,481)	-	-
Total support and revenue	58,402,593	(18,439)	2,000	58,386,154
Expenses:				
Program services:				
TEFAP	28,969,641	-	-	28,969,641
Agency partnerships	17,257,075	-	-	17,257,075
CSFP	7,215,011	-	-	7,215,011
Community food resource center	1,900,634	-	-	1,900,634
Caridad community kitchen	910,167	-	-	910,167
Child nutrition program	752,057	-	-	752,057
Multi-service center program	24,711	-	-	24,711
Total program services	57,029,296	-	-	57,029,296
Supporting services:				
Fund-raising	1,452,602	-	-	1,452,602
Management and general	314,681	-	-	314,681
Total expenses	58,796,579	-	-	58,796,579
Change in net assets	(393,986)	(18,439)	2,000	(410,425)
Net assets, beginning of year, as reclassified	15,364,735	245,909	289,910	15,900,554
Net assets, end of year	$ 14,970,749	$ 227,470	$ 291,910	$ 15,490,129

See independent auditors' report and accompanying notes.

COMMUNITY FOOD BANK, INC.

STATEMENT OF FUNCTIONAL EXPENSES
For the year ended June 30, 2015

	TEFAP	Agency Partnerships	CSFP	Community Food Resource Center	Caridad Community Kitchen	Child Nutriton Program	Multi-Service Center Program	Total Program Services	Fund-raising	Management and General	Total
Salaries	$ 1,262,867	$ 596,454	$ 501,504	$ 983,512	$ 326,189	$ 270,918	$ 10,077	$ 3,951,521	$ 679,070	$ 377,040	$ 5,007,631
Payroll taxes	115,519	56,944	52,118	81,337	35,008	28,211	1,084	370,221	58,676	18,579	447,476
Employee benefits	242,676	111,891	99,793	152,247	42,002	47,543	2,577	698,729	106,931	30,101	835,761
Total employee expenses	1,621,062	765,289	653,415	1,217,096	403,199	346,672	13,738	5,020,471	844,677	425,720	6,290,868
Donated commodities and food distributed	22,310,766	15,900,270	3,496,449	-	81,009	66,329	-	41,854,823	-	-	41,854,823
Cost of purchased goods	1,012,815	-	-	106,866	137,555	247,723	-	1,504,959	-	-	1,504,959
Printing and promotion	119,049	6,367	21,876	31,102	7,057	3,119	-	188,570	538,546	3,301	730,417
Depreciation	325,521	82,320	127,341	159,738	56,302	37,774	12,993	801,989	29,310	17,724	849,023
Supplies and minor equipment	194,933	29,381	56,736	100,551	66,178	15,089	4,161	467,029	22,708	30,688	520,425
Outside and professional services	131,890	52,407	28,732	116,126	10,511	9,876	1,150	350,692	2,445	35,609	388,746
Auto and truck expense	173,420	47,000	13,830	12,721	9,588	2,815	240	259,614	2,370	2,914	264,898
Utilities	103,879	10,467	32,440	52,198	36,076	14,370	402	249,832	14,324	571	264,727
Maintenance and repair	92,419	19,348	25,743	9,962	12,039	8,491	6,028	174,030	5,626	8,224	187,880
Miscellaneous	64,897	11,694	9,349	26,346	12,716	4,887	158	130,047	12,220	36,061	178,328
Insurance	67,218	27,767	26,938	21,777	5,329	10,521	476	160,026	8,853	4,302	173,181
Dues and subscriptions	44,979	24,916	12,182	18,445	7,959	7,581	268	116,330	1,741	8,368	126,439
Telephone	32,885	8,161	13,309	24,454	12,112	6,650	467	98,038	8,424	9,137	115,599
Occupancy and lease expense	29,512	9,502	9,286	43,582	1,727	4,205	2,729	100,543	5,204	2,669	108,416
Freight	23,890	53,213	1,063	-	864	2,161	-	81,191	-	-	81,191
Travel	15,281	2,259	3,538	17,838	3,988	4,172	95	47,171	11,671	7,659	66,501
Staff education	4,021	1,735	1,548	12,969	3,843	2,026	48	26,190	7,447	11,683	45,320
Grants expense	-	42,125	-	-	200	-	-	42,325	-	-	42,325
Postage	1,568	-	265	854	389	-	-	3,076	20,272	1,151	24,499
Property tax	7,166	230	1,369	330	-	97	77	9,269	36	168	9,473
Interest expense	-	-	-	-	-	-	-	-	4,012	-	4,012
Total expenses	$ 26,377,171	$ 17,094,451	$ 4,535,409	$ 1,972,955	$ 868,641	$ 794,558	$ 43,030	$ 51,686,215	$ 1,539,886	$ 605,949	$ 53,832,050

See independent auditors' report and accompanying notes.

COMMUNITY FOOD BANK, INC.

STATEMENT OF FUNCTIONAL EXPENSES
For the year ended June 30, 2014

	TEFAP	Agency Partnerships	CSFP	Community Food Resource Center	Caridad Community Kitchen	Child Nutrition Program	Multi-Service Center Program	Total Program Services	Fund-raising	Management and General	Total
Salaries	$ 1,658,994	$ 567,012	$ 430,652	$ 781,023	$ 304,379	$ 319,009	$ 6,571	$ 4,067,640	$ 532,349	$ 147,047	$ 4,747,036
Employee benefits	148,517	117,246	38,335	69,940	48,708	28,567	1,363	452,676	79,232	22,467	554,375
Payroll taxes	349,924	50,883	95,575	147,599	26,565	60,287	583	731,416	48,537	13,721	793,674
Total employee expenses	2,157,435	735,141	564,562	998,562	379,652	407,863	8,517	5,251,732	660,118	183,235	6,095,085
Donated commodities and food distributed	24,433,875	16,135,606	6,282,280	5,965	164,533	2,437	-	47,024,696	-	-	47,024,696
Cost of purchased goods	1,046,145	-	34,557	281,578	105,967	115,011	-	1,583,258	-	-	1,583,258
Depreciation	360,696	135,043	90,927	140,206	54,343	57,267	2,949	841,431	56,540	21,031	919,002
Printing and promotion	22,553	3,410	5,189	15,168	2,746	6,195	25	55,286	513,404	5,503	574,193
Supplies and minor equipment	148,145	23,436	64,885	84,255	51,612	34,414	2,317	409,064	37,701	9,580	456,345
Outside and professional services	41,193	15,762	15,882	111,268	5,300	45,447	789	235,641	70,178	17,388	323,207
Occupancy and lease expense	173,292	20,735	30,640	40,896	18,522	16,704	5,735	306,524	5,135	10,284	321,943
Auto and truck expense	118,000	45,523	22,203	39,091	21,102	15,967	403	262,289	2,474	2,362	267,125
Utilities	128,030	30,557	37,425	21,231	25,309	8,672	1,701	252,925	4,599	7,642	265,166
Miscellaneous	45,233	17,685	12,026	27,225	22,267	11,120	372	135,928	19,079	30,573	185,580
Insurance	74,280	32,877	19,305	65,423	8,721	9,161	656	210,423	2,819	3,936	217,178
Maintenance and repair	46,362	13,793	14,018	6,692	9,012	2,734	799	93,410	10,256	1,119	104,785
Telephone	36,948	10,630	8,738	10,658	11,338	4,353	226	82,891	7,114	2,778	92,783
Travel	21,157	5,745	5,031	20,769	5,833	8,483	65	67,083	11,623	7,355	86,061
Dues and subscriptions	22,883	7,623	6,276	13,174	4,821	5,381	111	60,269	14,974	4,351	79,594
Freight	51,685	23,234	-	94	572	39	-	75,624	-	-	75,624
Grants expense	36,265	-	-	16,400	-	-	-	52,665	-	-	52,665
Postage	2,450	146	471	1,911	216	781	3	5,978	36,568	1,943	44,489
Property tax	2,764	129	552	68	18,301	28	43	21,885	20	27	21,932
Interest expense	250	-	44	-	-	-	-	294	-	5,574	5,868
Total expenses	$ 28,969,641	$ 17,257,075	$ 7,215,011	$ 1,900,634	$ 910,167	$ 752,057	$ 24,711	$ 57,029,296	$ 1,452,602	$ 314,681	$ 58,796,579

See independent auditors' report and accompanying notes.

COMMUNITY FOOD BANK, INC.

STATEMENTS OF CASH FLOWS
For the years ended June 30, 2015 and 2014

	2015	2014
Cash flows from operating activities:		
Change in net assets	$ 2,020,620	$ (410,425)
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	849,023	919,002
Donated property and equipment	-	(5,926)
Net realized and unrealized loss (gain) on investments	90,704	(112,728)
Loss on disposal of property and equipment	23,802	1,733
Terminations and contributions from annuity obligations	(3,079)	(17,905)
Changes in operating assets and liabilities:		
Grants and accounts receivable	146,600	75,510
Food and commodities inventory	(752,342)	5,442
Prepaid expenses and other current assets	(33,330)	42,696
Accounts payable	99,865	(32,082)
Accrued expenses	31,759	42,727
Deferred revenue	782,793	318,601
Total adjustments	1,235,795	1,237,070
Net cash provided by operating activities	3,256,415	826,645
Cash flows from investing activities:		
Purchases of property and equipment	(1,758,971)	(239,455)
Proceeds on disposal of property and equipment	2,700	400
Purchases of investments and investments - other	(7,327,240)	(16,524,190)
Proceeds from sale of investments and investments - other	2,449,822	18,432,997
Net cash (used in) provided by investing activities	(6,633,689)	1,669,752
Cash flows from financing activities		
Payments on annuity obligations	(4,763)	(1,028)
Repayments on note payable	-	(35,501)
Net cash used in financing activities	(4,763)	(36,529)
Change in cash and cash equivalents	(3,382,037)	2,459,868
Cash and cash equivalents, beginning of year	7,418,669	4,958,801
Cash and cash equivalents, end of year	$ 4,036,632	$ 7,418,669
Supplemental cash flow information:		
Cash paid during the year for interest	$ 4,012	$ 5,868
Income taxes paid	$ -	$ -
Supplemental schedule of noncash investing and financing activities:		
Donated property and equipment	$ -	$ 5,926
Gift annuity received	$ -	$ 100,000

See independent auditors' report and accompanying notes.

1. Organization

Community Food Bank, Inc. dba Community Food Bank of Southern Arizona (Agency) is a private non-profit organization. The Agency's mission is to change lives in the communities served by feeding the hungry today and building a healthy, hunger-free tomorrow.

The Agency's primary programs are described below:

The Emergency Food Assistance Program (TEFAP) - through this program the Agency provides emergency food boxes, consisting of federal commodities, donated and purchased food items, to households in need throughout the Cochise, Graham, Greenlee, Pima and Santa Cruz counties.

The Commodities Supplemental Food Program (CSFP) - this program also provides food boxes to households in the five county service area. This program serves senior community members including those with mobility constraints.

Agency Partnerships - through its Agency Partnerships program, the Agency provides donated food and non-food items to other non-profits throughout Southern Arizona. The Agency also provides financial and non-financial grants to community partners whose services correspond to the Agency's mission.

Community Food Resource Center (CFRC) - the six programs of the CFRC assist clients in creating sustainable solutions to food security issues. Through the Las Milpitas de Cottonwood Urban Farm and the Home Garden programs, clients learn to grow their own food utilizing environmentally favorable methods. The Farmer's Market program allows clients and other local food producers to sell their fresh, local foods at affordable prices. The three weekly markets accept a variety of federally subsidized payment methods, further addressing food security and food desert issues. Additionally, sellers at the market can receive business development training and education to support their entrepreneurial endeavors. The Farm to Child program partners with dozens of schools to provide educators and students hands-on training in environmentally sustainable food production. Students are able to grow and consume their own food addressing both food security and nutritional education needs. The Gabrielle Giffords Family Assistance Center offers additional resources to clients along with other advocacy and outreach activities. Additionally, clients can receive assistance obtaining Supplemental Nutritional Assistance Program (SNAP) and other social service benefits.

Child Nutrition Programs (CNP) - the Backpack, Kids Club and School Pantry programs respectively provide take-home food packages, after-school meals and food pantries located on school grounds for more convenient family access. These programs specifically address the epidemic of childhood hunger while offering crucial nutritional education to the children and their families.

Multi Service Center (MSC) - located at the Agency's main facility, the MSC provides low-cost office space to other non-profit organizations that provide social services, facilitating a "one-stop" experience for the underserved clients in the community.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying financial statements have been prepared on the accrual basis of accounting and accordingly, reflect all significant receivables, payables, and other liabilities. Revenue is recognized when earned and expenses are recognized when incurred.

2. Summary of Significant Accounting Policies, Continued

Financial Statement Presentation

The Agency reports information regarding its financial position and activities according to the following net asset classifications:

- Unrestricted net assets - Net assets that represent the portions of expendable funds, which are available for support of Agency operations and are not subject to donor-imposed stipulations.
- Temporarily restricted net assets - Net assets subject to donor-imposed stipulations that may or will be met either by actions of the Agency and/or the passage of time. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions.
- Permanently restricted net assets - Net assets subject to donor-imposed stipulations that they be maintained permanently by the Agency. The donors of these assets permit the Agency to use all or part of the investment return of these assets on continuing operations which may be subject to certain restrictions.

All contributions are considered to be available for unrestricted use unless specifically restricted by the donor. Amounts received that are designated for future periods or restricted by the donor for specific purposes are reported as temporarily restricted or permanently restricted support that increase those net asset classes. When a temporary restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. However, if a restriction is fulfilled in the same time period in which the contribution is received, the Agency reports the support as unrestricted.

Donated Goods, Facilities, Advertising Time and Services

Donated goods, space, and advertising time are valued at their fair value. Donated services are recognized in the financial statements at their fair value if the following criteria are met:

- The services require specialized skills and the services are provided by individuals possessing those skills.
- The services would typically need to be purchased if not donated.

Many individuals volunteer their time to perform a variety of tasks that assist the Agency. During the years ended June 30, 2015 and 2014, volunteers worked approximately 181,837 and 172,220 hours, respectively. The fair value of these services is not recognized in the accompanying financial statements since they do not meet the criteria for recognition under accounting principles generally accepted in the United States of America.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Functional Allocation of Expenses

The costs of providing the various programs have been summarized on a functional basis in the statement of activities. Expenses that can be identified with a specific program are allocated directly according to their natural classification. Other expenses that are common to several functions are allocated by other reasonable methods.

2. Summary of Significant Accounting Policies, Continued

Income Taxes

The Agency is a non-profit organization exempt from federal income tax under Internal Revenue Code Section 501(c)(3) and from Arizona income tax under Arizona Revised Statute Section 43-1201(4). The Agency is classified as other than a private foundation under Section 509(a)(1) and 170 (b)(1)(A)(vi) of the Internal Revenue Code. There were no taxes paid by the Agency during the years ended June 30, 2015 and 2014.

The Agency's policy is to disclose or recognize income tax positions based on management's estimate of whether it is reasonably possible or probable, respectively, that a liability has been incurred for unrecognized income tax positions. Management has considered its tax positions and believes that all of the positions taken in its federal and state tax exempt Agency tax returns are more likely than not to be sustained upon examination. The Agency's federal Form 990, *Return of Organization Exempt from Income Tax* and Arizona Form 99, *Arizona Exempt Organization Annual Information Return*, are generally subject to examination by the IRS for three years and the Arizona Department of Revenue for four years, respectively, after the date the returns were filed.

Cash and Cash Equivalents

The Agency considers all highly-liquid investments with a purchased maturity of three months or less to be cash equivalents. During the last quarter of the fiscal year ended June 30, 2014, the Agency changed investment managers. The outgoing investment manager liquidated their proprietary certificates of deposit; therefore, approximately $2,667,000 was temporarily held as cash at June 30, 2014.

Concentration of Credit Risk

Cash balances are maintained at various financial institutions. The Federal Deposit Insurance Corporation (FDIC) insures cash accounts at banks up to $250,000 per institution. Investments held by other institutions are insured up to $500,000, including up to $250,000 for cash balances per institution, by the Securities Investor Protection Corporation (SIPC). The Agency also has investments insured under additional brokerage insurance provided by Lloyd's of London up to $150,000,000. This additional protection becomes available in the event that SIPC limits are exhausted. It is the opinion of management that the solvency of the referenced financial institutions is not of concern at this time. At June 30, 2015 and 2014, the Agency had cash in the amount of $1,653,499 and $443,114, respectively, at various banks and institutions in excess of FDIC limitations.

Grants and Accounts Receivable

Grants receivable consist principally of uncollateralized amounts due from state and local governments under contractual agreements. Other receivables consist principally of uncollateralized amounts due from other not-for-profit organizations under contractual agreements. There are no receivables at June 30, 2015 and 2014 that are considered delinquent. Due to the nature of these receivables, no allowance for doubtful accounts has been recorded.

2. Summary of Significant Accounting Policies, Continued

Food and Commodities Inventory and Deferred Revenue

Purchased inventory and certain commodities are stated at the lower of cost or market with cost determined on a first-in, first-out (FIFO) basis. Inventory of food contributed by donors and remaining commodities inventory are valued at the approximate wholesale value, which is determined annually by Feeding America, the national food bank network. It is standard industry practice to use the Feeding America estimated value per pound, which is subject to agreed-upon testing procedures by independent certified public accountants. Effective July 1, 2013, the Agency began estimating the value of certain commodities using the Feeding America value per pound. As a result, inventory and the related deferred revenue were increased by $562,586 on July 1, 2013.

Deferred revenue in the amount of $2,913,437 and $2,130,644 consists primarily of commodities received from the U.S. Department of Agriculture but not distributed as of June 30, 2015 and 2014, respectively.

Investments

In accordance with accounting principles generally accepted in the United States of America applicable to nonprofit organizations, investments in marketable securities with readily determinable fair values and all investments in debt securities are valued at their fair values in the statements of financial position. Unrealized gains and losses are included with the change in net assets.

Purchases and sales of securities are recorded on a trade-date basis. Interest income is recorded as earned. Dividends are recorded on the ex-dividend date. Investment expenses are recorded as a reduction in investment earnings. Investment gains and losses are included in the statements of activities as increases or decreases in unrestricted or temporarily restricted net assets.

Investments - Other

Investments – other consists of certificates of deposit held for investment that are not debt securities. Certificates of deposit with original maturities greater than three months and remaining maturities less than one year are classified as short-term, and certificates of deposit with remaining maturities greater than one year are classified as long-term.

Property and Equipment

Purchased property and equipment is recorded at cost. Donations of property and equipment are recorded as support at their estimated fair value. Such donations are reported as unrestricted support unless the donor has restricted the donated assets to a specific purpose. Assets donated with explicit restrictions regarding their use and contributions of cash that must be used to acquire property and equipment are reported as restricted support. Absent donor stipulations regarding how long those donated assets must be maintained, the Agency reports expirations of donor restrictions when the donated or acquired assets are placed in service as instructed by the donor. The Agency reclassifies temporarily restricted net assets to unrestricted net assets at that time.

Property and equipment with an expected useful life of more than one year and an acquisition cost of $5,000 or more per unit are capitalized and depreciated over the expected useful lives of the assets using the straight-line method of depreciation. All other equipment and the cost of repairs and maintenance is charged to expense in the year incurred. Property and equipment is depreciated using the straight-line method over the following estimated useful lives of the assets:

Buildings and improvements	3 - 30 years
Equipment	5 - 10 years
Vehicles	3 - 5 years

2. Summary of Significant Accounting Policies, Continued

Reclassifications

Certain items from 2014 have been reclassified to conform to the 2015 financial statement presentation. These reclassifications have no effect on the previously reported total net assets.

3. Food and Commodities Inventory

Inventories of food and U.S. Government commodities consist of the following at June 30,:

	2015	2014
Commodities received from the U.S. Department of Agriculture	$ 2,898,437	$ 2,092,635
Donated food	1,439,581	1,429,145
Purchased food	111,526	175,422
Total food and commodities inventory	$ 4,449,544	$ 3,697,202

4. Investments

Investments are stated at fair value and consist of the following at June 30,:

	2015	2014
Common stock	$ 2,384,828	$ 566,618
Fixed income	2,231,002	-
Mutual funds	185,544	132,208
Community Foundation for Southern Arizona	27,988	27,940
Total investments	$ 4,829,362	$ 726,766

Investment (loss) income consists of the following for the years ended June 30,:

	2015	2014
Interest and dividend income	$ 92,012	$ 66,566
Realized and unrealized (loss) gain on investments, net	(90,704)	112,728
Investment fees	(41,709)	(43,447)
Total investment (loss) income, net	$ (40,401)	$ 135,847

5. Fair Value Measurements

The Financial Accounting Standards Board has established a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy are described as follows:

Level 1: Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Agency has the ability to access.

5. Fair Value Measurements, Continued

Level 2: Inputs to the valuation methodology include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in inactive markets;
- Inputs other than quoted prices that are observable for the asset or liability;
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

Level 3: Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation methodologies used for assets measured at fair value. There have been no changes in the methodologies used at June 30, 2015 and 2014.

- *Stocks and fixed income:* Valued at fair value based on national trade listing.
- *Mutual funds:* Valued at the net asset value ("NAV") of shares held by the Agency at year-end.
- *Interest in trust held by Community Foundation for Southern Arizona:* Valued at the fair value of the underlying equity and fixed income funds as reported by the Foundation.

The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Agency believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

5. Fair Value Measurements, Continued

Fair values of investment assets measured on a recurring basis are:

	Investments at Fair Value as of June 30, 2015			
	Level 1	Level 2	Level 3	Total
Common stock	$ 2,384,828	$ -	$ -	$ 2,384,828
Fixed income	2,231,002	-	-	2,231,002
Mutual funds:				
Large blend/growth/value	72,840	-	-	72,840
Various bond funds	34,948	-	-	34,948
Mid-cap growth/value	25,578	-	-	25,578
Foreign large blend/value	22,251	-	-	22,251
Commodities/diversified funds	11,322	-	-	11,322
Small blend/growth	4,835	-	-	4,835
Industry funds	4,513	-	-	4,513
Multialternative	3,779	-	-	3,779
Managed futures	2,361	-	-	2,361
Bank loan	1,944	-	-	1,944
Market neutral	1,173	-	-	1,173
Community Foundation for Southern Arizona	-	-	27,988	27,988
Total investments	$ 4,801,374	$ -	$ 27,988	$ 4,829,362

	Investments at Fair Value as of June 30, 2014			
	Level 1	Level 2	Level 3	Total
Common stock	$ 566,618	$ -	$ -	$ 566,618
Mutual funds:				
Various bond funds	56,044	-	-	56,044
Large growth/value	15,564	-	-	15,564
Foreign large blend/value	12,983	-	-	12,983
Commodities/diversified funds	10,282	-	-	10,282
Mid-cap growth/value	9,893	-	-	9,893
Long/short government	7,593	-	-	7,593
Industry funds	7,203	-	-	7,203
Small blend/growth	4,969	-	-	4,969
Market neutral	3,220	-	-	3,220
Multialternative	2,575	-	-	2,575
Bank loan	1,882	-	-	1,882
Community Foundation for Southern Arizona	-	-	27,940	27,940
Total investments	$ 698,826	$ -	$ 27,940	$ 726,766

5. Fair Value Measurements, Continued

The table below sets forth a summary of changes in the fair value of the Agency's level 3 assets for the years ended June 30,:

Community Foundation for Southern Arizona	2015	2014
Balance, beginning of year	$ 27,940	$ 24,093
Investment income earned	368	4,044
Distributions and fees	(320)	(197)
Balance, end of year	$ 27,988	$ 27,940

6. Property and Equipment

Property and equipment consists of the following at June 30,:

	2015	2014
Land	$ 633,922	$ 536,253
Buildings and improvements	9,631,735	9,277,940
Vehicles	1,992,762	1,950,935
Equipment	2,473,060	2,259,328
Construction in progress	927,540	-
Total property and equipment, at cost or donated value	15,659,019	14,024,456
Less accumulated depreciation	(8,930,385)	(8,179,268)
Property and equipment, net	$ 6,728,634	$ 5,845,188

Construction in progress at June 30, 2015 consists of expenditures related to a new warehouse in Wilcox, Arizona. The warehouse opened during August 2015, and the total estimated costs are $1,175,000.

7. Gift Annuities

The Agency has received several charitable gift annuities, whereby a donor gives assets to the Agency in return for the Agency's promise to pay a fixed amount for the life of the annuitant. The gift is recorded as a contribution when received. The assets are included with investments held by a third party asset manager and designated for payment of the benefits until the death of the annuitant, at which time any remaining assets will be available for general use. The present value of the expected benefits to be paid are recalculated at each year end and recorded as a liability. Payment rates vary depending on the age of the annuitant at the time of the agreement. During the years ended June 30, 2015 and 2014, the payment rates ranged between 5.8% and 9.5%. At June 30, 2015, the Agency had four charitable gift annuities with an estimated benefit liability of $100,275. At June 30, 2014, the Agency had five charitable gift annuities with an estimated benefit liability of $108,117. Investments at June 30, 2015 and 2014 include $123,565 and $136,275, respectively, designated for payment of these benefits.

8. Line of Credit

During the year ended June 30, 2015, the Agency entered into a $1,000,000 line of credit agreement with a bank. The line of credit expires during February 2016. Interest is payable monthly at the LIBOR index plus 2.0% (LIBOR index is 0.175% at June 30, 2015). The line is collateralized by real property and accounts on deposit with the bank. The Agency is required to maintain a quick ratio as of year-end of not less than 2.0 to 1.0. As of June 30, 2015, the Agency is in compliance with the covenant. The balance on the line of credit at June 30, 2015 was $-0-.

9. Net Assets

Board-Designated

The board-designated net assets are maintained in separate investment accounts at various institutions. Expenditures from the accounts must be approved by the Board of Directors.

Board-designated net assets consist of the following at June 30,:

	2015	2014
Operating reserve	$ 2,716,610	$ 2,732,745
Community Food Bank discretionary	3,483,184	1,671,421
Community Food Bank capital reserve	450,643	453,375
Green Valley discretionary	151,162	152,045
Gift annuity reserve	123,565	136,275
Green Valley capital reserve	15,690	15,773
Total board-designated net assets	$ 6,940,854	$ 5,161,634

Temporarily Restricted Net Assets

Temporarily restricted net assets consist of the following at June 30,:

	2015	2014
Accumulated earnings on endowments	$ 81,174	$ 94,053
Milk and Eggs	30,851	18,145
Turkey and Ham	21,396	12,829
Back Pack program	13,885	42,708
School Pantry	9,376	-
Other	7,620	12,906
Food Security	133	4,617
Gabrielle Giffords Family Assistance Center	-	28,578
CFRC Farm to Child	-	13,634
Total temporarily restricted net assets	$ 164,435	$ 227,470

Permanently Restricted Net Assets

Permanently restricted net assets consist of the following at June 30,:

	2015	2014
Bornstein Farm to Child Endowment	$ 100,000	$ 100,000
Punch Woods Endowment	98,235	98,235
Green Endowment Fund	30,000	30,000
Stocker Endowment Fund	25,100	25,100
Terri Valenzuela Endowment Fund	17,200	17,200
Young Foundation	15,175	13,175
Jacob Haber Children's Fund	8,200	8,200
Total permanently restricted net assets	$ 293,910	$ 291,910

10. Endowments

The Agency has endowments that were established by individual donors and restricted for a variety of purposes. In accordance with FAS ASC 958-605, which requires net assets to be classified based on the existence or absence of donor-imposed restrictions, these funds are recorded as permanently restricted net assets.

These endowments require the Agency's compliance with Arizona's enacted version of the Uniform Prudent Management of Institutional Funds Act ("UPMIFA"). In addition, the Agency is subject to the FSP FAS No. 117-1, *Endowments of Not-for-Profit Organizations: Net Assets Classification of Funds Subject to an Enacted Version of the Uniform Prudent Management of Institutional Funds Act, and Enhanced Disclosures for All Endowment Funds* (as codified in FASB ASC 958-205) which improves the disclosures about an organization's endowment funds whether or not the funds are subject to UPMIFA.

Interpretation of Relevant Law

The board of directors has interpreted current law as requiring the preservation of the value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Agency classifies as permanently restricted net assets (a) the original value of gifts donated to the permanent endowment, (b) the original value of subsequent gifts to the permanent endowment, and (c) accumulations to the permanent endowment made in accordance with the direction of the applicable donor gift instrument at the time the accumulation is added to the fund. The remaining portion of the donor restricted endowment fund that is not classified in permanently restricted net assets is classified as temporarily restricted net assets until those amounts are appropriated for expenditure by the Agency in a manner consistent with the standard of prudence prescribed by current law.

Accordingly, the Agency considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds:

- The duration and preservation of the fund
- The purposes of the Agency and the donor-restricted endowment fund
- General economic conditions
- The expected total return from income and the appreciation of investments
- Other resources of the Agency

The endowments' net asset composition, by type, consists of the following at June 30,:

	2015	2014
Donor-restricted permanent endowment funds	$ 293,910	$ 291,910

The Agency had the following endowment-related activities during the year ended June 30, 2015:

	Temporarily Restricted	Permanently Restricted
Endowment balance, June 30, 2014	$ 94,053	$ 291,910
Interest and dividends	8,180	-
Net realized and unrealized loss	(3,060)	-
Appropriated for expenditure	(17,999)	-
Contributions	-	2,000
Endowment balance, June 30, 2015	$ 81,174	$ 293,910

See independent auditors' report.

10. Endowments, Continued

The Agency had the following endowment-related activities during the year ended June 30, 2014:

	Temporarily Restricted	Permanently Restricted
Endowment balance, June 30, 2013	$ 62,149	$ 289,910
Interest and dividends	9,661	-
Net realized and unrealized gain	41,552	-
Appropriated for expenditure	(19,309)	-
Contributions	-	2,000
Endowment balance, June 30, 2014	$ 94,053	$ 291,910

Fund Deficiencies

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the level that the donor or current law requires the Agency to retain as a fund in perpetual duration. In accordance with accounting principles generally accepted in the United States of America, deficiencies of this nature are reported in unrestricted net assets. There were no such deficiencies as of June 30, 2015 or 2014.

Return Objectives and Risk Parameters

The Agency has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs supported by the endowment funds while seeking to maintain the original value of any contributions to the endowment assets. Endowment assets include those assets of donor-restricted funds that the Agency must hold in perpetuity or for donor-specified periods. Under this policy, as approved by the board of directors, the endowment assets are invested with a growth and income style of investing in a portfolio comprised of cash, fixed income securities and equities.

Strategies Employed for Achieving Objectives

To satisfy its long-term objectives, the Agency relies on a total return strategy in which investment returns are achieved through both capital appreciation (realized and unrealized) and current yield (interest and dividends). The Agency targets a diversified asset allocation with a blend of cash, fixed income securities and equities to achieve its long-term return objectives within prudent risk constraints.

Spending Policy and How the Investment Objectives Relate to Spending Policy

The Agency's policy is to distribute the funds in accordance with the instructions of the endowment; in the absence of any specific instructions, all distributions require approval from the board of directors. One endowment allows for annual distributions, as long as these distributions do not result in an endowment balance less than the cumulative amount of the donations. The other endowments control any distributions in an attempt to maintain the endowment's buying power.

11. In-Kind Contributions

The Agency recognized in-kind contributions consisting of the following during the years ended June 30,:

	2015	2014
Rent	$ 81,318	$ 83,000
Small equipment and supplies	14,081	16,751
Professional services	13,009	18,788
Property and equipment	-	5,926
Total in-kind contributions	$ 108,408	$ 124,465

Contributed services were utilized by the Agency in support of the Caridad Community Kitchen and administrative personnel support.

12. Multi-Service Center Rent Income

The Agency's main facility has vacant space which is leased to local organizations in connection with its multi-service center program. Commercial leases range from one to nine years. These leases generally contain options to renew with provisions for rental adjustments for increases in the Consumer Price Index. Multi-service center rent income received during the years ended June 30, 2015 and 2014 was $27,405 and $76,896, respectively. The minimum future lease payments receivable from the Agency's tenants under existing leases are $36,134 for the year ended June 30, 2016.

13. Special Events

Special events activity consist of the following for the years ended June 30,:

	2015		
	Revenue	Expenses	Net
Good Vibrations	$ 50,868	$ 14,316	$ 36,552
Hunger Walk (includes in-kind donations of $14,335)	96,449	36,880	59,569
	$ 147,317	$ 51,196	$ 96,121

	2014		
	Revenue	Expenses	Net
Mardi Gras (includes in-kind donations of $25,000)	$ 66,390	$ 36,426	$ 29,964
Hunger Walk	78,784	25,088	53,696
Other events (includes in-kind donations of $9,750)	61,625	32,742	28,883
	$ 206,799	$ 94,256	$ 112,543

The Agency receives revenue from special events that it operates and from special events operated by other organizations that contribute the proceeds to the Agency. Proceeds contributed to the Agency from designated special events by other organizations are recorded as contributions revenue when received.

14. Commitments and Contingencies

Contingencies

The Agency is subject to audit by its funding agencies. Contingent liabilities, if any, have not been determined at June 30, 2015 and 2014. The Agency's management feels no such liabilities exist at June 30, 2015 and 2014.

Joint Occupancy Agreement

In February 1998, the Agency entered into a Joint Occupancy agreement (the "Agreement") with a not-for-profit organization (the "Joint Occupant") whereby the Joint Occupant has the right to use not less than 1,000 square feet of the Agency's 4,600 square foot Green Valley branch location. Neither the Agency nor the Joint Occupant are permitted to assign, transfer, mortgage, sublet or otherwise transfer its interest in the Agreement or its share of the branch location without the other party's prior written consent. The agreement is in effect for ten years commencing January 1998 with automatic ten year renewals unless mutually agreed to in writing by the parties. In January 2008, the first automatic ten-year renewal began.

Operating Lease Commitments

The Agency leases office equipment under operating leases. Total rent expense for the years ended June 30, 2015 and 2014 was $17,666 and $38,491, respectively. The future minimum lease payments are:

Year ending June 30,	
2016	$ 21,244
2017	21,244
2018	17,446
2019	12,640
2020	4,639
	$ 77,213

15. Retirement Plan

The Agency implemented a 401(k) retirement plan on June 1, 1998. All employees 18 years of age or older can participate in the plan after completing one month of service. Employer matching is available for employees who have completed a minimum of 1,000 hours of service. During the years ended June 30, 2015 and 2014, the Agency matching contributions to the plan amounted to $140,777 and $155,639, respectively. There were no discretionary contributions made for the fiscal years ending June 30, 2015 and 2014.

16. Subsequent Events

The Agency was unaware of any subsequent events as of November 4, 2015, the date the financial statements were available to be issued.

Community Food Bank, Inc.
Unaudited Statement of Activities
For the year ended June 30, 2016

REVENUE	
In-Kind Donated Food	56,741,623
Government Grants	2,517,946
Contributions	8,532,519
Grants & Foundation Support	942,001
Special Events	255,165
Bequests	1,099,825
In-Kind Donated Non Food	122,925
CFRC Revenues	168,363
Rent Income	25,099
Caridad Revenue	52,620
Miscellaneous Income	18,392
Unrealized Gains (Losses)	(23,932)
Realized Gains (Losses), Interest & Dividends	(97,982)
Gift Annuity Contracts	-
Capital Asset Grants	1,293,477
Endowment Contributions	3,000
Gain (Loss) on Sale of Assets	1,500
TOTAL REVENUE	**71,652,541**
EXPENSES	
Operating Expenses	
COGS - In Kind Food	55,796,252
Disposed Food	1,051,820
Variance - In Kind	(133,208)
Subtotal of COGS In-kind	***56,714,864***
Cost of Sales-Purchased Food	1,208,040
Cost of Sales - Farmers' Market	140,959
Freight -in and VAP fees	38,108
Subtotal of COGS Purchased	***1,387,107***
Salaries & Wages	5,056,024
Employer Taxes	429,947
Employee Benefits	805,473
Payroll & ERE Fees	39,685
Professional/Outside Services	485,698
Insurance	171,165
Vehicle & Fuel Expense	270,973
Equipment Maintenance & Repair	87,512
Occupancy Expense	155,019

Utilities	413,522
Supplies	482,667
Small and Leased Equipment	105,503
Postage, Printing and Promotion	238,981
Fund Raising Expense	904,849
Special Events Expense	132,669
Travel & Mileage	122,092
Staff, Board and Volunteer Expense	237,904
In Kind Expense	122,925
Dues & Fees	104,893
Grants Expense	168,084
Endowment, CGA & Investment Fees	53,549
Miscellaneous Expense	54,055
Depreciation/Amortization Expense	778,173
TOTAL EXPENSES	**69,523,333**

Community Food Bank of Southern Arizona
UNAUDITED STATEMENT OF FINANCIAL POSITION
For the year ended June 30, 2016

ASSETS		
Cash - Operations	$	1,728,582
Investments		8,525,110
Cash and Cash Equivalents Sub-Total		**10,253,692**
Accounts Receivable		482,891
Pledge Receivable at Discount		1,143,477
Prepaids and Other		103,713
Inventory - Purchased Food		94,977
Inventory - Donated Food		1,518,439
Inventory - USDA Commodities		2,257,659
Fixed Assets - Net		6,702,235
ASSET TOTAL	**$**	**22,557,082**
LIABILITIES & FUND BALANCE		
LIABILITIES		
Accounts Payable and Accrued Expenses	$	650,908
Deferred Revenue		2,266,214
LIABILITIES TOTAL		**2,917,123**
NET ASSETS		
Net Assets - Unrestricted		4,076,887
Net Assets- Temporarily Restricted		165,717
Endowment - Permanently Restricted		295,910
Board Designated		8,287,231
Gift Annuities		111,979
Plant Fund		6,702,235
NET ASSETS TOTAL		**19,639,960**
LIABILITIES AND NET ASSETS	**$**	**22,557,082**

TOWN COUNCIL AGENDA COMMUNICATION

MEETING DATE: August 22, 2016 ***DATE PREPARED:*** August 9, 2016

AGENDA ITEM: **7F**

TO: Honorable Mayor and Council

FROM: Sheila M. Bowen, P.E., Public Works Director / Town Engineer

SUBJECT: **Approval of Cooperative Purchasing Contract Nos. 170019, Underwood Bros., Inc. dba/AAA Landscape; 170020, M. Anderson Construction Corporation; 170021, Northwest Landscaping, LLC; and 170022, Santa Rita Landscaping, Inc. for Landscape Construction Services; all commencing August 24, 2016 and terminating September 30, 2017, each not to exceed $100,000.**

☐ **Economic Development** ☒ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☐ **Quality of Life** ☐ **Other**

GOALS/OTHER:

- Goal 1 a: Identify community priorities regarding the provision of clean and safe streets, sidewalks, landscaping, and parks and recreational facilities
- Goal 1 d: Prioritize parks and recreational facility needs through assessment and development of a capital needs and replacement plan

FINANCIAL / BUDGET SUMMARY

1. Cost: As-Needed, Not-to-Exceed $100,000 each.
2. Available Budget/Project Capacity ($): CIIF, Enterprise Fund, Parks & Recreation, HURF

STAFF RECOMMENDATION

Staff recommends approval of Contract Nos. 170019, 170020, 170021 and 170022 for Landscape Construction Services.

SUGGESTED MOTION

I move to approve Contract Nos. 170019, 170020, 170021 and 170022.

DISCUSSION

Job Order Contracting is commonly used to complete tasks such as routine maintenance and small construction projects. The timing and quantity of projects that may arise are unknown and many require limited design prior to execution. Jurisdictions may elect to establish an "as-needed" list of on-call, Job Order Contractors through the solicitation of interested contractors having the appropriate experience and qualifications. Recognizing there are significant costs and time involved in responding to and reviewing such solicitations that may or may not result in actual work, and recognizing that other jurisdictions have established lists of "as-needed" Job Order Contractors through a similar method of evaluating experience and qualifications, Cooperative Purchasing can be used to access those contractors efficiently and without duplication in effort. In accordance with Sahuarita Town Code, Chapter 3, at least three bids are solicited for contemplated work exceeding $5,000. Council approval is sought for purchases exceeding $25,000.

The Cooperative Purchasing Agreement with the City of Tucson allows utilization of their Job Order Contracts. These contracts have been identified by the Public Works Department as suitable and qualified contractors to provide Landscaping Construction Services for the Town of Sahuarita and will be called upon for an estimate when services are needed. These services may include, but are not limited to, the planting of trees, shrubs, and cacti; grading, excavation, ripping of soils, installation of hydroseeding; the placement of decorative rock and boulders; the installation of irrigation systems, and controls and all incidental work required to complete in place; sidewalks and/or

walking/bike paths; drainage pipes/scuppers; fencing; non load-bearing walls; signage; erosion control/Stormwater Pollution Prevention Plan (SWPPP); rip rap; hand seeding, hand watering and mulching. Some projects may require a Certified Arborist. The scope of work will vary with each individual task order.

Services under these Cooperative Agreements will be requested on an as-needed, if-needed basis and the resultant contract is neither exclusive nor a commitment by the Town of Sahuarita that the Contract's services will be required. If required, these services are not to exceed $100,000 for each contact from August 24, 2016 through September 30, 2017.

ATTACHMENTS

1. Cooperative Purchasing Contract Nos. 170019, 170020, 170021 and 170022

COOPERATIVE PURCHASING CONTRACT

Town of Sahuarita, Arizona

Department:	Public Works
Contractor:	Underwood Bros., Inc. dba/AAA Landscape
Project Name:	JOC for Landscape Construction Services
Project Number:	N/A
Contract Dates:	Start: 8/24/2016 End: 9/30/2017
Contract Number:	170019
Amount:	Not to Exceed $100,000.00
Funding Source:	Various

TOWN COUNCIL MEMBERS

Mayor Duane Blumberg
Vice Mayor Bill Bracco
Kara Egbert
Gil Lusk
Tom Murphy
Lynne Skelton
Melissa L. Hicks

TOWN MANAGEMENT

L. Kelly Udall, Town Manager
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

COOPERATIVE PURCHASING CONTRACT

THIS CONTRACT is entered into between the Town of Sahuarita, Arizona, an Arizona municipal corporation (hereinafter "Town"), and Underwood Bros., Inc., dba AAA Landscape, an Arizona corporation (hereinafter "Contractor").

W I T N E S S E T H

Whereas, Town requires the services of a vendor and/or contractor qualified and duly licensed in the Town of Sahuarita and the State of Arizona and qualified to provide landscape construction services; and

Whereas, Contractor is qualified and willing to provide such services; and

Whereas, Section 3.15.060 (C) of the Sahuarita Town Code provides that in the event of a purchase made by, through, or with any public agency as defined in Arizona Revised Statutes § 11-951, the Town Council may approve such purchases or award such contracts for services without a formal bidding process, and Contractor meets all such requirements.

A G R E E M E N T

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter provided, it is agreed between the Town and the Contractor as follows:

1 **INCORPORATION OF CONTRACT.** The parties hereby incorporate that certain contract between Contractor and the City of Tucson attached hereto as Exhibit "A" (the "Underlying Contract") as if fully set forth herein, and agree that (i) the Town shall be substituted in place of the other governmental entity, (ii) the Underlying Contract shall bind the parties to the fullest extent possible, and (iii) any clarifications or modifications to the Underlying Contract shall be set forth herein.

2 **TERM.** This Contract shall commence on August 24, 2016, and shall terminate on September 30, 2017, unless sooner terminated or further extended.

3 **SCOPE OF WORK.**

3.1 The work to be performed under this Contract is that work which is requested pursuant to the Scope of Work, list of materials, or other specifications attached hereto as Exhibit "B" and incorporated herein by this reference. Any clarifications, substitutions, corrections, additions, or other modifications to the Underlying Contract shall also be set forth on Exhibit "B."

4 **PAYMENT.**

4.1 In consideration of the services specified in this Contract, the Town agrees to pay the Contractor as set forth in the Underlying Contract, as clarified or modified as set forth in Exhibit "C" to this Agreement.

4.2 Contractor shall not perform work in excess of the contract amount without prior authorization by an amendment executed by all parties to this Contract. Work performed in excess of the contract amount without prior authorization by amendment shall be at Contractor's own risk.

5 **CONFLICT OF INTEREST.** This Contract is subject to the provisions of A.R.S. § 38-511.

6 **NOTICES.** Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as provided on Exhibit "E" to this Contract.

7 **Non-Discrimination.** Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/680 which is hereby

incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

8 **COMPLIANCE WITH FEDERAL AND STATE LAWS.** In the event this contract refers to services, the following shall apply. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1988. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

8.1 Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the Town that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Town in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

9. **NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Sahuarita Town Council does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, Town shall have no further obligation to Contractor, other than for services rendered prior to termination.

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

TOWN OF SAHUARITA, ARIZONA

_____
Duane Blumberg
Mayor

Date: _____

ATTEST:

_____
Lisa Cole, MMC, Town Clerk

TOWN OF SAHUARITA

_____
L. Kelly Udall, Town Manager/Purchasing Director

DEPARTMENT HEAD:

_____
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

APPROVED AS TO FORM:

_____
Daniel J. Hochuli, Town Attorney

Federal Tax ID Number: 86-0777111

D-U-N-S Number: 963704101

CONTRACTOR:
UNDERWOOD BROS., INC.
dba AAA Landscape

_____
Name: Robert L. Underwood
Title: CEO

Date: _____

Federal Tax ID Number: 86-0396095

D-U-N-S Number: 083720193

EXHIBIT A
UNDERLYING CONTRACT (WITH ALL AMENDMENTS TO DATE)

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: (520) 837-4118 / FAX: (520) 791-4735
sandra.alcorn@tucsonaz.gov
ISSUE DATE: May 23, 2016

CONTRACT #130762-03
CONTRACT AMENDMENT NUMBER: THREE (3)

SA/pp
CONTRACT OFFICER: SANDRA ALCORN

JOC for LANDSCAPE CONSTRUCTION SERVICES

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM ONE (1): RENEWAL
In accordance Special Terms and Conditions, Section 4, Contract Term and Renewal, the City of Tucson is hereby exercising its option to renew the contract for an additional one-year period from **October 1, 2016 through September 30, 2017.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING
The estimated dollar value of this contract for renewal period is **one hundred thousand dollars ($100,000.00).** In accordance with Arizona Revised Statute and the City's Construction Services Agreement, the Contractor must provide payment and performance surety bonds for this amount. Pursuant to Arizona Revised Statute, bonds may be provided as follows: annual bonds in the amount designated by the agency **($100,000.00)**, or bonding per each individual job. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value.

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR: AAA Landscape

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Robert L. Underwood 6-8-16
Signature of person authorized to sign Date

Robert L. Underwood, CEO
Name and Title (typed or printed legibly)

Underwood Bros., Inc. dba/AAA Landscape
Company Name

4742 North Romero Road
Address

RLU@aaalandscape.com
Email Address

Tucson, AZ 85705
City State Zip

Contact information for Sales/Account Representative for daily business operations:

Jordan Davis, Project Manager
Name and Title (typed or printed legibly)

520-245-9131
Phone Number

J.Davis@aaalandscape.com
Email Address

CITY OF TUCSON:

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 16th DAY OF June, 2016, AT TUCSON, ARIZONA.

Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM
as Director of Procurement and not personally

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

X ___ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

Underwood Bros., Inc. dba/AAA Landscape

Company Name

Robert L. Underwood

Signature of Person Authorized to Sign

Robert L. Underwood, CEO

Printed Name

PO Date: 11/20/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0010370 Phone: (520) 696-3223
Fax: (520) 696-0314

AAA LANDSCAPE
4742 N. ROMERO RD
TUCSON, AZ 85705-1360

Blanket PO Number

37263

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO

Gary Witwer 520-791-5100

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031
AccountsPayable-Finance@tucsonaz.gov

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762-03,		Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	0 EA	0.00	0.00	0.00	0.00
2	CONTRACT 130762-03:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.	0 EA	0.00	0.00	0.00	0.00
3	CONTRACT 130762-03:JOC FOR LANDSCAPING CONSTRUCTION SERVICES IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016. Contact Gary Witwer 520-791-5100.	0 EA	0.00	0.00	0.00	0.00
4	CONTRACT 130762-03: RENEWED FOR THE PERIOD OF OCTOBER 1, 2016 TO SEPTEMBER 30, 2017. Contact Gary Witwer 520-791-5100.	0 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Sandra Alcorn
Contract Officer

(520) 837 - 4118
Phone

(Rev. 5/25/2016) PO_S.rpt

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Resimont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

ITEM ONE (1): RENEWAL

In accordance with Section III, Contract Term and Renewal, the City of Tucson is renewing **Contract 130762: JOC for Landscaping Construction Services,** for an additional one-year period from **October 1, 2015 through September 30, 2016.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING

The estimated dollar value of this contract for renewal period is **ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00).** In accordance with Arizona Revised Statute and Special Terms and Conditions 4: Bonding, the Contractor must provide payment and performance surety bonds for this amount. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value. Bonds may be provided as follows: annual bonds in the amount designated above, or bonding per each individual job.

ITEM THREE (3): DAVIS BACON WAGE DETERMINATION(S)

Davis-Bacon Wage Determinations, if applicable, will be provided to the contractor on an individual project basis.

ITEM THREE (3): IMODIFICATIONS TO GENERAL CONDITONS FOR CONSTRUCTION

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1: Indemnification with:

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractors agrees to waive all rights of subrogation against the City of Tucson, it's agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

COT PROCURE 15 08 04 M09SE

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Resimont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM FOUR (4): INSURANCE

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1, Number 3 with:

The Contractor agrees to:

A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least thirty (30) calendar days prior to termination, cancellation, or reduction in coverage in any policy.

B. The Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

C. Provide and maintain minimum insurance limits as applicable.

COVERAGE	**LIMITS OF LIABILITY**
I. Commercial General Liability: Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	$1,000,000
General Aggregate Per Project	$2,000,000
Products & Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury	$1,000,000
Blanket Contractual Liability	$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	$1,000,000
III. Workers' Compensation (applicable to the State of Arizona)*[1]	
Per Occurrence	Statutory
Employer's Liability	$1,000,000
Disease Each Employee	$1,000,000
Disease Policy Limit	$1,000,000

*[1] Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Resimont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

D. **ADDITIONAL INSURANCE REQUIREMENTS:** All policies shall include, or be endorsed to include, the following provisions:

1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor.
2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

E. **NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.

F. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

G. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department of Procurement.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Resimont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

************END OF AMENDMENT************

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Robert L. Underwood 8-31-15
Signature Date

Robert Underwood, CEO
Print Name and

Title **AAA Landscape**
Company Name

4742 North Romero Road
Address

Tucson AZ 85705
City State Zip

RLU@aaalandscape.com
E-Mail Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 23rd DAY OF October, 2015 AT TUCSON, ARIZONA.

Marcheta Gillespie C.P.M., CPPO, CPPB, CPM
As Director of Procurement and not personally

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

__X__ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

AAA Landscape
Company Name

Signature of Person Authorized to Sign

Robert Underwood
Printed Name

PO Date: 11/20/2013
Change Order Date: 11/06/2015

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0010370
Phone: (520) 696-3223
Fax: (520) 696-0314

AAA LANDSCAPE
4742 N. ROMERO RD
TUCSON, AZ 85705-1360

Change Order Number
2
Blanket PO Number
37263
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO

Gary Witwer 520-791-5100

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,		Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
3	CONTRACT 130762-03:JOC FOR LANDSCAPING CONSTRUCTION SERVICES IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016. Contact Gary Witwer 520-791-5100.		0.00	0.00	0.00	0.00

Previous PO Total: $0.00

New PO Total: $0.00

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Dan Longanecker — **Contract Officer**

(520) 837 - 4125 — **Phone**

(Rev. 4/27/2009) PO_CHG_S.rpt

PO Date: 11/20/2013
Change Order Date: 10/08/2014

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR	
Vendor ID: 0010370	Phone: (520) 696-3223 Fax: (520) 696-0314
AAA LANDSCAPE **4742 N. ROMERO RD** **TUCSON, AZ 85705-1360**	

Change Order Number
1
Blanket PO Number
37263
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO	INVOICE
	City of Tucson **Finance/Accounts Payable** **PO Box 27450** **Tucson, AZ 85726-7450** **(520) 791-4031**

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762, -03		Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
2	CONTRACT 130762-03:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.		0.00	0.00	0.00	0.00

Previous PO Total: $0.00 **New PO Total: $0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

DEL **Dan Longanecker** — **Contract Officer**
(520) 837 - 4125 — **Phone**

(Rev. 4/27/2009) PO_CHG_S.rpt

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-03
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

ITEM ONE (1): RENEWAL

In accordance with Section III, Contract Term and Renewal, the City of Tucson is renewing **Contract 130762: JOC for Landscaping Construction Services,** for an additional one-year period from **October 1, 2014 through September 30, 2015.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING

The estimated dollar value of this contract for renewal period is **ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00).** In accordance with Arizona Revised Statute and Special Terms and Conditions 7: Bonding, the Contractor must provide payment and performance surety bonds for this amount. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value. Bonds may be provided as follows: annual bonds in the amount designated above, or bonding per each individual job.

ITEM THREE (3): DAVIS BACON WAGE DETERMINATION(S)

Davis-Bacon Wage Determinations, if applicable, will be provided to the contractor on an individual project basis.

ITEM THREE (3): IMODIFICATIONS TO GENERAL CONDITONS FOR CONSTRUCTION

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1: Indemnification with:

"To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and the Regional Transit Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City."

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-03
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

Replace Section 11.4: Independent Contractor with:

"It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees."

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Robert L. Underwood 9-5-14
Signature Date

Robert L. Underwood, CEO
Printed Name and Title

AAA Landscape
Company Name

4742 North Romero Rd
Address

Tucson AZ 85705
City State Zip

RLU@aaalandscape.com
Email Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 7th DAY OF October, 20 14, AT TUCSON, ARIZONA.

for Marcheta Gillespie, C.P.M., CPPO, CPPB, CPM
as Director of Procurement and not personally

BONDING OPTIONS

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

✓ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

____ "Annual" bonds in the amount of $100,000; each project over $100K or concurrent projects totaling more than $100K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

AAA Landscape
Company Name

Signature of Person Authorized to Sign

Executive Director of Operations

Cheryl Sallivant
Printed Name

130702-03
Contract Number

9/8/14
Date

Return this completed form along with your signed amendment

PO Date: 11/20/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0010370 Phone: (520) 696-3223
Fax: (520) 696-0314

AAA LANDSCAPE
4742 N. ROMERO RD
TUCSON, AZ 85705-1360

Blanket PO Number

37263

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,		Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	0 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Matt Hausman — Contract Officer

(520) 837 - 4123 — Phone

CITY OF TUCSON

Contract 130762-03

JOC for Landscape
Construction Services

AAA Landscape

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT NO. 130762
CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

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II. Scope of Work

III. Contract Term and Renewal

IV. Special Terms and Conditions

V. Pricing

VI. Construction Services Agreement

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B. General Conditions for Construction

C. Federal Terms and Conditions, to include the following:

- HUD REQUIREMENTS
  - 5369
  - 5369-A
  - 5370
  - 4010
  - Anti-Kickback Act
  - SECTION 3 Requirements

D. SBE /DBE Program Provisions for Job Order Contracts (JOC)

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

I. INTRODUCTION

The City of Tucson (COT) has conducted a competitive one-step process to retain up to FOUR (4) Contractors for a Job Order Contract (JOC) to provide miscellaneous landscape services at various locations for various City Departments. Housing and Urban Development (HUD), Regional Transportation Authority (RTA) and local funding sources will be used. As such, HUD requirements are hereby incorporated into the contract in Exhibit C. For Federal Aid projects, Contractors shall be provided with the most current and appropriate wage determination by the user department with the request for job order pricing. Individual job orders shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement. For federally funded projects, Contractors must comply with all Davis-Bacon Act requirements before any work can commence. The estimated budget for the first year is $850,000 and bonding per job will be an option. The term of this contract will be one year with FOUR (4) one-year renewal options. Services will be requested on an as-needed, if-needed basis and the resultant contract is neither exclusive nor a commitment by the COT that the Contractor's services will be required.

1. JOB ORDER CONTRACTING BACKGROUND

Job Order Contracting is an alternative delivery method for construction of public works projects. JOC's differ from the standard project-specific, low bid contracts in that they are indefinite-quantity contracts, which can be awarded on the basis of qualifications. Best value may be considered in awarding job orders under the resulting contract.

During the term of the JOC, work is performed by way of individual job orders. Each job order, initiated by the City, is defined cooperatively by the City and contractor. Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in an executed Notice to Proceed letter prior to proceeding with the work.

I. SPECIAL CONSIDERATIONS:

A. Project Pricing

Upon identification of a project, contractor(s) will be provided any/all details, construction drawings and specifications. The City intends to solicit proposals from the all contractors for the work indicated by the project documents. Individual job orders will be awarded based on the contractors qualifications, the proposed cost, and consideration of the firm's ability to complete the work expeditiously. When quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

B. Award of individual Job Orders

Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work. Each individual job order shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement prior to services being rendered. For any individual job $50,000 or greater that results in the establishment of DBE/SBE goals, contractor shall submit a DBE/SBE plan for OEOP review, per DBE/SBE program requirements outlined herein. Davis Bacon eligible projects will be identified in the request for price and schedule proposals for individual projects the most recent wage determination will be provided at that time.

C. Miscellaneous

- Use of subcontractors is allowed; however, each subcontractor must be identified and approved by the City Representative prior to commencement of work.
- All correspondence and data submitted by the Contractor under this contract shall reference the contract number, title, and full purchase order number.

D. Permitting:

The contractor is responsible for submitting and securing all necessary City and County permits. The City is responsible for the City required permit fees. The contractor is responsible for any Pima County fees, such as Pima County Wastewater fees.

II. SCOPE OF WORK

The scope of work will vary with each individual job order. It is expected that the specific Scope of Work and any Special Provisions, Plans, Specifications and Details shall be provided by the user Department prior to soliciting bids for individual job orders. Project pricing is anticipated to be by Unit Price or Lump Sum.

SECTION 1: SPECIAL CONDITIONS

A. Work Under This Contract

The work to be done under this Contract shall include the furnishing of all labor, material, and equipment necessary for or incidental to the construction and completion of all work indicated by the individual job orders. This consists of, but is not necessarily limited to:

The planting of trees, shrubs, and cacti; grading, excavation, ripping of soils, installation of hydroseeding; the placement of decorative rock and boulders; the installation of an irrigation systems, and controls and all incidental work required to complete in place; sidewalks and/or walking/bike paths; drainage pipes/scuppers; fencing; non load-bearing walls; signage; erosion control/SWPPP; rip rap; hand seeding, hand watering and mulching. Some projects may require a Certified Arborist.

All work in the public rights-of-way shall be done in accordance with the 2003 City of Tucson / Pima County Standard Specifications and Standard Details for Public Improvements, and TDOT Standard Details unless directed otherwise by the City's Project Manager for that particular Job Order. The work, when performed in the public rights-of-way, for the Department of Transportation, shall not require an Excavation Permit. This shall not preclude the contractor from obtaining permits required from other agencies and organizations that may be required for the performance of a job order. Permits may be required for work on real property belonging to the City or other private property, as required by ordinance, State or Federal Law. The term Engineer, shall represent the Contract Representative on projects constructed in the public rights-of-way.

B. Description of Work

This Contract was prepared to provide an expeditious means to meet landscaping requirements and needs on existing and future City facilities and public rights-of-way. The work to be performed consists

of furnishing all labor, material, equipment, and supplies in a workmanlike manner, in accordance to the 2003 City of Tucson / Pima County Standard Specifications for Public Improvements (hereto referred to as the Standard Specifications).

C. Location of Project

The individual job orders will be located at facilities throughout the City and Pima County. Job orders may also be issued for work in the public rights-of-way.

D. Special Provisions

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107-6 Archaeological Features: of the Standard Specifications is modified to add:

In the event that archaeological or historical features are encountered, cease work that could damage the features and contact Jonathan Mabry at the City of Tucson Historic Preservation Office at 837-6965 or 791-4171 and the engineer.

SECTION 109 – MEASUREMENT AND PAYMENT

109-5(B)(3)(a) Rental Rates (Without Operators): of the Standard Specifications is modified to add:

The Rental Rate Blue Book adjustment factor (F) will be 0.933.

SECTION 701 - MAINTENANCE AND PROTECTION OF TRAFFIC

701-1 Description: of the Standard Specifications is modified to add:

All work shall be performed during daylight hours unless a written program from the Contractor is received and approved by the City Engineer. If night work is approved, all other specifications, such as temperature requirements, must be met. Night work shall consist only of those items specifically approved by the City Engineer. If night work is approved, the City Representative may terminate all, or any portions, of the night work at any time. The remaining portion of this section shall further restrict all work, including night work.

Traffic Control Plan

No less than 5 working days prior to commencement of any work on any site or job order that will impact traffic movement, in the public rights-of-way, the Contractor shall submit for approval a detailed traffic control plan. The traffic control plans shall be on paper reproducible on a copier or blueprint machine (maximum paper size for copier prints is 8-1/2" x 14"). The plans shall be submitted to the Project Administrator/ Manager, Field Engineering Section, located in the County/City Public Works Center, 201 North Stone Avenue, 4th floor.

No separate payment shall be made for the traffic control plans. The costs shall be included in the overall cost of the project. The overall cost shall also include applicable plan review and permit fees.

Traffic Control/Lane Closures must be in accordance with the Manual on Uniform Traffic Control Devices as amended by the State of Arizona and the 2005 edition of Additions by the City of Tucson,

available at the City of Tucson Traffic Engineering Division, located in the County/City Public Works Center, 201 North Stone Avenue, 5th floor, and at http://dot.tucsonaz.gov/traffic/barricading.cfm.

No Arterial or Collector Street restriction between 7-9 a.m. and 4-6 p.m., Monday through Friday.

The Contractor must obtain permission a minimum of three (3) days in advance, except in an emergency, before closing or barricading any street or public right-of-way.

Barricading shall be in accordance with the approved barricading plan.

If the Contractor is allowed to temporarily eliminate parking on any streets, the Contractor shall arrange 24 hours in advance to have the meters hooded by the City of Tucson Parkwise Division. Parkwise may be contacted at (520) 791-5071 and information obtained at http://tucsonaz.gov/parkwise. The Contractor shall absorb any costs.

701-2 Materials: of the Standard Specifications is revised to add:

(A) Conformance:

Except as specified herein, all equipment, procedures used by workers, devices and facilities shall conform to the requirements of the MUTCD and associated Traffic Engineering Supplement.

(B) Safety:

(1) General Requirements:

All traffic control devices listed below as Category I and Category II devices shall meet the evaluation criteria for Test Level III per NCHRP (National Cooperative Highway Research Program) Report 350.

At the pre-construction conference the contractor shall submit a letter certifying that all such traffic control devices to be used on the project will meet the above-referenced criteria. The certification shall contain the following:

(a) A list of all Category I and II traffic control devices to be used on the project.

(b) The project number.

(c) A statement verifying that these devices, and their application, meet the requirements of NCHRP Report 350 Test Level III.

(d) The name, title and signature of a person having legal authority to bind the manufacturer or supplier of the Category I and II devices. The binding authority shall be in accordance with Subsection 106.05(B)(5).

If additional Category I or II devices are required at a later date, the contractor shall provide an amended certification letter to the Engineer specifying that such devices also comply with the requirements of NCHRP Report 350 Test Level III.

For all Category I and Category II devices used on the project, the contractor shall also acquire or have access to reports which verify that such devices meet the above-referenced criteria. The reports shall

contain the name and model of the tested traffic control devices, detailed drawings or product literature of each, and under what conditions the devices passed. The traffic control devices detailed in the report shall be the complete warning devices, including warning lights, flags, ballast and any other auxiliary attachment allowed. Reports for Category II devices are prepared by the Federal Highway Administration (FHWA). For Category I devices, the supplier is responsible for testing the product and providing a report which verifies that the device meets the criteria of NCHRP Report 350, Test Level III. If requested by the Engineer, the contractor shall provide copies of such reports within one working day.

(2) Category I Devices:

Category I devices are low-mass traffic control devices that will not cause an appreciable change in speed of an impacting vehicle, nor is it likely that any part of the device will intrude into the passenger compartment. The following traffic control devices will be considered Category I devices: rubber or plastic traffic cones, rubber or plastic tubular markers, single-piece plastic drums, plastic or fiberglass delineators. No warning lights, signs, flags or other auxiliary devices are allowed on Category I devices. Should any of these attachments be added to a Category I device, the Category I device will be considered a Category II device. Ballast at the base, such as a rubber tire, is an acceptable attachment to Category I devices. The single-piece plastic drum refers to the construction of the body of the drum exclusive of a separate base, if any.

(3) Category II Devices:

Category II devices are low-mass traffic control devices that will not cause a significant change in speed of an impacting vehicle. The following traffic control devices will be considered Category II devices: type I, II, and III barricades with or without warning lights; vertical panels with or without warning lights; signs and sign stand (all types) with or without warning lights and/or flags; drums, other than those listed in Category I, with or without warning lights; and any Category I devices with attached warning lights.

701-2.03 Temporary Concrete Barrier: of the Standard Specifications is revised to read:

Temporary concrete barrier shall conform to the requirements of Subsections 910-2 and 910-3 of the standard specifications for precast sections except that the dimensions of the connecting pin shall be 1 ¼ inch diameter by two feet five inches in length.

701-2.04 Temporary Pavement Markings: is revised to read:

Paint for temporary striping shall be white or yellow in accordance with the Manual on Uniform Traffic Control Devices. Temporary striping shall be 3-1/2 inches in width. The finished line shall have well defined edges and be free from waviness. Lateral deviation of the temporary stripe shall not exceed 1 inch in 100 feet.

Symbols (such as arrows) and legends (such as only) shall not be applied as temporary installations.

701-3.01 General: of the Standard Specifications is modified to add:

Traffic control does not include any devices or services used solely for the convenience of the Contractor, or to protect the Contractor's work. Excluded from Traffic Control (for the convenience of

the Contractor) is the use of devices and services (flagpersons and uniformed officers) which serve only to save the Contractor time and/or expense in his daily operations.

An example would be the use of flagpersons to control traffic at an equipment crossing in the construction zone in order to provide the right-of-way to construction equipment. Another example is the use of barricading devices around excavations in lieu of backfilling the excavation. Similarly, when a permanent below ground structure, which is to be surrounded or protected by a permanent device such as a wall or fence, is completed to the point where the permanent protection could be installed, the continued use of temporary protection [barricades, temporary concrete barriers (new installation), etc.] is for the Contractor's convenience.

701-3.02 Basic Maintenance and Protection of Traffic is modified to add:

The contractor shall provide and maintain, at all times, safe and adequate, emergency access lane for all affected directions at arterial and collector intersections. This lane shall be used for emergency vehicles only and will be adequately signed.

Should it become impossible to maintain an emergency access lane, a point control by a police officer will be provided to wave emergency vehicles through. The contractor shall notify the affected parties (police, fire, ambulance, hospitals, etc.) a minimum of 24 hours in advance of the disruption of the emergency access lane. The emergency access lane shall be restored as soon as possible.

701-3.06 Temporary Concrete Barriers: of the Standard Specifications is modified to add:

The Contractor shall provide temporary concrete barriers any time that traffic is adjacent to an open trench.

701-3.11 Flagging Services: of the Standard Specifications is modified to add:

The Contractor shall furnish verification to the Engineer that all civilian flaggers have completed a recognized training and certification program. Flaggers certified by the American Traffic Safety Services Association (A.T.S.S.A.) or by the National Safety Council shall be acceptable. Certification through other programs offering flagger training must be approved by the Engineer. Flagger certification must be current. Training and certification shall be required at least once every two years.

701-3.14 Traffic and Work Restrictions: of the Standard Specifications is modified to added:

It shall be the Contractor's responsibility to contact the adjacent and/or impacted property owners and tenants one week prior to construction. The City will furnish the written communication to be delivered by the Contractor (to be hand-delivered or left at doorway).

The Contractor shall provide vehicular access to property owners/tenants unless absolutely impossible to do so. Accessibility will be provided at the first opportunity.

There shall be no separate pay item for the cost of the resident notification and shall be included as a part of the overall project.

701-4.02 **Construction Area Elements:** of the Standard Specifications is modified to add:

The Agency will reimburse the contractor for the work under this section on the basis of bid prices or the predetermined reimbursement rates as specified in the Special Provisions.

(A) **Elements of Work (Complete-in-Place):** The elements of work listed under this subsection will be measured for payment upon the satisfactory completion of the initial installation or obliteration. Except as hereinafter specified under Basis of Payment, no subsequent measurements will be made:

Element of Work	Unit	Rate($)
Supply/Install/Remove		
Temporary Concrete Barriers	L.F.	5.00
Temporary Impact Attenuation (Sand Barrel)		
(Installation & Removal)	Each	5.00
Specialty Sign		Invoice + 10%
Preformed Pavement Marking (Type II)	L.F.	1.60
Preformed Pavement Marking (Type III)	L.F.	1.00
Temporary Pavement Marking (Painted Line)	L.F.	0.13
Pavement Marking, Preformed (Type I), Legend	Each	125.00
Pavement Marking, Preformed (Type I), Single Arrow	Each	100.00
Pavement Marking, Preformed (Type I), Merge Arrow	Each	115.00
Obliterate Pavement Marking	L.F.	0.25
Obliterate Pavement Legends	Each	25.00
Obliterate Pavement Arrows (Single, Double or Merge)	Each	22.00
Delineator (ADOT Std. Dwg. 4-M-4.01)(Temporary)	Each	20.00
Reflective Raised Pavement Marker (Temporary)	Each	4.00
Reflective Raised Pavement Marker (Permanent)		
(Used as Temporary)	Each	4.50
Non Reflective Raised Pavement Markers (Temporary)	Each	2.50
Remove Raised Pavement Markers	Each	1.00
Chip-Seal Pavement Marker (Single Capped)	Each	2.00
Chip-Seal Pavement Marker (Double Capped)	Each	3.00
Embedded Sign Post (Installation, Use & Removal)	Each	35.00

(B) **Elements of Work (In-Use) and Flagging:** The elements of work listed under this subsection will be measured for payment from the time at which the element is put into active use on the project and accepted by the Engineer until such time that the Engineer determines that the element is no longer required. Individual flags and sandbags used in conjunction with the traffic elements of work shall be considered incidental items. No separate payment shall be made for flags or sandbags and their cost shall be included in their respective elements of work. The work shall also include all maintenance, cleaning, and repair of all elements. The Engineer must also approve the use of Flagging Services. Flagging Services will be paid as indicated in this subsection.

Element of Work	Unit	Rate($)
Temporary Concrete Barrier (In Use)	L.F./Day	0.04
Temporary Impact Attenuation (Sand Barrel)(In-Use)	Each/Day	0.20
Flashing Arrow Panel	Each/Day	96.00
	Hour	5.00
Pilot Truck and Driver	Hour	30.00
Attenuator Truck and Driver	Hour	42.24
Vertical Panels	Each/Day	0.50
Traffic Cones (18 inch) (450mm)	Each/Day	0.10
Traffic Cones (28 inch) (710mm)	Each/Day	0.15
Barricade (Type II)	Each/Day	0.50
Barricade (Type III)	Each/Day	0.75
Flashing Warning Light (Type A)	Each/Day	0.25
Flashing Warning Light (Type B)	Each/Day	2.50
Steady-Burning Warning Light (Type C)	Each/Day	0.80
Standard Intensity Reflective Sheeting:		
Small Sign (Less Than 10 S.F.) (0.9m2)	Each/Day	0.50
Large Sign (10 S.F. or more) (0.9m2)	Each/Day	0.80
Portable Sign Stand (Spring Type)	Each/Day	2.10
Portable Sign Stand (Large Sign, 10 S.F. or more) (0.9m2)	Each/Day	1.00
Portable Sign Stand (Small Sign, Less Than 10 S.F.) (0.9m2)	Each/Day	0.70
High Level Flag Tree Sign Stand	Each/Day	0.40
Drum (18" x 36") (450mm x 900mm)	Each/Day	1.20
Orange Safety Fence (4ft. min. by 50 ft.) (1.2m min. x 15m)	Each/Day	1.50
Changeable Message Board (Pre-approved)	Each/Day	100.00
Chain Link Fence	L.F./Day	0.04
Flagging Services (Civilian)	Hour	15.18
Flagging Services (Civilian)(Federal Aid Proj.)	Hour	Prev. Wage
Flagging Services (Uniformed Officer)(Off Duty)	Hour	Invoice + 10%
Official Police Vehicle (Off Duty)	Hour	Invoice + 10%

701-4.04 Flagging Services: of the Standard Specifications is modified to add:

Overtime hours will be converted to straight times for measurement.

701-5 Basis of Payment: of the Standard Specifications is modified to add:

The traffic control bid item (Construction Area Traffic Control Elements) in the proposal is for bidding purposes only. Traffic Control will be paid according to the predetermined reimbursement rates listed herein.

The Contractor is responsible for the proper placement/maintenance of all traffic control elements in accordance with MUTCD requirements. The Basic Maintenance and Protection of Traffic Control Elements item shall be paid for at a lump sum as bid (Item 7010001).

701-5.02(A) General: of the Standard Specifications is modified to add:

The Agency will reimburse the Contractor for the work of providing and maintaining traffic control elements on the basis of the predetermined reimbursement rates for the Elements of Work listed in

Section 701-4.02 (A) and (B) as listed herein. (The pre-determined amount shown on Item 7010006 is for proposal submittal purposes only.)
Until determined otherwise, the City of Tucson, Contract Representative will pay for Traffic Control elements of work according to the schedules listed herein.

III. CONTRACT TERM AND RENEWAL

The term of this contract shall be OCTOBER 1, 2013, through SEPTEMBER 30, 2014, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, as its sole option, to renew the Contract for four (4) additional one-year periods, or portions thereof. If the City chooses to exercise this option, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of fee basis and minor scope additions and/or deletions.

1. PRICE ADJUSTMENT: The City will review fully documented requests for fee basis adjustments after any contract has been in effect for one (1) year. Adjustments will only be made at the time of contract renewal or extension, except for financial emergencies, and will be a factor in the renewal/extension review process. The City will determine whether the requested adjustment or an alternate option is in the best interest of the City. Any adjustment will be effective on the first day of the contract renewal or extension.

IV. SPECIAL TERMS AND CONDITIONS

1. **ANNUAL ESTIMATE:** The estimated dollar value of this contract for the initial one-year term is TWO HUNDRED THOUSAND DOLLARS ($200,000).

2. **BASIS FOR AWARDING INDIVIDUAL JOB ORDERS:** In the event the City awards more than one contract for these services, individual job orders will be awarded based upon consideration of the firm's ability to complete the work expeditiously and the proposed cost. The City intends to request price and schedule proposals from all contracted firms for each individual job order. However, when quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

   Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work.

   The Contractor shall be available on a five-day work basis throughout the term of the contract unless notified in writing by the City that this requirement may be temporarily waived due to the Contractor's approved written request or a reduced need by the City. The Contractor must be available to commence work on assignments within one week from award of an individual job order.

3. **COMPENSATION AND METHOD OF PAYMENT**: In consideration of the performance of the services described in the Scope of Services of each individual job order and pursuant to the master Scope of Work herein, the City shall pay the Contractor in accordance with the negotiated contract rates, and the Contractor shall charge the City only in accordance with those same rates.

   Compensation under this contract should not exceed $50,000 per individual job order unless a waiver is requested of and granted by the Director of Procurement.

The City will pay the Contractor following the submission of itemized invoice(s) for the service rendered. No payment shall be issued prior to receipt of material or service and correct invoice.

All requests for payment shall follow a format to be approved by the City Representative. Invoices shall be submitted monthly on a job-by-job basis.

4. **BONDING REQUIREMENTS:** Contractor shall file with the City, prior to the time of execution of the contract and annually, if the term of this contract is extended by the City, payment and performance bonds in the forms prescribed by the City unless bonding per project. The bonds must cover all construction performed under job orders. The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement, as provided under A.R.S. 34-610. Bonds may be provided as follows: annual bonds in the amount designated by the agency, or bonding per each individual job. Successful contractor(s) will designate bonding methodology prior to contract award.

5. **DBE PROGRAM REQUIREMENTS:**

The Job Order Contractor shall be required to comply with DBE Program requirements, if goals are applicable, on federally funded projects that exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed bidder's statement of proposed DBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The DBE Plan must include:
1. The names and addresses of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction as well as a DBE Acknowledgment of Participation which provides signed confirmation from the DBE(s) that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

A signed offer in response to this RFQ represents the offerors's intent to comply with the DBE program.

Also See EXHIBIT D - DBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

6. **SBE PROGRAM REQUIREMENTS:**

The Job Order Contractor shall be required to comply with SBE Program requirements, if goals are applicable, on projects that meet or exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed offeror's statement of proposed SBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The SBE Plan must include:
1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction.

A signed offer in response to this RFQ represents the offerors's intent to comply with the SBE program.

Also see: EXHIBIT D - SBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

7. **PERFORMANCE RATING:** At the completion of each term or termination of this contract, the City will evaluate the Contractor based on performance under this Contract. This rating will be used in the overall evaluation of the Contractor when applying for future work with the City.

8. **AUDIT AND INSPECTION OF RECORDS:** The Contractor shall permit the authorized representatives of the City Of Tucson to inspect and audit any books, documents, papers, data and records relating to its performance under the contract until the expiration of three years after final payment under this contract. The City shall have the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by the City to be incomplete or erroneous.

The following access to records requirements apply to this Contract:
The Contractor agrees to provide the City of Tucson or any of its authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City of Tucson or any of its duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

9. **CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:

A) Amend the contract or enter into supplemental verbal or written agreements;
B) Grant time extensions or contract renewals;
C) Otherwise modify the scope or terms and provisions of the contract.

The contract shall only be modified with the approval of the Department of Procurement. Except in the case of documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Department of Procurement through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

10. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

11. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to

A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

12. **CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-397**: By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-397. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.

13. **CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at http://www.tucsonaz.gov/etax. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.

14. **FEDERALLY FUNDED PROJECTS:** For projects that are identified as being federally funded, Federal Labor Standards will be applicable to that project. All Federal forms are attached and will be incorporated into any resulting contract(s)*. It shall be mandatory upon the Contractor(s) to whom the contract is awarded, and upon subcontractors working on this project to comply with the following:

A. Davis Bacon Act: (AZ Wage Decision) Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions.
B. Work Hour and Safety Standards Act: overtime pay and safety.
C. Mandatory Preconstruction meeting for Prime Contractor and all listed subcontractors

15. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See **www.tucsonaz.gov/procure** and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

V. PRICING

A. On the ensuing page are labor and/or equipment rates to be used in pricing the work under this contract. This pricing list is not all inclusive of the work that may be required. Those items of work which are not included may be negotiated on a job order by job order basis.

B. The rates established under this contract are not to exceed prices for those items of work identified. Proposals on individual job orders may not exceed those unit prices but may be less than that at the contractors discretion as they compete for each individual job order.

AAA LANDSCAPE
AN UNDERWOOD BROTHERS CO.
Est. 1975

We Beautify the World

September 10, 2013

City of Tucson

Attn: Matt Hausman, Principal Contract Officer
Re: JOC RFQ 130762 Landscape and Irrigation Rates

Extras and additional work will be per the following rates:

Labor:	$22.00 per hour
Project Manager	$75.00 per hour
Foreman:	$55.00 per hour
Irrigation/Leadperson:	$45.00 per hour
Equipment w/operator:	3500/Bobcat: $75.00 per hour
	570 Grade Tractor: $85.00 per hour
	590 Backhoe: $95.00 per hour
	1800 Gal Water Truck or Dump Truck: $115.00 per hour
Material, Fuel and rentals:	Cost + 15%

AAA Landscape Warranty:
AAA LANDSCAPE will replace – upon notice by Owner – any material installed which is defective due to poor quality material or workmanship. This Warranty takes effect upon **substantial completion** of areas when accepted and continues for the period listed below. This Warranty does not cover damage caused by others, or damage or loss beyond the control of AAA LANDSCAPE.

Turf - one (1) year (assuming no air-borne disease has infected the turf grass)
Shrubs – ninety (90) days from date of planting
Trees – one (1) year from date of planting
Irrigation – one (1) year
Low Voltage Lighting – one (1) year (excluding any / all bulb replacement)

If you have any questions, please feel free to call.

Sincerely,

Reid Iber
Chief Estimator

Note: This proposal expires in 30 calendar days.

Acceptance of this proposal- The above prices, specifications, and conditions are satisfactory and are herby accepted. You are authorized to do the work as specified.

Date Of Acceptance:_____

Authorized Signature:_____

Phoenix Office
3747 E. Southern Ave.
Phoenix, AZ 85040
P 602.437.2690

Tucson Office
4742 N. Romero Rd.
Tucson, AZ 85705
P 520.696.3223

aaalandscape.com

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT NO. 130762
CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

VI. CONSTRUCTION SERVICES AGREEMENT

CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this_____day of_____, 20 ____, by and between the City of Tucson, a municipal corporation organized and existing

under the laws of the State of Arizona, hereinafter called the "City", and _____

of the City of _____, County of _____, and State of _____ hereinafter called the "Contractor".

WITNESSETH: That the Contractor and the City, in consideration of the mutual covenants herein contained, agree as follows:

Contract Number: 130762
Contract Name: Job Order Contract (JOC) for Landscape Construction Services

1. Pricing - See Section V. of the Contract

2. Notice to Proceed, Completion Time, and Liquidated Damages

2.1 It is agreed that the City Representative will issue the Notice To Proceed with the Work to be performed under this Contract within twenty (20) consecutive calendar days after the date of execution of this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

2.2 The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

2.3 Liquidated Damages. Completion times will be specified in the Notice to Proceed. Applicable liquidated damages shall be assessed for each day the Work remains incomplete after the scheduled completion date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the City will sustain on account of late completion.

3. Miscellaneous

3.1 Guarantee. The Contractor shall guarantee all work under this Agreement against defects of material and workmanship for a minimum of two years from the date of Final Completion unless otherwise specified.

3.2 Contract Documents. The following listed documents constitute the Contract Documents and they are all as fully a part of this Agreement as if repeated herein:

1. Any and all Amendments
2. Any and all Supplementary General Conditions, Special Requirements and/or Special Provisions included herein.
3. This Agreement.
4. Standard Terms & Conditions or General Conditions for Construction
5. Construction Specifications, including any and all Standard, Special, Technical, and Supplementary Specifications included herein.

6. Project Plans, if applicable
7. SBE/DBE Plan, if applicable
8. Performance and Payment Bonds
9. Insurance Requirements

3.3 Precedence. In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved by giving precedent to the terms of the above documents in the order listed. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Agreement shall be a part of the Agreement between the parties and shall take precedence over all of the other Contract Documents.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date and year first written above.

CITY OF TUCSON, a municipal corporation

By _____
As Procurement Director and Not Personally

AAA LANDSCAPE
Contractor
By: _____
Title: Const. MGR

APPROVED AS TO FORM this 9
day of Dec, 2013

_____
As City Attorney and not personally

NOTE: The City's Contract Representative is:

GARY WITTWER (520) 837-6618

SAMPLE FORMS

STATUTORY PERFORMANCE BOND
(Penalty of this bond must be 100% of the specified Contract amount.)

KNOW ALL MEN BY THESE PRESENTS: That the City of Tucson, Arizona, a municipal

corporation, by action of the Purchasing Agent on _____, 20___

has awarded to _____

hereinafter designated as the "Principal", a Contract for the construction of _____

_____

which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein; and

WHEREAS, said Principal is required under the terms of said Contract, and the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we the Principal and _____

_____

a corporation organized and existing under the laws of the State of _____

_____

with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Tucson, a municipal corporation, (hereinafter called the Obligee), in the penal amount of _____

_____ Dollars ($_____),
for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

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

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court of a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named, on the _____day of _____
20 _____.

_____
Principal

By _____

ATTEST:

_____
Title

_____
Surety

By _____
Attorney in Fact

_____
Agency of Record

_____
Agency Address

_____
City and State

ATTEST:

_____
Title

APPROVED AS TO FORM THIS _____

DAY OF_____, 20 _____.

_____
City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

STATUTORY PAYMENT BOND

(Penalty of bond must be 100% of the specified Contract Amount.)

KNOW ALL MEN BY THESE PRESENTS:

That _____,

as Principal, and _____

as Surety, are held and firmly bound unto the City of Tucson, Arizona, a municipal

corporation (hereinafter called the Obligee). in the penal sum of _____

_____Dollars ($_____), for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract with said Obligee

dated _____, 20 _____, hereinafter called the Contract, for _____

_____

which Contract shall be deemed a part hereof as fully as if set forth herein, and under the terms thereof the Principal has agreed to furnish a bond such as herein set forth;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, or in any amendment or extension of or addition to said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all rights and remedies on this bond shall insure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to the same extent as if they were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed

by the Principal and Surety named, on the _____day of_____, 20 _____.

_____
Principal

By _____

ATTEST:

_____

Title

_____

Surety

By _____

Attorney in Fact

_____

Agency of Record

_____

Agency Address

_____

City and State

ATTEST:

_____

Title

APPROVED AS TO FORM THIS _____DAY OF_____, 20

.

_____

City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

CONSENT OF SURETY TO FINAL PAYMENT

The undersigned Surety (hereinafter "Surety"), having provided the City of Tucson (hereinafter "City") with a payment bond for the payment of labor and material provided to the

Contractor _____

(hereinafter "Contractor") in connection with City of Tucson Contract No. _____ (hereinafter the "Project") hereby consents to final payment.

Surety further releases City from all claims, past, present, future, known or unknown which it may assert or could have asserted against City as a result of City's final payment.

This release is only intended to relieve City of any liability or responsibility in connection with final payment to the Contractor in connection with the Project and shall in no way be construed to relieve Surety of any obligation under the payment bond issued for the Project.

IN WITNESS WHEREOF, the Surety has executed this instrument this _____ day of _____, 20 _____.

SURETY

_____ _____
Authorized Representative

Title: _____

STATE OF ARIZONA)
) §.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____,

20 _____, by _____,

on behalf of _____.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES:

EXHIBIT A

EXHIBIT B

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4.3 Materials and Labor; Warranty
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11.6 Provisions Required by Law
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11.10 Right to Assurance

ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Amendment - written or graphic instrument issued prior to the due date which clarifies, corrects or changes the Solicitation.

Architect/Engineer - the person licensed to practice architecture/engineering by the State of Arizona and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract plans, drawings, specifications and related documents. May be utilized to provide construction administration services.

Bonds - bid, performance and payment bonds and other instruments of security.

Change Order - a document approved by the City Contract Representative and which is signed by the Contractor and the City's Director of Procurement or duly authorized designee and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Completion time, issued on or after the effective date of the Contract.

City - means the City of Tucson, Arizona, a municipal corporation.

City Contract Representative - the City official administering the Contract for the City of Tucson.

Completion Time - the number of consecutive calendar days agreed to by the City and Contractor for completion of the Work, which may be revised by written Change Order.

Construction – the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real public property.

Construction-Manager-At-Risk – a project delivery method in which there is a separate contract for design services and a separate contract for construction services, with design and construction taking place in sequential or concurrent phases, and in which finance services, maintenance services, operations services and preconstruction services may be included.

Construction Services – either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

a) construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods;
b) a combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

Contract - the written agreement and all associated attachments, drawings, amendments and change orders executed between the City and the Contractor covering the Work to be performed.

Contract Price - the amount payable by the City to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order, or, in the case of a job-order contract, in the Notice to Proceed.

Contract Officer - the City official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the City's Director of Procurement and in accordance with the Tucson Procurement Code.

Contractor - the person, firm or corporation with whom the City has entered into the Contract.

Design-Build – the process of entering into and managing a contract between the City and a contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services and preconstruction services.

Design Services – architect services, engineer services or landscape architect services.

Director of Procurement – the person acting as Director of the City's Department of Procurement and who has authority to award and revise City solicitations and contracts for construction, construction services, and construction-related services as necessary.

Drawings - the graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Estimate for Payment - a form furnished by the City or an approved form submitted by the Contractor in lieu of city furnished form, and is required to be used when submitting requests for payments for work actually performed and materials supplied during a an agreed-to preceding period of time.

Field Order - a written order or directive issued by the City Contract Representative that orders minor changes in the Work.

Final Completion Date - the calendar date when the Work is one hundred percent (100%) complete as determined by the City.

Finance Services – financing services for the Work.

Guaranteed Maximum Price or GMP - the sum of the maximum cost of the Work; the Construction Manager @ Risk's or Design Builder's construction fee; general conditions fee; taxes, bonds, insurance costs; and bid contingency as proposed and approved pursuant to this Agreement. The approved GMP will be made part of this Agreement by executing an amendment or additional amendments for phased construction.

Job-Order-Contracting – a project delivery method in which the contract is a requirements contract for indefinite quantities of construction and in which specified job orders are issued during the contract and may include finance services, maintenance services, operations services, preconstruction services and design services.

Liquidated Damages – a sum set forth in the Contract documents that will be deducted from any monies due to the Contractor, not as a penalty, but in lieu of actual damages for late completion of the work.

Maintenance Services – routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Notice to Proceed - a written notice given by the City to the Contractor fixing the date on which the Completion time will commence and upon which the Contractor shall start to perform the

Contractor's obligations under the Contract. In the case of a job order, it may also contain the specifications exclusive to the job order as well as consideration for the Contractor.

Operations Services – routine operation of existing facilities, structures, buildings or real property.

Preconstruction Services – services during the design stage of the Work.
Contract

Public Inspector(s) - that person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes.

Schedule of Values - a schedule submitted by the Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

Shop Drawings - drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

Specifications - those portions of the Contract, or Notice to Proceed if a Job Order, consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Substantial Completion – a written declaration of the date upon which the City, in its sole discretion, determines the Work is substantially complete such that the City has beneficial use and/or occupancy. Upon substantial completion, the right of the City to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within thirty days of substantial completion.

Tucson Procurement Code – in addition to applicable State statutes and applicable Federal regulations and requirements, the municipal ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

The Work - the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract, or, in the case of a job-order contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract and/or Notice to Proceed, as appropriate.

ARTICLE 2. THE CONTRACT ITS EXECUTION AND INTENT

2.1 **<u>The Contract</u>**

2.1.1 The documents in the Contract include any amendments, drawings, change orders and approved Contractor submittals.

2.1.2 The Contract comprises the entire agreement between the City and the Contractor concerning the Work and supersedes any prior negotiations, representations or

agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

2.2 Intent of the Contract

2.2.1 The intent of the Contract is to include all labor, materials, equipment, transportation and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

2.2.2 The Contractor shall take no advantage of any apparent error or omission in the plans, estimated quantities or specifications. In the event the Contractor discovers such an error or omission after contract award, the Contractor shall immediately notify the City Contract Representative. The City Contract Representative shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the contract.

2.2.3 The Contract shall be construed in accordance with the laws of the State of Arizona, and all such laws regulating the construction of public works by the City are hereby incorporated herein by reference and made a part hereof.

2.2.4 Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

2.2.5 The organization of the Contract into divisions, sections or articles is merely for the purpose of convenient reference, and neither the headings nor divisions shall have any legal or Contractual significance and shall not control the division of the Work by the Contractor among the various subcontractor or trades.

2.2.6 The Contractor shall include all utility fees, permits, licenses, etc. including sewer connection fees in each estimate or proposal submitted.

2.3 Execution

2.3.1 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract.

2.4 Ownership of the Contract

2.4.1 The Contract, including, but not limited to, the drawings and specifications, is the property of the City and is not to be used by the Contractor or any subcontractor on other projects outside the scope of the Work without the express written consent of the City.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.1 Lines of Authority and Communications

3.1.1 The City's Director of Procurement is the City official with overall authority and responsibility for the award and administration of City Contracts. The Director of Procurement or his designated Procurement Department representative after consultation with the City Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Work.

3.1.2 The City Contract Representative is the designated representative of the particular City department for which the Work is being constructed (the "user department") or the City department which is responsible for the oversight of the work.

3.1.3 Day-to-day administration of the Contract is the responsibility of the City Contract Representative. The City Contract Representative is the City's representative during the prosecution of the Work and shall act as surveillance and technical advisor for the City. The City Contract Representative duties are more fully described in Section 3.2 of this Article.

3.1.4 The Contractor shall supervise and direct the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract gives other specific instructions concerning these matters. The Contractor's duties and responsibilities are more fully described in Article **4** of these Contract conditions.

3.1.6 Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall initially communicate with the City Contract Representative.

3.2 **City Contract Representative's General Authority and Responsibilities**

3.2.1 Unless the Contractor is responsible for the design of the Work, the City Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, up to three copies of drawings, specifications and instructions available for the execution of the Work. The City Contract Representative **may** furnish additional clarifications or interpretations in writing or by drawings as may be necessary for the proper progress and execution of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications where needed. All drawings, specifications and copies thereof furnished by the City Contract Representative are City property. They are not to be used on other work and, with the exception of the signed Contract, and are to be returned to the City Contract Representative at the completion of the Work.

3.2.2 The City Contract Representative shall make general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the City Contract Representative will become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.

3.2.3 The City Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished and Work performed and as to the rate of progress of the Work, and all questions which may arise as to the interpretation of the drawings and specifications.

3.2.4 The City Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work. The City Contract Representative's failure during the progress of work to discover or reject materials or work not in accordance with the plans, specifications or contract documents shall not be considered an acceptance of the work or materials or a waiver of defects. Neither the failure of the City Contract Representative to properly perform inspections, tests or approvals required by the contract documents nor the activities or duties of the City Contract Representative

in the administration of this contract shall relieve the Contractor from the contractor's responsibility for the means, methods, techniques, sequences or scheduling of the construction or the obligation to perform the work in strict accordance with the contract documents.

3.2.5 The City Contract Representative shall conduct an initial review of, and approve or deny, written Change Orders submitted by the Contractor, and may prepare Change Orders and provide field clarifications and corrections. All Change Orders shall be approved by the Director of Procurement or his designee prior to any work being done. However, in emergencies endangering life or property, the City Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.

3.2.6 The City Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Contract Officer as to all claims of the Contractor.

3.2.7 The City Contract Representative will review and process the Contractor's monthly Estimates for Payment, as more fully set forth in Article 7 of these General Conditions.

3.2.8 The City Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the Contract Officer.

3.2.9 The City Contract Representative will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility.

3.3 **Public Inspections**

3.3.1 Unless otherwise specifically provided in the Contract, Public Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications and applicable codes, and may provide clarification of any unspecified or unclear item or situation.

3.3.2 If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the City Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the City Contract Representative or the Public Inspectors, the Contractor shall advise the City Contract Representative of the date fixed for such inspection.

3.3.3 All tests, inspections or approvals required to be performed by the City Contract Representative, Public Inspectors, or other authorities or entities shall not relieve the Contractor of their obligation to perform the Work in accordance with the Contract.

3.4 **Special Inspections and Testing of Materials**

3.4.1 All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, will be subject to adequate inspection and testing in accordance with accepted standards, to

establish conformance with specifications and suitability for the use intended, as determined by the City Contract Representative.

3.4.2 The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the City Contract Representative. Except as provided in subsection 3.4.3, the City will pay for approved tests and services rendered by the approved laboratory or agency in addition to the Contract price for construction.

3.4.3 When initial tests indicate that any portion of the Work is not in conformance with the Contract because of faulty workmanship, the Contractor shall be required to pay for necessary re-tests. When initial tests indicate that the work is in conformance with the Contract, any re-testing that's ordered by the City shall be paid for by the City.

ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES

4.1 Contractor's Review of Contract and Site Conditions

4.1.1 It shall be the duty of the Contractor to carefully study and compare all drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the City Contract Representative.

4.1.2 The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale; but in the absence of figured dimensions, scale dimensions may be used with the prior written concurrence of the City Contract Representative. The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, level or grades, walks, driveways or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the City Contract Representative immediately. **It is the responsibility of the Contractor to provide BLUESTAKE verification of underground utilities on and off the construction site.**

4.1.3 Change orders will not be issued to cover any cost, loss or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the City Contract Representative.

4.1.4 The Contractor shall perform the Work in accordance with the Contract and with shop drawings, product data and samples that have been approved by the City Contract Representative.

4.1.5 Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the

City Contract Representative and shall be responsible for any required corrective action.

4.2 **Contractor's Supervision**

4.2.1 The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques and procedures and shall coordinate the sequences of all portions of the Work.

4.2.2 The Contractor shall ensure that the key personnel submitted in response to the Request for Qualifications and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of key personnel, the Contractor shall obtain prior approval from the City for key personnel substitution. The Contractor shall ensure that substituted personnel are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

4.2.3 The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its subcontractors and of persons, either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor.

4.3 **Materials and Labor; Warranty**

4.3.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, equipment, tools, construction equipment and machinery, water, gas, heat, utilities, transportation, and other facilities and services necessary for the execution, completion and delivery of the Work within the specified Completion Time.

4.3.2 **The Contractor shall pay all applicable taxes associated with the Work**

4.3.3 The Contractor warrants to the City that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

4.3.4 The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Agency. The Contractor shall receive, inventory, store, inspect, protect, distribute, and install Agency furnished material unless otherwise specified. The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used. The Contractor shall be held responsible for all material delivered to the contractor. Deductions shall be made from any monies due the Contractor to make good any shortages or deficiencies, from any cause whatsoever and for any damage which may occur after such delivery, and for any late delivery charges.

4.3.5 The Contractor will be held to furnish all work as specified in the Contract. After a price proposal for the Work has been accepted by the City, changes of brand named, trade named, trade marked, patented articles, or any other substitutions will be allowed only by written order signed by the City Contract Representative.

Unless otherwise agreed to via Change Order, the City shall receive all benefits of the difference in costs.

4.3.6 Materials not conforming to the requirements of the specifications, whether in place or not, shall be rejected and shall be promptly removed from the site of the work, unless otherwise directed by the City Contract Representative. No rejected material, the defects of which have been corrected, shall be returned to the work site until such time as approval for its use has been given by the City Contract Representative.

4.4 **Construction Schedules and Submittals**

4.4.1 Before commencing the Work, the Contractor shall provide the City Contract Representative with a construction schedule for the Work, fixing the dates at which various pre-determined events shall occur in order to promote a timely completion of the various parts of the Work in accordance with the Contract. The schedule may be revised from time to time as may be required by conditions of the Work, but shall not exceed time limits, or any extensions thereof, set forth in the Contract or in the individual job order, as appropriate.

4.4.2 The Contractor shall prepare and keep current for the City Contract Representative's approval, a schedule of submittals which shall be coordinated with the Contractor's construction schedule and allow the City Contract Representative reasonable time to review such submittals.

4.4.3 After review, the City Contract Representative, with reasonable promptness, shall approve these shop or setting drawings, product data, samples and sequences for conformance with the design concept of the project, the approved construction schedule, and other requirements of the Contract.

4.4.4 The Contractor shall make any corrections required by the City Contract Representative and re-submit such corrected materials to the City Contract Representative for approval. Any correction or change that will result in a design or function change or in an increase or decrease in the Contract price must also receive the prior approval of the City's Director of Procurement or his designee.

4.4.5 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or schedules until the respective submittals have been approved by the City Contract Representative, and shall not deviate from such submittals after final approval by the City Contract Representative.

4.4.6 As-builts documents must be provided to the City by the Contractor within thirty days of substantial completion. The City reserves the right to withhold final payment until complete as-builts have been received in good order by the City Contract Representative.

4.5 **Documents and Samples at the Work Site**

4.5.1 Unless otherwise directed by the City's Contract Representative, the Contractor shall maintain at the Work site a complete file of the drawings, specifications, amendments, change orders and other approved modifications, in good order and marked to reflect changes and selections made during construction, together with all approved shop drawings, product data, samples and similar required submittals. Such files shall be made available to the City Contract Representative and Public Inspectors upon request.

4.6 **Protection and Use of Site - (Signs, Utilities, Water, Sanitation, Traffic, etc.)**

4.6.1 The City will provide land, rights-of-way and easements for all work specified in the Contract. The Contractor shall confine their apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the City Contract Representative, and shall not unreasonably encumber the premises with their material and equipment.

4.6.2 Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the City harmless from damages for any injury done to such pipes, structures or property during the course of the Work.

4.6.3 Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public.

4.6.4 The Contractor shall supply safe drinking water for all Contractor employees at the Work site. Water from existing fire hydrants may be made available to the Contractor upon his request to the City's Water Department through the City's Contract Representative. In such cases where the City elects to provide hydrant water, the Contractor will be provided a meter for the fire hydrant and will be charged the City's current rate for all water used. A deposit for the meter will be required by the City's Water Department.

4.6.5 If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The City Contract Representative will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the City Contract Representative. Extensions in the Completion time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 10 of these General Conditions.

4.7 **Cleaning Up**

4.7.1 The Contractor shall at all times keep the construction site and surrounding area free from accumulations of waste material or rubbish caused by operations under the Contract. Upon completion of the Work, the Contractor shall remove all rubbish, tools, equipment, scaffolding and surplus materials from the site and surrounding areas and leave the area "broom clean" or its equivalent, unless otherwise instructed by the City Contract Representative.

4.7.2 If the Contractor fails to clean up as provided in the Contract, the City may do so and the cost thereof shall be charged against the Contractor.

4.8 **Emergencies**

4.8.1 In an emergency affecting the safety of life or property, the Contractor, without special instruction or authorization from the City Contract Representative, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury.

4.8.4 Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Contract Representative.

4.8.5 The Contractor shall file with the City Contract Representative the names, addresses and telephone numbers of their employees who can be contacted at any time in case of emergency. These Contractor representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by the City or the Public Inspectors.

4.9 **Permits, Fees and Notices**

4.9.1 The Contractor shall, at their expense, obtain all necessary permits and licenses for work performed under the Contract, and shall give all necessary notices required by laws, ordinances, rules, regulations and lawful orders of public authorities pertaining to performance of the Work, public health and safety.

4.9.2 If the Contractor knowingly performs work which is not in compliance with such laws, ordinances, rules, regulations or orders, without such notice to the City Contract Representative, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

4.10 **Royalties and Patents**

4.10.1 The Contractor shall pay all royalties and license fees.

4.10.2 The Contractor and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark, or copyright, and the Contractor shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or, subject to Engineer's approval, replace same with noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

4.10.3 If appropriate, the Contractor shall furnish the City Contract Representative satisfactory evidence of patent licenses or patent releases covering City-specified proprietary materials, equipment, devices or processes, as the case may be.

4.11 **Protection of Persons and Property**

4.11.1 The Contractor shall be responsible for initiating, maintaining, supervising and directing all safety precautions and programs in connection with the performance of the Contract.

4.11.2 The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated whether in storage on or off the Work site.

4.11.3 The Contractor shall, at their own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the work site or adjacent thereto, and the Contractor and their sureties shall be liable therefore.

4.11.4 The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Article 6 of these General Conditions.

4.11.5 In the event the Contractor encounters on the work site material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop work in the area affected and report the condition to the City Contract Representative.

4.11.6 The Contractor shall take all necessary precautions for the safety of employees on the work site and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

4.11.7 The Contractor warrants it is fully familiar and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or recodified from time to time). Also the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or recodified from time to time), as promulgated by the Federal Government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Section 4.12.

4.12 **<u>Indemnification and Insurance</u>**

4.12.1 To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, <u>reasonable</u> attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, <u>but only to the extent caused by negligence, recklessness or intentional wrongful conduct</u> including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold

harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City.

4.12.2 The Contractor Agrees to:

.1 Obtain insurance coverage of the types and amounts required in this subsection and keep such insurance coverage in force throughout the life of the Contract. The Contractor will provide satisfactory certificates of the required coverage to the Contracting Officer before beginning the Work. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy.

.2 Include the City and Regional Transportation Authority as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies with respect to liability arising out of the performance of the Work. The Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

.3 Provide and maintain minimum insurance coverage as follows:

Coverage Afforded	Limits of Liability
Workers' Compensation	Statute
Commercial General Liability Insurance including: (a) Products & Completed Operations (b) Blanket Contractual (c) Explosion, Collapse & Underground Hazard	$1,000,000 Bodily Injury and property damage Combined Single Limit
Automobile Liability Insurance including: (a) Non-owned (b) Leased (c) Hired Vehicles	$1,000,000 Bodily Injury and property damage Combined Single Limit
[ ] Checked If applicable: Builder's Risk Insurance including: Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft.	Contract Value (Less site preparation)

Builder's Risk insurance shall be required on all vertical construction.

The City reserves the right, at its sole option, to furnish the Builder's Risk Insurance at the City's expense in the event that the City exercises such right, Contractor shall reduce General Conditions and overhead accordingly.

.4 In the event any of the Work is subcontracted, the Contractor shall require the subcontractor to provide Workers' Compensation insurance for all of the subcontractor's employees engaged in the Work, unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation insurance. In case any class of employees engaged in hazardous work under the Contract is not protected under the Workers' Compensation statute, the Contractor

shall provide, and shall cause each subcontractor to provide, adequate employer's general liability insurance for the protection of such of their employees as are not otherwise protected.

ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS

5.1 Subcontracts

5.1.1 The Contractor shall ensure that the assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of subcontractors, the Contractor shall obtain prior approval from the City for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

5.1.3 In job-order-contracting, by appropriate written agreement, the Contractor agrees that each subcontractor has been notified in writing of the negotiated amount or coefficient agreed to for billing purposes. Furthermore, by appropriate written agreement, the Contractor agrees that each subcontractor shall be bound to the Contractor by the terms of this Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.

5.1.4 Contractor shall ensure that each subcontract shall preserve and protect the rights of the City under the Contract with respect to the work to be performed by the subcontractor. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor will be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.

5.1.5 Each subcontract will require the subcontractor to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment to the City in a timely manner, including any claims for extras, extensions of time, and damages for delays or otherwise to the Contractor in the manner provided in the Contract for like claims by the Contractor upon the City.

5.1.6 The Contractor further agrees:

.1 To be bound to the subcontractor by all the obligations that the City assumes to the Contractor under this Contract, and by all provisions thereof affording remedies and redress to the Contractor from the City.

.2 To promptly pay the subcontractor in accordance with applicable State statute.

.3 That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them. Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.

.4 To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.

.5 To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the City in making payments to the Contractor for any cause not the fault of the subcontractor.

.6 To share or forward, as appropriate, with its subcontractors or, as appropriate, with the City, any fire insurance money received by the Contractor under the insurance provisions of the Contract.

.7 That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

.8 To give the subcontractor an opportunity to be present and to submit evidence in any Contractual claim, controversy or dispute.

5.1.7 Nothing in this Article shall create any obligation on the part of the City to pay to, or to see to the payment of, any sums to any subcontractor, except as may otherwise be required by law.

5.1.8 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

.1 Assignment is effective at the sole option of the City and only upon termination of the Contract for cause pursuant to Article 9 of these General Conditions, and only for those subcontract agreements which the City determines to accept by notifying the subcontractor in writing, and

.2 Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 **<u>Separate Contracts</u>**

5.2.1 The City reserves the right to perform construction or operations related to the Work with the City's own forces and to let separate Contracts in connection with other portions of the Work or other construction or operations on the Work site.

5.2.2 The Contractor shall afford other Contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

5.2.3 The City Contract Representative shall coordinate the activities of the City's own forces and of each separate Contractor with the work of the Contractor. The Contractor and all other Contractors on the Work site shall be required to review their construction schedules and cooperate with the City Contract Representative in coordinating the various portions of the Work with the schedules of such separate contractors.

5.2.4 If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the City Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the

reception of the Contractor's Work, except as to defects not then reasonably discoverable.

5.2.5 Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.

5.2.6 If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall defend such proceedings and, if any judgment against the City arises therefrom, the Contractor shall pay or satisfy it.

5.2.7 Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the City shall not be held responsible or liable therefore in any way other than extensions of completion time in accordance with Article 6 of these General Conditions.

ARTICLE 6. TIME FACTORS; LIQUIDATED DAMAGES

6.1 **Time**

6.1.1 Unless otherwise provided in the Contract, the Completion Time is the number of calendar days, including authorized time extensions, specified for completion of the Work.

6.1.2 Completion Time shall commence on the day specified in the Notice to Proceed. The date shall not be postponed on account of the failure of the Contractor, or of any of its subcontractors to take any action required to commence the Work.

6.1.3 The date of Substantial Completion is the date certified by the City Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

6.1.4 The term "day" as used in the Contract shall mean calendar day.

6.1.5 By execution of the Contract documents, or by concurrence with the Notice to Proceed in the case of a job order, the Contractor acknowledges that the time described is a reasonable period for a competent Contractor to complete the Work.

6.1.6 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

6.2 **Liquidated Damages**

6.2.1 The amount of liquidated damages shall be as specified in the Contract documents, or, in the case of a job-order, in the Notice to Proceed.

6.2.2 The Contractor has been put on notice that the City shall enforce the liquidated damages set forth in the Contract documents or Notice to Proceed.

6.2.3 The Contractor agrees that the City will incur damages if the Contractor fails to complete the Work within the Completion time or any approved extensions thereof and that the liquidated damages specified in the Contract or, in the case of a job-order, in the Notice to Proceed, represents a fair and equitable approximation of the City's damages.

Each calendar day that the Contractor shall fail to achieve Substantial Completion after the calendar date agreed to for the completion of the Work provided for in the Contract, the sum set forth in the Contract documents will be deducted from any monies due the Contractor, not as penalty, but as liquidated damages; provided however, that due account will be taken of any adjustments of the Completion time for the completion of the work allowed under the Contract.

Permission allowing the Contractor to continue and finish any part of the Work after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Once substantial completion is granted, the Contractor shall achieve final completion within thirty (30) calendar days, unless otherwise agreed upon. If final completion does not occur within the agreed upon number of days, liquidated damages will commence on the first day after the agreed days, until final completion occurs.

6.3 **Delays and Time Extensions**

6.3.1 It is agreed that the City's only liability for any delay from any cause shall be limited to granting a time extension to the Contractor and that no extended general conditions for any delay will be applicable unless agreed to by the City. There is no other obligation, express or implied, on the part of the City to the Contractor for delay from any cause.

6.3.2 **Force Majeure**

6.3.2.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the parties affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a sub-contractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

6.3.2.2 If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.3.3 The completion time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority or allocation order duly issued by the Federal Government.

6.3.4 Time extensions shall only be granted for delays caused by the City, changes authorized in accordance with Article 8 of this agreement, or delays pursuant to sections 6.3.2 and 6.3.3.

6.3.4 Should a dispute arise between the Contractor and the City regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

ARTICLE 7. PAYMENTS TO THE CONTRACTOR

7.1 Contract Price; Request for Payment; Schedule of Values

7.1.1 The Contract amount or coefficient stated in the Contract documents or, in the case of a job order, in the Notice to Proceed, plus or minus any authorized adjustments, is the amount payable by the City to the Contractor for performance of the Work under the Contract or for a specific job order.

7.1.2 During the course of construction, the Contractor shall request payment for work actually performed during the preceding month or some other time period as mutually agreed to, using "ESTIMATE FOR PAYMENT" forms, which are furnished by the City or a City approved form submitted by the Contractor. Completed forms shall be submitted to the City Contract Representative. A schedule of values and an updated project schedule shall accompany the request for payment.

7.2 Certification and Payment

7.2.1 The City by mutual agreement may make progress payments on Contracts of less than ninety days and shall make monthly progress payments on all other Contracts as provided for in this paragraph. Payment to the Contractor on the basis of a duly certified and approved estimate for payment of the work performed during the preceding calendar month under the Contract may include payment for material and equipment. An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the City or the City's designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the City on submission to any person designated by the City for the submission, review or approval of the estimate of the work.

7.2.2 On completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified in paragraph 7.2.5, payment may be made in full, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the architect, engineer or other person, as specified in the Contract.

7.2.3 The Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no Contract for construction services may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. The payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the Contractor or subcontractor of payments received for work performed on a Contract, or failure to reasonably account for the application or use of those payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The subcontractor or material supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

7.2.4 A subcontractor may notify the City in writing requesting that the subcontractor be notified by the City in writing within five days from payment of each progress payment made to the Contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.

7.2.5. Nothing in this section prevents the Contractor or subcontractor, at the time of application and certification to the City or Contractor, from withholding the application and certification to the City or Contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention.

7.2.6 If any payment to a Contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.7 If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.8 Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services Contract for construction and does not apply to amounts payable in a construction services Contract for design services, preconstruction services, finance services, maintenance services, operations services and other related services.

7.2.9 The City Contract Representative, with reasonable dispatch, will review the contents of the ESTIMATE FOR PAYMENT submitted by the Contractor, determine the sufficiency of the estimate, satisfy himself that the City has received full value, certify the estimate and submit it through normal channels for payment.

7.2.10 Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work.

7.3 **Payment Withheld**

7.3.1 If the City Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the ESTIMATE FOR PAYMENT, the City Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the City Contract Representative shall promptly notify the Contractor. If the City Contract Representative and the Contractor cannot agree on a revised amount, the City Contract Representative will promptly issue a certificate for payment in an amount they determines is justified.

7.3.2 The City Contract Representative or other City official, as a result of subsequently discovered evidence, may also withhold or nullify the whole or a part of any certification to such extent as may be necessary to protect the City from loss on account of:

.1 Defective work not remedied.

.2 Third party claims filed or reasonable evidence indicating probable filing of such claims.

.3 Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment.

.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount, or reasonable evidence that the Work will not be completed within the Completion time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

.5 Damage to another contractor or to the City.

.6 Damage to the real or personal property of another and failure to repair or replace the same.

.7 Persistent failure to carry out the Work in accordance with the Contract.

7.3.3 When the grounds for withholding payment have been corrected to the satisfaction of the City Contract Representative or other City official concerned, the City shall proceed to process any amounts due.

7.4 **Substantial Completion**

7.4.1 When the Contractor considers that the Work, or a portion thereof which the City has agreed to accept separately, is ready for its intended use, it shall notify the City Contract Representative in writing that the Work, or the agreed upon portion thereof, is substantially complete and request the City Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the City Contract Representative will make an inspection of the Work, or the designated portion thereof, to determine the status of completion. If the inspection discloses any item that is not in accordance with the Contract, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for a re-inspection by the City Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the City Contract Representative will prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the City and Contractor, pending final payment by the City, for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list attached to the certificate.

7.4.2 Warranties required by the Contract shall commence on the date of Final Completion for a period of two years, except where a specific provision of the Contract provides otherwise.

7.5 **Final Completion and Final Payment**

7.5.1 Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the City Contract Representative will determine that all items on the punch list have been completed or corrected and the City will make payment for such work or portion thereof as provided for in the Contract.

7.6 **Consent of Surety/ Lien Waivers and As-Built Drawings**

7.6.1 Final payment shall become due when the Contractor provides to the Contract Officer a Consent of Surety Certificate from their bonding company, or lien waivers, at the Contract Officer's discretion and all completed as-built drawings.

7.7 **Partial Utilization**

7.7.1 The City may occupy or use any portion of the Work which the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City without significant interference with the Contractor's performance of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided the City and the Contractor have accepted in writing their mutual responsibilities regarding the used portion, including but not limited to insurance coverage, maintenance and utilities.

7.7.2 Partial use or occupancy of the Work by the City shall not constitute acceptance of Work not complying with the requirements of the Contract.

ARTICLE 8. UNCOVERING AND CORRECTION OF WORK; CHANGES IN THE WORK

8.1 Uncovering of Work

8.1.1 Piping, wiring, ducts, etc., shall not be covered up before proper inspection, approval and certificates, if required, are issued. Should any work that is designated for inspection by the City Contract Representative or the Contract before covering is covered before such inspection, it must be uncovered by the Contractor at their expense when examination is ordered by the City Contract Representative.

8.1.2 If a portion of the Work not designated by the City Contract Representative or the Contract for inspection has been covered and the City Contract Representative or a Public Inspector orders such work uncovered for inspection, the Contractor shall immediately uncover such work. If such uncovered work is found to be in accordance with the Contract, an appropriate Change Order shall be issued to compensate the Contractor for the expense of uncovering and replacing the work. If such work is found to be not in compliance with the Contract, the Contractor shall pay such costs, unless the condition was caused by the City or a separate Contractor.

8.1.3 The City shall not be responsible for or bear the cost of any re-examination and replacement occasioned by defects in the work caused by subcontractors.

8.2 Correction of Work

8.2.1 Correction of Work Before Final Payment: The Contractor shall promptly remove from the site of the Work all materials and/or associated portions of the Work rejected by the City Contract Representative as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract, without expense to the City, and shall bear the expense of making good the work of other contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such rejected Work and/or materials within a reasonable time, fixed by written notice, the City may remove it and may store the materials at the expense of the Contractor.

8.2.2 Should the Contractor fail to repair such defective material and/or workmanship or to make replacements within five (5) calendar days after written notice by the City, it is agreed that the City may, at its sole discretion, make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor or his surety.

8.3 Changes in the Work

8.3.1 The City Contract Representative may order extra work or make changes by altering, adding to or deducting from the Work, the Contract price being adjusted accordingly by Change Order without invalidating the Contract. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

8.3.2 If, instead of requiring corrections or removal of work not conforming to the requirements of the contract, the work is determined to be acceptable with diminished value in the sole judgment of the City Contract Representative, a change order shall be issued incorporating the necessary revisions in the contract, including

an appropriate reduction in the contract price. Such a change order does not require the signature or approval of the Contractor. Such acceptance of non-conforming work shall not constitute a waiver of any other work required under this contract.

8.3.3 The value of any extra work or change ordered under the Contract shall be determined in one or more of the following ways:

.1 By estimate and acceptance in a lump sum.

.2 By unit prices in the Contract or subsequently agreed upon prices.

.3 By a fixed fee.

ARTICLE 9. SUSPENSION OR TERMINATION OF THE WORK

9.1 Suspension of the Work for Cause; City's Right to Perform the Work

9.1.1 If the Contractor fails to correct Work which is not in accordance with the Contract, or persistently fails to carry out the Work in accordance with the Contract, the Contract Officer, after consultation with the City Contract Representative, may order the Contractor in writing to stop the Work, or any portion of the Work, until the cause for such order has been eliminated.

9.1.2 If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the City may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the City may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and its surety shall be liable to the City for such deficiency.

9.2 Termination by the City for Cause

9.2.1 The City, upon certification by the City Contract Representative, without prejudice to any other right or remedy of the City and after giving the Contractor seven (7) days written notice, may terminate this Contract as to all or any part of the Work for any of the following reasons:

.1 If the Contractor abandons the Work, or unnecessarily delays the Work.

.2 If the Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractor.

.3 If the Contractor fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the Contractor and the subcontractor or as expressly set forth herein.

.4 If the Contractor persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract.

.5 If the Contractor should be adjudged bankrupt.

.6 If the Contractor should make a general assignment for the benefit of its creditors,

or if a receiver should be appointed on account of its insolvency.

.7 If the Contractor is otherwise in substantial breach of a provision of the Contract as determined by the City.

9.2.2 Upon termination of the Contract for any of the above reasons, the City, subject to any prior rights of the surety, may:

.1 Take possession of the Work and of all materials, equipment, tools, and construction equipment and machinery at the Work site or adjacent thereto belonging to the Contractor.

.2 Accept assignment of subcontracts pursuant to Subsection 5.1.8 of Article 5 of these
General Conditions.

.3 Finish the Work by whatever reasonable method the City may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the City may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the City's possession and may make all necessary repairs and replacements thereto.

9.2.3 If the City terminates the Contract for one of the reasons stated in Subsection 9.2.1, the Contractor shall not be entitled to receive any further payment.

9.2.4 The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the City to other Contractors, all costs of repairs and replacements of machinery, implements, tools and plant of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including but not limited to the cost of the City Contract Representative's additional services and added expenses made necessary by the termination of the Contract.

9.2.5 If the unpaid balance of the Contract price exceeds costs of finishing the Work, such excess may, at the City's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the City may sell all materials, supplies, machinery, implements, tools and plant of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) days notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay such deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.

9.3 **<u>Suspension by the City for Convenience</u>**

9.3.1 The City may, without cause, order the Contractor in writing to suspend or interrupt the Work in whole or in part for such period of time as the City may determine whenever such suspension or interruption would be in the best interest of the City.

9.3.2 If the City suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:

.1 That performance is, was or would have been so suspended or interrupted by another cause for which the Contractor is responsible, or

.2 That an equitable adjustment is made or denied by the City.

9.4 **Termination by the City for Convenience**

9.4.1 The performance of the Work under this Contract may be terminated by the City, in whole or in part, in accordance with this clause whenever the City reasonably determines that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

9.4.2 If the Contract is terminated by the City as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated profit on unperformed Work.

9.4.3 In the event the City terminates the Work, in whole or in part, for cause pursuant to Section 9.2 of this Article 9 and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 9.4 shall apply.

9.4.3 Termination of the Contract or portion thereof by the City for convenience shall not relieve the Contractor of their contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

9.5 **Contractor's Right to Terminate Contract**

9.5.1 The Contractor may terminate the Contract for any of the following reasons:

.1 If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month through no act or fault of the Contractor or of anyone directly or indirectly employed by him.

.2 If the City has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the City Contract Representative, or

.3 If repeated suspensions or interruptions ordered by the City pursuant to Section 9.3 total in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

9.5.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days, written notice to the City Contract Representative, stop Work and terminate the Contract and recover payment from the City for all Work executed and accepted by the City and any loss sustained upon any plant or materials and reasonable profit and damages.

ARTICLE 10. CLAIMS AND DISPUTES

10.1 **City Contract Representative's Resolution of Claims and Disputes; Review by Contract Officer**

10.1.1 This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.

10.1.2 All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the City Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

10.1.3 Claims by either party must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

10.1.4 Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract.

10.1.5 The City Contract Representative shall, within twenty-one (21) days of receipt of a claim, issue one of the following:

(1) Issue a decision either rejecting or approving the claim.
(2) Suggest an equitable compromise of the claim.
(3) Provide a schedule to the Contractor indicating when they expect to be able to take action, which shall be within a reasonable time.

10.1.6 The City Contract Representative may require the submission of additional documentation from the Contractor to facilitate a decision.

10.1.7 The Contractor shall have ten (10) days from the date of the City Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of the Contractor to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Contract Officer for de novo review.

10.1.8 The Contract Officer shall have sixty (60) days from receipt of a written objection by the Contractor to the City Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the Tucson Procurement Code. During such period, the Contract Officer may require such additional documentation or testimony as deemed necessary to support his/her response.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 **Governing Law**

11.1.1 The Contract shall be governed and construed according to the laws of the Tucson City Code and the State of Arizona.

11.2 **Written Notice**

11.2.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

11.3 **Conflict of Interest**

11.3.1 The City shall also have the right to terminate this Contract pursuant to the conflict-of-interest provisions of A.R.S. Sec. 38-511 and to exercise any and all remedies provided in such statute. The City may cancel this Contract if any person significantly involved in negotiating, drafting, securing or obtaining this Contract for or on behalf of the City of Tucson becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Contract.

11.4 **Independent Contractor**

11.4.1 It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

11.4.2 Contractor shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

11.4.3 The City of Tucson will not provide any insurance coverage to Contractor, including Workers' Compensation coverage. The Contractor is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

11.5 **Gratuities**

11.5.1 The City may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

11.6 **Provisions Required By Law**

11.6.1 Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly

inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

11.7 **Severability**

11.7.1 The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

11.8 **Interpretation – Parol Evidence**

11.8.1 This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

11.9 **Rights and Remedies**

No provision in this document or in the Contractor's response shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

11.10 **Right to Assurance**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.

EXHIBIT C

HUD-5369

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Instructions to Bidders for Contracts Public and Indian Housing Programs

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

(1) Integrity;

(2) Compliance with public policy;

(3) Record of past performance; and

(4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding $25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website **http://www.fms.treas.gov/c570/index.html**, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

HUD-5369A

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding $50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [ ] has, [ ] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding $100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the bidder; or,

(b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

[ ] Black Americans	[ ] Asian Pacific Americans
[ ] Hispanic Americans	[ ] Asian Indian Americans
[ ] Native Americans	[ ] Hasidic Jewish Americans

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding $2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding $10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed $10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding $100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding $50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"

[ ] is, [ ] is not included with the bid.

13. Bidder's Signature

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

_____
(Signature and Date)

_____
(Typed or Printed Name)

_____
(Title)

_____
(Company Name)

(Company Address)

HUD-5370

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. This form is applicable to any construction/development contract greater than $100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).
The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.
Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.
The information requested does not lend itself to confidentiality.
HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

(a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

(b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.

(d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.

(e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.

(f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

(g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.

(j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(l) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.

(b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.

(c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

(f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.

(g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

(h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

(b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

(c) The Architect's duties and responsibilities may include but shall not be limited to:

(1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

(2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;

(3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,

(4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress Schedule

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads;(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

(b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

(h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

(i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

(a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."

(b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

(c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

(a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:
  (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
  (2) Protect the lives, health, and safety of other persons;
  (3) Prevent damage to property, materials, supplies, and equipment; and,
  (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:
  (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
  (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

(f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.

(g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

(h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.

(i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.

(j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

(k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

(a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contactor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

20. Inspection and Acceptance of Construction

(a) Definitions. As used in this clause -

(1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.

(2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.

(3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.

(d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The PHA may conduct routine inspections of the construction site on a daily basis.

(g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.

(i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

(a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of Construction

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.

(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
   (1) The Contractor's failure to conform to contract requirements; or
   (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
   (1) Obtain all warranties that would be given in normal commercial practice;
   (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
   (3) Enforce all warranties for the benefit of the PHA.

(g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required under this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

(a) The PHA shall pay the Contractor the price as provided in this contract.

(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

(d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:
I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

_____
Name:

_____
Title:

_____
Date:

(f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

(h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.

(i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) PHA-furnished facilities, equipment, materials, services, or site; or,
(4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.

(2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

(3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

(g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

(h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.

(i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

(j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

(a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.

(d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.

(f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

(b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of $_____ Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.

(b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA in completing the work.

(c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

(a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non -owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

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

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

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

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

(a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds $2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved 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 29 CFR 5.5(a)(1)(iv); 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 regular 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 in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employee 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 HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

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

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

(3) 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.

(4) 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.

(b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

(1) 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 in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of 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.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

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

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;

(B) 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 29 CFR Part 3; and

(C) 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.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, 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, HUD or its designee 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. 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.

(d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, 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 OATELS 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 in this paragraph, 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 of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in 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 in 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 in 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 in 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.

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

(e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(i) Certification of eligibility.

(1) 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 contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 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 provisions set forth in subparagraph (j)(2) of this clause.

(k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

HUD-4010

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. 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 l(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 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, 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 subparagraph 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 HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. **Apprentices and Trainees.**

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses 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 this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

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

10. (i) Certification of Eligibility. 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

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

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ANTI-KICKBACK ACT

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS

SO CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR.
UNITED STATES DEPARTMENT OF LABOR

TITLE 18. U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1932 (48 Stat. 948, 40 U.S.C., sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whenever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than $5,00 or imprisoned not more than five years, or both.

SECTION 2 OF THE ACT OF JUNE 13, 1932, AS AMENDED (48 Stat. 948, 62 Stat. 862, 63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec, 276c)

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or building or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements.

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Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A., Code of Federal Regulations, Part 3. The term "this part," as used in the regulations hereinafter set forth, refer to Part 3 last above mentioned. Said regulations are as follows:

TITLE 29 - LABOR

Subtitle A - Office of Secretary of Labor

PART 3 - CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Section 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

3.3 - Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, ``Statement of Compliance", or on an identical form on the back of WH 347, ``Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982]

SECTION 3 REQUIREMENTS

SECTION 3 RESIDENTS AND BUSINESS CONCERNS

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or

2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;

2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or

3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

INCOME LIMITS

New Income Limits for Tucson and Pima County were issued May 31, 2011. The Area Median Family Income is $59,600. The following Income Limits are effective June 1, 2011.

Income Limits

Family Size	30% of Median Income	50% of Median Income	80% of Median Income
	Extremely Low Income	Very Low Income	Low Income
1 Person	$12,550	$20,900	$33,400
2 Persons	$14,350	$23,850	$38,200
3 Persons	$16,150	$26,850	$42,950
4 Persons	$17,900	$29,800	$47,700
5 Persons	$19,350	$32,200	$51,550
6 Persons	$20,800	$34,600	$55,350
7 Persons	$22,200	$37,000	$59,150
8 Persons	$23,650	$39,350	$63,000

See Notice PDR 2011-02 for families with more than 8 persons.

CITY OF TUCSON

SECTION 3 OPPORTUNITIES PLAN
STATEMENT OF INTENT TO FULFILL OBLIGATION

PROJECT: _____

CONTRACT #: _____

CONTRACTOR NAME: _____

OPPORTUNITIES PLAN

☐ The Contractor has identified _____ employment opportunities during the term of the contract (if no opportunities have been identified, enter 0). The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of work of this Contract.

☐ The Contractor has identified _____ subcontracting opportunities.

☐ The Contractor qualifies as a Section 3 Business Enterprise. ***(See section below)***

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or _____YES _____ NO
2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or _____YES _____ NO
3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises. _____YES _____ NO

Contractor's Signature: _____

Title: _____ Date: _____

CITY OF TUCSON

INDIVIDUAL CERTIFICATION FOR SECTION 3 RESIDENT ELIGIBILITY

This form is to be used by individual persons requesting to be certified by the City of Tucson as a Section 3 Resident for purposes of Section 3 employment opportunities on HUD-funded construction projects.

Project: _____ Contract #: _____

Contractor Name: _____

Job Title: _____ Hire Date: _____

Name: _____ Phone Number: _____

Physical Address: _____
(No P.O. Box Addresses)

City State Zip: _____ Email Address: _____

Please complete Part A (Household Size and Income) OR Part B (Public Housing Resident)

A. Household Size and Income

My household size (total persons in household) is: _____

My total annual household income is: _____

My total current monthly household income is: _____

B. Public Housing Resident

I currently receive the following housing assistance:

Check box: ☐ Public Housing ☐ Section 8 (Housing Choice Voucher)

City Use Only

Income at/below: _____

Verified: _____ Date: _____

Public Housing Resident/
Sec. 8/HCV Participant: _____

Verified: _____ Date: _____

Certification

I hereby certify, under penalty of perjury, that all of the information provided above is true and correct. I agree to provide acceptable documentation, if requested, that confirms the accuracy of my residency, household size, income, and employment.

Employee Name (Print): _____ **Date:** _____

Employee Signature: _____

CITY OF TUCSON

SECTION 3 ELIGIBLE BUSINESS CERTIFICATION

Instructions

To be considered for certification as a Section 3 Business Concern, a business must complete this form and provide all required supporting documentation. An *Individual Certification for Section 3 Resident Eligibility Form* must be completed and signed by each Section 3 Resident owner or employee certifying that each individual meets the HUD definition of a Section 3 Resident.

BUSINESS LEGAL STATUS

Business Name: _____ Phone: _____

Address: _____ Fax: _____

City: _____ State: _____ Zip: _____

Email Address: _____

☐ Sole Proprietor ☐ Corporation ☐ Partnership ☐ Limited Liability

Date Business Established _____ Federal Tax ID or Social Security Number _____

Total Number of Employees: _____ *Number of Section 3 Employees: _____ Percentage of Section 3 Employees: _____%

*Must provide completed Individual Certification forms for each employee

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or _____YES _____ NO
2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or _____YES _____ NO
3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises. _____YES _____ NO

A Section 3 Resident is a public housing resident or an individual who resides in the covered metropolitan area and is a low income person as identified by HUD, *(see certification instructions for HUD definitions and income limits).*

Owner' Name (printed): _____ Title: _____

Signature: _____ Date: _____

EXHIBIT D

SBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Small Business Enterprise Participation goal for this project is as follows:

__X___ % SBE

I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - Is defined as the performance of real and actual services in the discharge of any contractual endeavor. An SBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

Contractor - The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City. For the purposes of SBE plan evaluation, any Offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the contractor SBE program compliance requriements.

Eligible Contract - Any contract undertaken by the City, unless otherwise precluded by law, *provided* the estimate meets or exceeds fifty thousand dollars ($50,000). An Eligible Contract does not include any project in which the estimated contract value is below fifty thousand dollars ($50,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the City Procurement Code.

Joint Venture – An association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the Joint Venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the Joint Venture, may be counted towards relevant SBE participation goals.

Small Business Enterprise (SBE) – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification with the City of Tucson, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).

Subcontractor and Subconsultant – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

B. APPLICABILITY

The SBE program and policies are codified in Chapter 28, Article XIII of the City Procurement Code. It is the responsibility of all contractors, subcontractors, vendors, suppliers and others who are interested in contracting with the City of Tucson to read and become familiar with this section of the City Code.

Only firms that are certified by the City of Tucson under Chapter 28, Article XIII of the City Code, ***at time of SBE Plan submittal***, are eligible to fulfill SBE goals for City of Tucson projects.

In addition to subcontractors, contractors may use their own participation towards fulfillment of the SBE participation goal if they are certified through the City of Tucson SBE program.

The City of Tucson's most recent SBE Directory contains the ***complete*** listing of those firms which are currently certified with the City, and therefore eligible to participate as an SBE on a project. If the name of an SBE firm does not appear in directories, it shall be the contractors responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. The contractor may accomplish this by calling the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593 for assistance.

ALL CONTRACTORS, INCLUDING SBEs, MUST COMPLY. Contractors who are SBEs must also comply with all requirements stated herein. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's SBE goal and comply with all aspects of the SBE Program requirements.

C. SBE PARTICIPATION

An SBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. An SBE shall be responsible for a clearly defined portion of the work to be performed.

D. SBE GOALS

To satisfy SBE goals, a certified SBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Contractors may meet the SBE project goals through the following methods:

Prime Contractor Participation – SBE prime contractors may use their own participation towards fulfillment of the SBE participation goals. Credit will only be given for the dollar value of actual work performed by the prime contractor's work force.

Subcontractor Participation - Contractors may utilize one or more certified SBE subcontractors to satisfy its SBE participation commitment and may claim the value of the commercially useful function to be performed by such subcontractor(s) to obtain credit toward the satisfaction of the applicable goal.

1. Contractors who utilize certified SBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar

value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values and cannot be specified as a range.

2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, contractors are required to identify and report the use of any second tier subcontractors on the project on the Statement of Proposed SBE Plan form.

3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE's subcontractor is itself a SBE.

Supplier Participation - The contractor may contract with one or more certified SBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credit toward SBE goals. The value of the commercially useful function to be performed by such SBE's and credited toward satisfaction of the applicable SBE goals is as follows:

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.

2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer's representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.

3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

Joint Venture - Where a contractor engages in a joint venture to satisfy its SBE commitment, the SBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. The SBE joint venture partner must submit information for determining joint venture eligibility. ***The SBE joint venture must be approved as a SBE joint venture prior to SBE Plan submittal.*** The OEOP shall determine the degree of SBE participation resulting from the joint venture which may be credited toward the applicable SBE goal of the project.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF AN SBE PLAN

The SBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The SBE Plan must include:

1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

B. REVIEW OF SBE PLANS

The OEOP Director may determine that the contractor is nonresponsive where the contractor: (1) failed to provide a completed Statement of Proposed SBE Plan; (2) failed to identify SBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable SBE goal for that project; (3) failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the SBE goal.

III. GOOD FAITH EFFORT

If the SBE plan does not meet the project goals, the contractor may seek a waiver. The application for a waiver shall be in writing and **must be completed and submitted with the project proposal.** The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and an SBE plan must also be submitted. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals. Evidence of the good faith efforts shall include, but is not limited to the following:

a. Documentation of communication with the OEOP Director seeking technical/professional assistance identifying available SBE's.
b. Copies of written notification to Certified SBE's regarding subcontracting opportunities on a project.
c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
d. Documentation of efforts to assist and negotiate with SBE's for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE's who were contacted and reason for the rejection.
e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.
f. Written quotes or records of verbal quotes solicited from all SBE's seeking subcontract work at the time of the proposal submittal.
g. Verification that the offeror rejected available SBE's because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City's OEOP Director shall review the waiver and approve the waiver where the contractor has demonstrated good faith efforts or deem the contractor nonresponsive where they failed to meet the good faith efforts and shall recommend that the Project Manager reject the proposal.

Right to Appeal Good Faith Effort Waiver or Plan Decision An aggrieved party has a right to protest a good faith waiver request or plan decision made by the OEOP Director as follows:

1. An aggrieved party may submit a protest in writing to the OEOP Director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.
2. Within five (5) days of receipt of the protest, the OEOP Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
3. The decision of the director is final and not appealable.

General Waiver or Reduction of SBE Goals If, after consultation with appropriate City departments, the OEOP Director determines that SBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that SBE's are not in fact available or that the amount of work, which occurred under the contract, was insufficient to support the established goals.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified SBE's, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-SBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that SBE's are not available to provide the needed labor and materials at competitive prices.

A contractor may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a proposal.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND / OR CLARIFY INFORMATION AS IT RELATES TO THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND / OR THE STATEMENT OF PROPOSED SBE PLAN.

IV. MISCELLANEOUS PROVISIONS

A. CONTRACT PERFORMANCE

The contractor's distinct contract items of work to be awarded to SBE's shall be performed by the designated SBE or SBE substitute approved by the OEOP. SBE contract work items shall not be performed by the contractor in lieu of subcontracting, without the OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for SBE participation. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all SBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY SBE's

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the Office of Equal Opportunity Programs and the Project Manager and provide all facts surrounding the matter. Such failure on the part of an SBE will not relieve the contractor of responsibility for meeting the SBE participation goal on the contract. The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE to perform an equal or greater dollar value of the work. The substitute SBE's name, description of work and dollar value of the work shall be submitted to the OEOP and OEOP's approval must be obtained prior to the substitute SBE beginning the work.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the SBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

CITY OF TUCSON - OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF PROPOSED SBE PLAN

ALL SBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A SBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE SBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a SBE)	Trade/Industry	Dollar Value of Contract (SBE Only)

Project Amount $ _____

Total Claimed SBE Participation $_____ _____%

I hereby certify by signing below that the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project. The information shown above is a true reflection of the proposed subcontracts expressed as a percentage of the base bid.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED SBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Office of Equal Opportunity Programs

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET SBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE CONTRACTOR WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing SBE firms to meet the City of Tucson's SBE goal. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.

_____
_____
_____
_____
_____

2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to SBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for SBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which SBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to SBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact			Telephone #

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the SBE goal.) Attach necessary documentation.

Yes ____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide SBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist SBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which SBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of SBE Firm	Explanation for Rejecting Quotes

10. Were any bids from SBE Subcontractors that were no more than 15% or $250,000 greater than the accepted Non-SBE Subcontractor rejected?
If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

DBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Disadvantaged Business Enterprise Participation goal for this project is as follows:

__X__ % DBE

I. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - The performance of real and actual services in the discharge of any contractual endeavor. A DBE is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE firm is not performing a commercially useful function and no DBE credit may be awarded toward the DBE goal.

Contract - A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor - One who participates, through a contract or subcontract (at any tier), in a federally funded program. For the purposes of DBE Plan evaluation, any offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the Contractor DBE program compliance requirements.

Disadvantaged Business Enterprise or DBE - A for-profit small business concern certified under the Arizona Unified Certification Program (AZUCP) --
(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Good Faith Efforts - Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture - An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Primary Industry Classification - The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA 22261). NTIS also makes materials available through its web site (www.ntis.gov/products/naics.aspx).

Program - Any undertaking on the City of Tucson's part to use federal financial assistance, authorized by the laws to which this part applies.

Race and Gender-Conscious - A measure or program that is focused specifically on assisting only DBEs.

Race and Gender-Neutral - A measure or program that is, or can be, used to assist all small businesses.

Recipient - Any entity, public or private, to which federal financial assistance is extended, whether directly or through another recipient, or who has applied for such assistance.

Set-Aside - A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Concern - With respect to firms seeking to participate as a DBE, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and Economically Disadvantaged Individual - Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --
(a) Any individual who the City of Tucson finds to be a socially and economically disadvantaged individual on a case-by-case basis.
(b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Lorea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americans," which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

B. APPLICABILITY

The City of Tucson has received federal financial assistance and has established a DBE Diversity Program for Contracts in accordance with 49 CFR 26, which is incorporated herein by this reference. The DBE Diversity Program applies to all City and subrecipient contracts that are funded, in whole or in part, by federal financial assistance. In the event of any conflicts or inconsistencies between 49 CFR 26 and this DBE Diversity Program, 49 CFR 26 shall prevail.

ALL CONTRACTORS INCLUDING DBEs MUST COMPLY. Contractors who are DBEs must also comply with all requirements stated herein. However, a DBE on a prime contract may meet the contract goal by virtue of the work it performs on the prime contract with its own forces. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's DBE goals and federal regulations.

Firms that are certified ***at time of DBE Plan submittal*** through the Arizona Unified Certification Program (AZUCP) under 49 CFR 26 are eligible to participate as DBEs on City of Tucson contracts that are federally funded wholly or in part.

The Arizona Unified Certification Program (AZUCP) Database contains the ***complete*** listing of those firms which are certified and therefore eligible to participate as a DBE on a project. DBE participation is NOT limited to Pima County firms. Any DBE firm recognized through the AZUCP is eligible to be recognized as a certified DBE. The AZUCP Database can be accessed through the following internet address: (http://www.azdbe.org/). If the name of a firm does not appear in the AZUCP database, it shall be the bidder's responsibility to ascertain the certification status of the firm.

Questions regarding the AZUCP and the City's DBE Program can be addressed to the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593.

The City of Tucson has provided an overall DBE goal for this project. Prime contractors should be aware that **your obligation is to meet the DBE goal or submit an Affidavit of Good Faith Effort** to waive any or all of the portion of the goal not met.

C. DBE PARTICIPATION

A DBE goal may only be met by a certified DBE firm performing a commercially useful function. A DBE may participate as a prime contractor, subcontractor, second-tier

subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE shall be responsible for a specific contract amount and a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control. Open ended contracts or reimbursable contracts may not be used to meet a DBE goal at the time of bid submission. A copy of an executed subcontract must be submitted upon request by the City of Tucson.

D. DBE GOALS

To satisfy the DBE goals, a certified DBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Unless specific subcontractor participation goals are expressed in the specifications, contractors may meet the DBE project goals through the following methods:

Subcontractor Participation - Where a prime contractor utilizes one or more certified DBE subcontractor(s) to satisfy its DBE participation commitment, the prime contractor may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

1. Prime Contractors who utilize certified DBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the DBE firm and may only take credit for the dollar value of that contract towards satisfying its DBE commitment in their proposed DBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.

2. When a DBE participates in a contract, only the work actually performed by the DBE will count toward DBE goals.

a. Credit will be given for the entire amount of that portion of a contract by the DBE performing a commercially useful function, including the cost of supplies and materials obtained by the DBE for the work of the contract (including supplies purchased or equipment leased by the DBE except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

b. Credit will be given for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a federally funded contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The value of work that a non-DBE subcontractor subcontracts (second-tier) to a DBE firm may count toward DBE goals. Therefore, **prime contractors are required to identify and report the use of any second tier subcontractors on the project on the DBE Plan form.**

d. Credit will be given when a DBE subcontracts part of the work of its contract to another firm only if the DBE's subcontractor is itself a DBE.

3. When a DBE is used as the source for materials or supplies:

a. If a DBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable DBE participation goal.

b. If a DBE supplier is a regular dealer (a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock, and regularly sold or leased to the public), 60% of the cost of the materials or supplies will be credited toward DBE goals.

4. Where a contractor engages in a joint venture to satisfy its DBE commitment, the DBE joint venture partner must be responsible for a distinct and clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. DBE joint ventures do not have to be certified as a joint venture by the City prior to bid opening. However, prime contractors must submit information at the time of bid opening that includes a copy of the joint venture agreement and clearly outlines the work to be performed by the DBE joint venture partner, including the dollar amount and percentage of the contact to be performed.

When a DBE performs as a joint venture, the OEOP will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF A DBE PLAN

The DBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The DBE Plan must include:

1. The names of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

If the completed Statement of Proposed DBE Plan or, if necessary, a documented waiver application is not included with the proposal, the proposal will be considered non-responsive.

B. DBE ACKNOWLEDGMENT OF PARTICIPATION

The Contractor will be required to submit to the Office of Equal Opportunity Programs (OEOP), a DBE Acknowledgment of Participation for each DBE listed on the proposed

DBE Plan which provides signed confirmation that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

C. REVIEW OF DBE PLANS

The OEOP Director may determine that the Plan and/or Affidavit of Good Faith Effort is nonresponsive where the contractor, (1) failed to provide a completed Statement of Proposed DBE Plan; (2) failed to identify DBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable DBE goals for this project; (3) failed to achieve the dollar value of credible participation by certified DBEs as necessary to meet the project goals; (4) failed to provide written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal prior to contract execution; or (5) failed to meet the requirements for a waiver of the DBE goals. The OEOP Director's determination shall be in writing and shall state the basis for such decision.

III. GOOD FAITH EFFORT

A contractor must, in order to be responsive, make good faith efforts to meet the goal. The contractor can meet this requirement in either of two ways. First, the contractor can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the goal, the contractor can document adequate good faith efforts. This means that the contractor must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

The application for a waiver shall be in writing and must be submitted with the project proposal. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such wavier must be indicated. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals.

The following is a list of types of actions which the City will consider as part of the good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE

participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. **(1)** Negotiating in good faith with interested DBEs. It is the contractors responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve them of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Tucson or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

I. Communicating with the Office of Equal Opportunity Programs (OEOP) seeking technical or professional assistance in identifying available DBEs and requesting the most current Arizona Unified Certification Program (AZUCP) directory of certified DBE firms.

J. In determining whether a contractor has made good faith efforts, the OEOP may take into account the performance of other bidders in meeting the contract. For example, when the Apparent Low Bidder (ALB) fails to meet the contract goal, but others

meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the ALB could have met the goal. If the ALB fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the City may view this, in conjunction with other factors, as evidence of having made good faith efforts.

The City's OEOP Director shall review the waiver application and approve the waiver where the contractor has demonstrated good faith efforts or deem them nonresponsive where they failed to meet the good faith efforts.

IV. ADMINISTRATIVE RECONSIDERATION

If it is determined by the City's OEOP Director that the contractor has failed to meet the goal and/or document adequate good faith efforts, the contractor shall have the opportunity for administrative reconsideration. Therefore, within five (5) working days of being notified by OEOP that it is not responsive because it has not met the goal or documented adequate good faith efforts, a contractor may request administrative reconsideration. Contractors must make this request in writing to the following individual:

Procurement Director
City of Tucson
255 W. Alameda – PO Box 27210
Tucson, Arizona 85726.

The request for reconsideration must include the reasons and factual grounds for reconsideration with any supporting documents. The Procurement Director shall appoint a Reconsideration Official who will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. The Reconsideration Official shall hold a hearing within ten (10) working days of the request for reconsideration. The contractor will have the opportunity to meet in person with the City's Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Reconsideration Official can also take testimony from City employees.

The City will send the contractor, via certified mail, a written decision on reconsideration, explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts to do so. The decision will be sent within five (5) working days of the Reconsideration Hearing. The result of the reconsideration process is not administratively appealable. Copies of the reconsideration documentation, including supporting documents and the Reconsideration Officials final decision, shall be maintained in the contract file at Procurement and OEOP.

FAILURE TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE CONTRACTOR TO BE DEEMED NONRESPONSIVE.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND/OR CLARIFY INFORMATION AND REQUEST RESUBMITTAL OF INFORMATION BASED ON CLARIFICATION AS IT RELATES TO

THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND/OR THE STATEMENT OF PROPOSED DBE PLAN.

V. GENERAL WAIVER OR REDUCTION OF DBE GOALS

If after consultation with appropriate City departments, the OEOP Director determines that DBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that DBEs are not in fact available.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified DBEs, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-DBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that DBEs are not in fact available to provide the needed labor and materials at competitive prices.

VI. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. This reporting requirement also extends to any certified DBE subcontractor. As part of the contract documents requirement, the contractor will submit company procedures and policy for prompt payment of work and prompt release of retention to subcontractors.

Prime contractors are required to pay **all** subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson. Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release. Required timelines are indicated below:

A. When a subcontractor has completed all the tasks called for in the subcontract, the subcontractor will submit a written request to the prime contractor for an acceptance inspection and release of all retention.

B. Within 10 days of receipt of an inspection request by a subcontractor, the contractor shall schedule an inspection / walk through for acceptance of the work.

C. Within 30 days of the acceptance of a subcontractors work, the prime contractor shall pay all retention owed to a subcontractor.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

Prime contractors are asked to submit the attached Certification of Payments, for each DBE subcontractor utilized on this project, once that portion of the work has been completed and the subcontractor has been paid in full.

Prime contractors will report the actual value of any contract to DBE firms for work committed to them at the time of the contract award. Contractors must submit the attached Supplier & Subcontractor Utilization List Final Payment Record to OEOP with their request for final payment. The Final Payment Record will record total dollar amounts paid to both DBE and non-DBE suppliers and subcontractors.

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the DBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

VII. MISCELLANEOUS PROVISIONS

A. CONTRACT PROVISIONS

The contractor's distinct contract items of work to be awarded to DBEs shall be performed by the designated DBE or DBE substitute approved by the OEOP and the Procurement Department. DBE contract work items shall not be performed by the contractor in lieu of subcontracting, without OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for DBE participation. The DBE must perform a commercially useful function, that is, the DBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all DBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY DBEs

In the event that a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the OEOP and the Project Manager and provide all facts surrounding the matter. The DBE firm can be terminated only for good cause. Good cause includes a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE participation goal on the contract. The contractor shall immediately take adequate good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of the work. The substitute DBEs name, description of work and all written and signed commitments, and dollar value of the work shall be submitted to the OEOP, and the OEOP's approval must be obtained prior to the substitute DBE beginning work. If the contractor fails or refuses to comply, the OEOP will recommend that the City issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City may terminate the contract for cause and/or pursue any other remedy available to the City.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. RECORD-KEEPING

The City of Tucson will require prime contractors to maintain records and documents of payments to DBE for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. The reporting requirement also extends to any certified DBE subcontractors.

E. FALSE, FRAUDULENT OR DISHONEST CONDUCT

The City of Tucson will bring to the attention of the federal government any false, fraudulent or dishonest conduct in connection with the DBE Diversity Program for Contracts so that the federal government can take steps (e.g., referral to the Department of Justice for criminal prosecution, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109. The City will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

F. NON-DISCRIMINATION

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

CITY OF TUCSON
OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF
PROPOSED DBE PLAN

ALL DBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A DBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE DBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a DBE)	Trade/Industry	Proposed Dollar Value of Contract (DBE Only)

Project Amount $ _____

Total Claimed DBE Participation $_____ _____%

I hereby certify by signing below that the foregoing firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED DBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Equal Opportunity Office

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET DBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing DBE firms to meet the City of Tucson's DBE goals. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a DBE plan must also be submitted.

_____

_____

_____

_____

_____

2. Provide a brief summary of why the DBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to DBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for DBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which DBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to DBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted Telephone #	Contact Person		Dates of Contact		

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the DBE goals.) Attach necessary documentation.

Yes _____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide DBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist DBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which DBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of DBE Firm	Explanation for Rejecting Quotes

10. Were any proposals from DBE subcontractors that were no more than 15% or $250,000 greater than the accepted Non-DBE subcontractor rejected? If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

MUST BE SUBMITTED WITH THE PROPOSAL

City of Tucson
Office of Equal Opportunity Programs (OEOP)

DBE ACKNOWLEDGMENT OF PARTICIPATION

CONTRACT NO._____ PROJECT NAME: _____

TRADE/INDUSTRY/SUPPLY/EQUIPMENT:_____

DOLLAR VALUE OF THE CONTRACT: _____

DBE Firm: _____

DBE Signature: _____

Phone No. _____ Date: _____

Name: _____

Title: _____

I hereby certify that _____ is participating in the contract as provided in the Proposed DBE Plan and that the information shown above is a true reflection of the proposed subcontract.

Prime Contractor's Signature: _____

MUST BE SUBMITTED WITH REQUEST FOR FINAL PAYMENT

City of Tucson
Office of Equal Opportunity Programs (OEOP)

SUPPLIER AND SUBCONTRACTOR UTILIZATION LIST
FINAL PAYMENT RECORD

Pursuant to administrative procedures and policies, the OEOP Director may verify and/or clarify and request resubmittal of information to verify or clarify information as it relates to the contractor's Final Payment Record.

CONTRACT No. _____ Bid Amount: _____ Project Name: _____

FIRM NAME	DBE	TRADE/INDUSTRY	SUPPLIER TOTAL PAYMENT MADE		
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__

CERTIFICATION OF PAYMENTS TO DBE FIRMS

Project Name:_____
COT Job No.: _____ Contract No.: _____
Fed Job No.: _____ State TRACS No.: _____

The undersigned prime contractor on the above named City of Tucson project hereby, certifies that full payment was made to the firm indicated for material and/or work performed under this project's contract as follows:

Firm Name _____, was paid $ _____

The subcontract was completed on _____

Full Retention has been released to the Subcontractor by the Prime Contractor Yes / No

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contracts, all documentation supporting the contractors position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Prime Contractor

By: _____

Title: _____

Date: _____

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Subcontractor/Supplier/Manufacturer

By: _____

Title: _____

Date: _____

MUST BE SUBMITTED WITH THE PROPOSAL

SUBCONTRACTOR PROMPT PAYMENT REQUIREMENTS

CONTRACT NO: _____

PROJECT NAME: _____

DBE Contract Provisions – Section V. Monitoring Payments to Subcontractors

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson.

Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

By signing below I acknowledge and agree to the DBE subcontractor prompt payment requirements.

Company Name: _____

Signature: _____

Name & Title: _____

Date: _____

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

✓ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

____ "Annual" bonds in the amount of $50,000; each project over $50K or concurrent projects totaling more than $50K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

AAA Landscape
Company Name

Signature of Person Authorized to Sign

Cheryl J. Balbinot
Printed Name

JOC No. 130762
Contract Number

October 3, 2013
Date

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/30/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Lovitt & Touche' Inc
1050 W. Washington St., Suite 233
Tempe AZ 85281

CONTACT NAME: Leisa Youngman
PHONE (A/C, No, Ext): 602.385.0528 FAX (A/C, No): 602.956.2258
E-MAIL ADDRESS: lyoungman@lovitt-touche.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Zurich American Insurance Company	16535
INSURER B : Cincinnati Ins Company	10677
INSURER C : Travelers Property Casualty Co of A	25674
INSURER D :	
INSURER E :	
INSURER F :	

INSURED UNDER-1

Underwood Bros. Inc. dba
Underwood Brothers, Inc dba
AAA Landscape, Arid Solutions, LLC
3747 E. Southern Avenue
Phoenix AZ 85040-9088

COVERAGES **CERTIFICATE NUMBER:** 401294976 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC	Y	Y	GLO388893907	5/1/2013	5/1/2014	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$1,000,000 $100,000 $10,000 $1,000,000 $2,000,000 $2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	Y	Y	BAP388894007	5/1/2013	5/1/2014	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$1,000,000 $ $ $ $
B	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED X RETENTION $0			EXS0076555	5/1/2013	5/1/2014	EACH OCCURRENCE AGGREGATE $	$5,000,000 $5,000,000 $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	WC388893807	5/1/2013	5/1/2014	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $1,000,000 $1,000,000 $1,000,000
C	Rented/Leased Eqpt Scheduled Eqpt			QT6300062R228TIL13	5/1/2013	5/1/2014	Rented/Leased Limit Scheduled Eqpt Deductible	$250,000 $1,026,946 See Below

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Regarding the Liability coverage shown, if required by written contract (per forms attached):

GENERAL LIABILITY – Additional Insured-Automatic-Owners, Lessees or Contractors U-GL-1175-D CW (10-11)with Primary/Non-Contributory wording (see section F. on form)
GENERAL LIABILITY – Waiver of Subrogation (Blanket) U-GL-1114-A CW (10/02)
GENERAL LIABILITY – Additional Insured-Lessor of Leased Equipment CG 20 28 07 04
See Attached...

CERTIFICATE HOLDER

City of Tucson
PO Box 27210
Tucson AZ 86701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mary K. Kruzman

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AGENCY CUSTOMER ID: UNDER-1

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Lovitt & Touche' Inc	NAMED INSURED Underwood Bros. Inc. dba Underwood Brothers, Inc dba AAA Landscape, Arid Solutions, LLC 3747 E. Southern Avenue Phoenix AZ 85040-9088
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

AUTOMOBILE LIABILITY – Automatic Additional Insured & Waiver of Subrogation per form U-CA-424-E CW (04-11)(as required in written contract or agreement)
WORKERS COMPENSATION – Waiver of Our Right to Recover From Others Endorsement WC 00 03 13 (Ed.4-84)
CONTRACTORS EQUIPMENT – Loss Payable Provision CM T5 60 0110
Excess Liability is over General Liability, Auto Liability & Employer's Liability

- Note Scheduled Equipment Deductible $5,000; except Cranes 2%/$5,000 minimum-
- Hired Car Physical Damage Deductible $100 Comprehensive/$500 Collision

Coverage is subject to all policy terms, conditions, definitions, exclusions, forms & endorsements.

RE:Houghton Road

Additional Insured: City of Tucson

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Additional Insured – Automatic – Owners, Lessees Or Contractors

ZURICH®

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO388893906	05/01/12	05/01/13				

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: Underwood Bros., Inc. dba Underwood Brothers, Inc. dba AAA Landscape & Arid Solutions, LLC

Address (including ZIP Code):

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – **Who Is An Insured** is amended to include as an insured any person or organization who you are required to add as an additional insured on this policy under a written contract or written agreement.

B. The insurance provided to the additional insured person or organization applies only to "bodily injury", "property damage" or "personal and advertising injury" covered under Section I – **Coverage A – Bodily Injury And Property Damage Liability** and Section I – **Coverage B – Personal And Advertising Injury Liability**, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

and resulting directly from your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

C. However, regardless of the provisions of Paragraphs **A.** and **B.** above:

1. We will not extend any insurance coverage to any additional insured person or organization:
   a. That is not provided to you in this policy; or
   b. That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or written agreement; and
2. We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:
   a. The Limits of Insurance provided to you in this policy; or
   b. The Limits of Insurance you are required to provide in the written contract or written agreement.

D. The insurance provided to the additional insured person or organization does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
2. Supervisory, inspection, architectural or engineering activities.

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E. The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured, if the written contract or written agreement requires that this coverage be primary and non-contributory.

F. For the coverage provided by this endorsement:

1. The following paragraph is added to Paragraph **4.a.** of the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

   This insurance is primary insurance as respects our coverage to the additional insured person or organization, where the written contract or written agreement requires that this insurance be primary and non-contributory with respect to any other policy upon which the additional insured is a Named Insured. In that event, we will not seek contribution from any other such insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.

2. The following paragraph is added to Paragraph **4.b.** of the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

   This insurance is excess over:

   Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

G. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

All other terms and conditions of this policy remain unchanged.

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Policy Number GL0388893906

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured Underwood Bros., Inc. dba Underwood Brothers, Inc.
dba AAA Landscape & Arid Solutions, LLC

Effective Date: 05/01/12
12:01 A.M., Standard Time

Agent Name LOVITT & TOUCHE INC

Agent No. 09192-000

WAIVER OF SUBROGATION (BLANKET)

THE FOLLOWING IS ADDED TO THE TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US CONDITION:

IF YOU ARE REQUIRED BY A WRITTEN CONTRACT OR AGREEMENT, WHICH IS EXECUTED BEFORE A LOSS, TO WAIVE YOUR RIGHTS OF RECOVERY FROM OTHERS, WE AGREE TO WAIVE OUR RIGHTS OF RECOVERY. THIS WAIVER OF RIGHTS SHALL NOT BE CONSTRUED TO BE A WAIVER WITH RESPECT TO ANY OTHER OPERATIONS IN WHICH THE INSURED HAS NO CONTRACTUAL INTEREST.

Coverage Extension Endorsement

ZURICH

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
BAP388894006	05/01/12	05/01/13				

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Business Auto Coverage Form
Motor Carrier Coverage Form

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Liability Coverage:**

   The following are also "insureds":

   a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you.

   b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.

   c. Anyone else who furnishes an "auto" referenced in Paragraphs **a.** and **b.** above.

   d. Any person(s) or organization(s) where required by written contract or written agreement executed prior to any "accident" provided the "accident" arises out of operations contemplated by such contract or agreement.

2. The following is added to the **Other Insurance** Provision in the **Conditions** Section:

   Coverage for any person(s) or organization(s) where required by written contract or written agreement executed prior to any "accident" will apply on a primary basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the coverage form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Liability Coverage** are replaced by the following:

(2) Up to $5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Liability Coverage** does not apply.

D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the **Racing** Exclusion in **Section II – Liability Coverage:**

   This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

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2. The following is added to Paragraph **2.** in the **Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph **2.b.** in the **Exclusions of Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

   This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

E. Lease or Loan Gap Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Lease Or Loan Gap Coverage

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

a. Any amount paid under the **Physical Damage Coverage** Section of the coverage form; and

b. Any:

   (1) Overdue lease or loan payments at the time of the "loss";

   (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

   (3) Security deposits not returned by the lessor;

   (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and

   (5) Carry-over balances from previous leases or loans.

F. Towing and Labor

The following is added to Paragraph **A.2.** of the **Physical Damage Coverage** Section:

We will pay up to $75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

G. Extended Glass Coverage

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible will be $100 or the deductible shown in the Declarations, whichever is less. If glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

H. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Loss Of Use Expenses** Provision of the **Physical Damage Coverage** Section is replaced by the following:

Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

(1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

(2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

(3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is $100 per day, to a maximum of $3000.

I. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Personal Effects Coverage

a. We will pay up to $750 for "loss" to personal effects which are:

   (1) Personal property owned by an "insured"; and

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(2) In or on a covered "auto".

b. Subject to Paragraph **a.** above, the amount to be paid for "loss" to personal effects will be based on the lesser of:

(1) The reasonable cost to replace; or

(2) The actual cash value.

c. The coverage provided in Paragraphs **a.** and **b.** above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:

(1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.

(2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.

(3) Paintings, statuary and other works of art.

(4) Contraband or property in the course of illegal transportation or trade.

(5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph **B.4.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.2.c.** of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form do not apply.

2. The following is added to Paragraph **1.a. Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

   We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

   (a) Are the property of an "insured"; and

   (b) Are in a covered "auto" at the time of "loss".

   The most we will pay for such "loss" to tapes, records, discs or other similar devices is $500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

K. Airbag Coverage

The Exclusion in Paragraph **B.3.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.4.a. of Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form do not apply to the accidental discharge of an airbag.

L. Two or More Deductibles

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or coverage form and by another policy or coverage form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or coverage form is the smaller (or smallest) deductible, it will be waived; or

2. If the deductible on this policy or coverage form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

M. Physical Damage – Comprehensive Coverage – Deductible

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is $5,000.

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N. **Temporary Substitute Autos – Physical Damage**

1. The following is added to **Section I – Covered Autos:**

   Temporary Substitute Autos – Physical Damage

   If Physical Damage Coverage is provided by this coverage form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

   Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

   1. Breakdown;
   2. Repair;
   3. Servicing;
   4. "Loss"; or
   5. Destruction.

2. The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

   Temporary Substitute Autos – Physical Damage

   We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

   The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

O. **Amended Duties In The Event Of Accident, Claim, Suit Or Loss**

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

   Include, as soon as practicable:

   (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";

   (2) The "insured's" name and address; and

   (3) To the extent possible, the names and addresses of any injured persons and witnesses.

   If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

P. **Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

Q. **Employee Hired Autos – Physical Damage**

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

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(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

R. Unintentional Failure to Disclose Hazards

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this coverage form if you unintentionally:

(1) Fail to disclose any hazards existing at the inception date of this coverage form; or

(2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

S. Hired Auto – World Wide Coverage

Paragraph **(5)(a)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

(a) A covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less; and

T. Bodily Injury Redefined

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

All other terms and conditions of this policy remain unchanged.

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Policy Number
GLO 3888939-06

ENDORSEMENT

ZURICH AMERICAN INSURANCE COMPANY

Named Insured UNDERWOOD BROS., INC.

Effective Date: 05-01-12
12:01 A.M., Standard Time

Agent Name LOVITT & TOUCHE INC

Agent No. 09192-000

BLANKET NOTIFICATION TO OTHERS OF CANC

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. IF WE CANCEL THIS COVERAGE PART BY WRITTEN NOTICE TO THE FIRST NAMED INSURED FOR ANY REASON OTHER THAN NONPAYMENT OF PREMIUM, WE WILL DELIVER ELECTRONIC NOTIFICATION THAT SUCH COVERAGE PART HAS BEEN CANCELLED TO EACH PERSON OR ORGANIZATION SHOWN IN A SCHEDULE PROVIDED TO US BY THE FIRST NAMED INSURED. SUCH SCHEDULE:
1. MUST BE INITIALLY PROVIDED TO US WITHIN 15 DAYS:
A. AFTER THE BEGINNING OF THE POLICY PERIOD SHOWN IN THE DECLARATIONS; OR
B. AFTER THIS ENDORSEMENT HAS BEEN ADDED TO POLICY;
2. MUST CONTAIN THE NAMES AND E-MAIL ADDRESSES OF ONLY THE PERSONS OR ORGANIZATIONS REQUIRING NOTIFICATION THAT SUCH COVERAGE PART HAS BEEN CANCELLED;
3. MUST BE IN AN ELECTRONIC FORMAT THAT IS ACCEPTABLE TO US; AND
4. MUST BE ACCURATE.
SUCH SCHEDULE MAY BE UPDATED AND PROVIDED TO US BY THE FIRST NAMED INSURED DURING THE POLICY PERIOD. SUCH UPDATED SCHEDULE MUST COMPLY WITH PARAGRAPHS 2. 3. AND 4. ABOVE.
B. OUR DELIVERY OF THE ELECTRONIC NOTIFICATION AS DESCRIBED IN PARAGRAPH A. OF THIS ENDORSEMENT WILL BE BASED ON THE MOST RECENT SCHEDULE IN OUR RECORDS AS OF THE DATE THE NOTICE OF CANCELLATION IS MAILED OR DELIVERED TO THE FIRST NAMED INSURED. DELIVERY OF THE NOTIFICATION AS DESCRIBED IN PARAGRAPH A. OF THIS ENDORSEMENT WILL BE COMPLETED AS SOON AS PRACTICABLE AFTER THE EFFECTIVE DATE OF CANCELLATION TO THE FIRST NAMED INSURED.
C. PROOF OF EMAILING THE ELECTRONIC NOTIFICATION WILL BE SUFFICIENT PROOF THAT WE HAVE COMPLIED WITH PARAGRAPHS A. AND B. OF THIS ENDORSEMENT.
D. OUR DELIVERY OF ELECTRONIC NOTIFICATION DESCRIBED IN PARAGRAPHS A. AND B. OF THIS ENDORSEMENT IS INTENDED AS A COURTESY ONLY. OUR FAILURE TO PROVIDE SUCH DELIVERY OF ELECTRONIC NOTIFICATION WILL NOT:
1. EXTEND THE COVERAGE PART CANCELLATION DATE;
2. NEGATE THE CANCELLATION; OR
3. PROVIDE ANY ADDITIONAL INSURANCE THAT WOULD NOT HAVE BEEN PROVIDED IN THE ABSENCE OF THIS ENDORSEMENT.
E. WE ARE NOT RESPONSIBLE FOR THE ACCURACY, INTEGRITY, TIMELINESS AND VALIDITY OF INFORMATION CONTAINED IN THE SCHEDULE PROVIDED TO US AS DESCRIBED IN PARAGRAPHS A. AND B. OF THIS ENDORSEMENT.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

COMMERCIAL INSURANCE

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

ENDORSEMENT

Insurance for this coverage part provided by:
ZURICH AMERICAN INSURANCE COMPANY

This endorsement changes the insurance as is afforded by the policy relating to the following:

Named Insured	Policy Number
UNDERWOOD BROS., INC.	WC 3888938-06

BLANKET NOTIFICATION TO OTHERS OF CANC

THIS ENDORSEMENT IS USED TO ADD THE FOLLOWING TO PART SIX OF THE POLICY.
PART SIX CONDITIONS

F. NOTIFICATION TO OTHERS OF CANCELLATION
1. IF WE CANCEL THIS POLICY BY WRITTEN NOTICE TO YOU FOR ANY REASON OTHER THAN NONPAYMENT OF PREMIUM, WE WILL DELIVER ELECTRONIC NOTIFICATION TO EACH PERSON OR ORGANIZATION SHOWN IN A SCHEDULE PROVIDED TO US BY YOU.
SUCH SCHEDULE:
A. MUST BE INITIALLY PROVIDED TO US WITHIN 15 DAYS:
AFTER THE BEGINNING OF THE POLICY PERIOD SHOWN IN THE DECLARATIONS; OR
AFTER THIS ENDORSEMENT HAS BEEN ADDED TO POLICY;
B. MUST CONTAIN THE NAMES AND E-MAIL ADDRESSES OF ONLY THE PERSONS OR ORGANIZATIONS REQUIRING NOTIFICATION THAT THIS POLICY HAS BEEN CANCELLED;
C. MUST BE IN AN ELECTRONIC FORMAT THAT IS ACCEPTABLE TO US; AND
D. MUST BE ACCURATE.
SUCH SCHEDULE MAY BE UPDATED AND PROVIDED TO US BY YOU DURING THE POLICY PERIOD. SUCH UPDATED SCHEDULE MUST COMPLY WITH PARAGRAPHS B. C. AND D. ABOVE.
2. OUR DELIVERY OF THE ELECTRONIC NOTIFICATION AS DESCRIBED IN PARAGRAPH 1. OF THIS ENDORSEMENT WILL BE BASED ON THE MOST RECENT SCHEDULE IN OUR RECORDS AS OF THE DATE THE NOTICE OF CANCELLATION IS MAILED OR DELIVERED TO YOU. DELIVERY OF THE NOTIFICATION AS DESCRIBED IN PARAGRAPH 1. OF THIS ENDORSEMENT WILL BE COMPLETED AS SOON AS PRACTICABLE AFTER THE EFFECTIVE DATE OF CANCELLATION TO YOU.
3. PROOF OF MAILING THE ELECTRONIC NOTIFICATION WILL BE SUFFICIENT PROOF THAT WE HAVE COMPLIED WITH PARAGRAPHS 1. AND 2. OF THIS ENDORSEMENT.
4. OUR DELIVERY OF ELECTRONIC NOTIFICATION DESCRIBED IN PARAGRAPHS 1. AND 2. OF THIS ENDORSEMENT IS INTENDED AS A COURTESY ONLY. OUR FAILURE TO PROVIDE SUCH DELIVERY OF ELECTRONIC NOTIFICATION WILL NOT:
A. EXTEND THE POLICY CANCELLATION DATE;
B. NEGATE THE CANCELLATION; OR
C. PROVIDE ANY ADDITIONAL INSURANCE THAT WOULD NOT HAVE BEEN PROVIDED IN THE ABSENCE OF THIS ENDORSEMENT.
5. WE ARE NOT RESPONSIBLE FOR THE ACCURACY, INTEGRITY, TIMELINESS AND VALIDITY OF INFORMATION CONTAINED IN THE SCHEDULE PROVIDED TO US AS DESCRIBED IN PARAGRAPHS 1. AND 2. OF THIS ENDORSEMENT.
ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Insured Copy

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS OR ORGANIZATIONS. APPLIES WHEN REQUIRED BY A WRITTEN CONTRACT.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Policy No. Endorsement No.

Insured Premium $

Insurance Company Countersigned By _____

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET LOSS PAYEES

This endorsement modifies insurance provided under the IM PAK COVERAGE FORM.

The following is added to Section E – ADDITIONAL COVERAGE CONDITIONS:

Loss Payable Provision

In the event of a Covered Cause of Loss to Covered Property in which both you and a Loss Payee share an insurable interest, we will:

a. Adjust the loss or damage with you; and

b. Pay any claim for loss or damage jointly to you and the Loss Payee as your interests may appear.

This endorsement applies to all Covered Property for which a Loss Payee is on file with us or your insurance agent or insurance broker.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLLUTION LIABILITY – BROADENED COVERAGE FOR COVERED AUTOS – BUSINESS AUTO, MOTOR CARRIER AND TRUCKERS COVERAGE FORMS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Liability Coverage is changed as follows:

1. Paragraph **a.** of the **Pollution** Exclusion applies only to liability assumed under a contract or agreement.
2. With respect to the coverage afforded by Paragraph **A.1.** above, Exclusion **B.6. Care, Custody Or Control** does not apply.

B. Changes In Definitions

For the purposes of this endorsement, Paragraph **D.** of the **Definitions** Section is replaced by the following:

D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs **a.** and **b.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

(1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and

(2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

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EXHIBIT B
SCOPE OF WORK, LIST OF MATERIALS, SPECIFICATIONS AND OTHER MODIFICATIONS TO UNDERLYING CONTRACT

SEE EXHIBIT A

EXHIBIT C
PAYMENT & COMPENSATION TERMS

SEE EXHIBIT A

EXHIBIT D
INSURANCE REQUIREMENTS

COVERAGE AFFORDED	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Commercial General Liability Insurance Including:	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

A. Products & Completed Operations
B. Blanket Contractual
C. Premises-Operations-Personal Injury

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which require automobile travel by Contractor.

Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

SPECIAL CONDITIONS:

1. THE TOWN OF SAHUARITA WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the Town.
3. Deductibles will be stated on the certificate of insurance and are subject to the review and approval of the Town.
4. Contractor shall provide Town with proof of compliance with the insurance provisions and requirements within ten (10) days of the date this Contract is executed by all parties by providing a current certificate of insurance and the associated endorsement to the policy. Failure of Contractor to comply with the insurance requirements at any time shall result in a breach of this Agreement, and shall, among other things, allow immediate termination of this Agreement.
5. Contractors performing any portion of a Project that shall acquire funding from the Regional Transportation Authority (RTA) shall name the RTA as additional insured and additional indemnitee. The RTA shall be identified as an additional insured with respect to insurance policies for general liability, automobile liability and defects in design. Contractor is also required to name the RTA as an additional beneficiary in any performance and payment related assurances posted for the Project.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 8/8/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Lovitt & Touche' Inc
1050 W. Washington St., Suite 233
Tempe AZ 85281

CONTACT NAME: Elaine Leaman
PHONE (A/C, No, Ext): 602.956.2250 **FAX (A/C, No):** 602.956.2258
E-MAIL ADDRESS: eleaman@lovitt-touche.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Zurich American Ins Co	16535
INSURER B : Cincinnati Insurance Company	10677
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED UNDER-1
Underwood Brothers, Inc dba
AAA Landscape, Arid Solutions, LLC
3747 E. Southern Avenue
Phoenix AZ 85040-9088

COVERAGES **CERTIFICATE NUMBER:** 1749573503 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	Y	Y	GLO3888939	5/1/2016	5/1/2017	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
							MED EXP (Any one person)	$10,000
	X Pest/Herbicide						PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY X PRO-JECT X LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY	Y	Y	BAP3888940	5/1/2016	5/1/2017	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
B	UMBRELLA LIAB X OCCUR	Y	Y	EXS0076555	5/1/2016	5/1/2017	EACH OCCURRENCE	$5,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$5,000,000
	DED X RETENTION $ 0							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N		Y	WC3888938	5/1/2016	5/1/2017	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder and owner (if applicable) are additional insureds as respects general liability and automobile liability if required in a written contract subject to the policy, conditions, definitions and exclusions. Waiver of Subrogation applies to the general liability, automobile liability and workers' compensation if required in a written contract subject to the policy terms, conditions, definitions and exclusions. The general liability and automobile liability is primary and certificate holder's insurance is non-contributory if required by written contract. (Per forms: UGL1175F CW 04/13, CG2503 05/09, CG2404 05/09, CA2048 02/99, CA0444 03/10, WC000313, WC420304B 06/14).
RE: JOC for Landscape Construction Services
See Attached...

CERTIFICATE HOLDER

Town of Sahuarita
375 W. Sahuarita Center Way
Sahuarita AZ 85629

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Dennis M. Tsonis

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AGENCY CUSTOMER ID: UNDER-1

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Lovitt & Touche' Inc	NAMED INSURED Underwood Brothers, Inc dba AAA Landscape, Arid Solutions, LLC 3747 E. Southern Avenue Phoenix AZ 85040-9088
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

JOC for Landscape Construction Services and Town of Sahuarita are additional insured if required by written contract.

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Contractors Liability Supplemental Coverages And Conditions

ZURICH®

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO3888939	05/01/2016	05/01/2017	05/01/2016	09192-00	N/A	N/A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

NON-OWNED WATERCRAFT SCHEDULE

Watercraft Length: _____ feet

(If no amount is shown above, 51 feet applies.)

A. Non-owned Watercraft Liability Extended Coverage

Paragraph **(2)** of Exclusion **2.g. Aircraft, Auto Or Watercraft** under Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

(2) A watercraft you do not own that is:

(a) Less than the length shown in the Non-Owned Watercraft Schedule of this endorsement; and

(b) Not being used to carry persons or property for a charge;

B. Damage To Premises Rented Or Occupied By You

1. The last paragraph under Paragraph **2. Exclusions** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage to Premises Rented To You Limit of Insurance applies to this coverage as described in Section **III** – Limits Of Insurance.

2. The paragraph directly following Paragraph **(6)** in Exclusion **j.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" to premises (other than damage by "specific perils"), including "property damage" to the contents of such premises, rented to you under a rental agreement for a period of 14 or fewer consecutive days. A separate Limit of Insurance applies to Damage to Premises Rented to You as described in Section **III** – Limits Of Insurance.

3. Paragraph **6.** of Section **III – Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises while rented to you, or in the case of damage by one or more "specific perils" to any one premises, while rented to you or temporarily occupied by you with permission of the owner.

4. Paragraph **a.** of the "insured contract" definition under the **Definitions** Section is replaced by the following:

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a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

5. Paragraph **(ii)** under Paragraph **4.b.(1)** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions** is replaced by the following:

(ii) That is property insurance providing coverage for "specific perils" for premises rented to you or temporarily occupied by you with permission of the owner;

6. The following definitions are added to the **Definitions** Section:

"Specific perils" means fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment, weight of snow, ice or sleet or "water damage".

"Water damage" means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

C. Additional Insured – Lessor Of Leased Equipment – Automatic Status When Required In Lease Agreement With You

1. Section **II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in a written contract or written agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, the insurance afforded to such additional insured:

a. Only applies to the extent permitted by law; and

b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

2. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

3. With respect to the insurance afforded to these additional insureds, the following is added to Section **III – Limits of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the written contract or written agreement you have entered into with the additional insured; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

The insurance provided by this Paragraph **C.** shall not increase the applicable Limits of Insurance shown in the Declarations.

D. Additional Insured – Managers Or Lessors Of Premises

1. Section **II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) that you have agreed in a written contract or written agreement to name as an additional insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

a. Any "occurrence" which takes place after you cease to be a tenant in that premises.

b. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured manager or lessor of the premises leased to you.

However, the insurance afforded to such additional insured:

a. Only applies to the extent permitted by law; and

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b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. With respect to the insurance afforded to these additional insureds, the following is added to Section **III – Limits of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the written contract or written agreement you have entered into with the additional insured; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

The insurance provided by this Paragraph **D.** shall not increase the applicable Limits of Insurance shown in the Declarations.

E. Additional Insured – State Or Governmental Agency Or subdivision Or Political Subdivision – Permits Or Authorizations

1. Section **II – Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision that you have agreed in a written contract or written agreement or that you are required by statute, ordinance or regulation to name as an additional insured, subject to the following provisions:

a. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

b. This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or

(2) "Bodily injury" or "property damage included within the "products-completed operations hazard".

However, the insurance afforded to such additional insured:

a. Only applies to the extent permitted by law; and

b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. With respect to the insurance afforded to these additional insureds, the following is added to Section **III – Limits of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the written contract or written agreement you have entered into with the additional insured; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

The insurance provided by this Paragraph **E.** shall not increase the applicable Limits of Insurance shown in the Declarations.

F. Personal And Advertising Injury Coverage – Assumed Under Contract Or Agreement

1. Exclusion **e.** of Section **I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

2. Exclusions

This insurance does not apply to:

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to:

(1) Liability for damages that the insured would have in the absence of the contract or agreement; or

(2) Liability for "personal and advertising injury" if:

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(a) The liability pertains to your business and is assumed in a contract or agreement that is an "insured contract"; and

(b) The "personal and advertising injury" occurs subsequent to the execution of the contract or agreement.

Solely for the purposes of liability so assumed in such "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "personal and advertising injury", provided:

(i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same contract or agreement; and

(ii) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

2. For purposes of this "personal and advertising injury" coverage only:

Paragraph **d.** and the second to last paragraph under Paragraph **2.** of **Supplementary Payments – Coverages A** and **B** are replaced by the following:

d. The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Such payments will not be deemed to be damages for "bodily injury", "property damage" or "personal and advertising injury" and will not reduce the limits of insurance.

G. Insured Contract Amendment

Paragraph **f.** and **f.(1)** through **f.(3)** of the "insured contract" definition under the **Definitions** Section is replaced by the following:

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities;

(4) That indemnifies a person or organization for "personal and advertising injury":

(a) Arising out of advertising, publishing, broadcasting or telecasting done for you or on your behalf; or

(b) To an "employee" of such person or organization that does advertising, publishing, broadcasting or telecasting for you or on your behalf; or

(5) That indemnifies a labor leasing firm for "bodily injury" to "leased workers".

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H. Medical Payments – Increased Reporting Period

Paragraph **a.** of Section **I – Coverage C – Medical Payments** is replaced by the following:

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(a) The accident takes place in the "coverage territory" and during the policy period;

(b) The expenses are incurred and reported to us within three years of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

I. Broad Bail Bond Coverage

Paragraph **1.b.** under **Supplementary Payments – Coverages A And B** is replaced by the following:

b. The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

J. Amendment – Duties In The Event of Occurrence, Offense, Claim or Suit

The following paragraphs are added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV** – **Commercial General Liability Conditions**:

Notice of an "occurrence" or of an offense which may result in a claim under this insurance or notice of a claim or "suit" shall be given to us as soon as practicable after knowledge of the "occurrence", offense, claim or "suit" has been reported to your officer, manager, partner or an "employee" authorized by you to give or receive such notice. Knowledge by "employees" other than your officer, manager, partner or "employee" authorized by you to give or receive such notice of an "occurrence", offense, claim or "suit" does not imply that you also have such knowledge.

In the event that an insured reports an "occurrence" to your workers compensation carrier and this "occurrence" later develops into a General Liability claim, covered by this Coverage Part, the insured's failure to report such "occurrence" to us at the time of the "occurrence" shall not be deemed to be a violation of this Condition. You must, however, give us notice as soon as practicable after being made aware that the particular claim is a General Liability rather than a Workers Compensation claim.

K. Unintentional Failure To Disclose Or Describe Hazards

Paragraph **6. Representations** of Section **IV – Commercial General Liability Conditions** is replaced by the following:

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

Coverage will continue to apply if you unintentionally:

(1) Fail to disclose all hazards existing at the inception of this policy; or

(2) Make an error, omission or improper description of premises or other statement of information stated in this policy.

You must notify us in writing as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to inception of this Coverage Part.

L. Bodily Injury Redefined

The "bodily injury" definition under the **Definitions** Section is replaced by the following:

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"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish, mental injury, shock, fright or death resulting from bodily injury, sickness or disease.

M. Two Or More Of Our Coverage Parts/Policies

The following is added to Section **III – Limits of Insurance**:

1. Subject to Paragraph **2.** or **3.** above, whichever applies, if this Coverage Part and any other Commercial General Liability Coverage Part or policy providing Commercial General Liability insurance issued to you by us or any other Zurich underwriting company affiliated with us apply to the same "occurrence", only the highest available Each Occurrence Limit under any such Coverage Part or policy applies to such "occurrence".

2. Subject to Paragraph **2.** above, if this Coverage Part and any other Coverage Part or policy providing Commercial General Liability insurance issued to you by us or any other Zurich underwriting company affiliated with us apply to the same offense, only the highest available Personal And Advertising Injury Limit under any such Coverage Part or policy applies to such offense.

3. Under this Coverage Part and all other Zurich underwriting company Coverage Parts or policies to which Paragraphs **1.** and **2.** above combined apply, the most we will pay for all injury or damage because of "bodily injury" or "property damage" "occurrences", "personal and advertising injury" offenses and medical expenses is:

a. The single highest Coverage Part or policy General Aggregate Limit; or

b. The single highest Coverage Part or policy Products-Completed Operations Aggregate Limit,

whichever applies, whether such "occurrence", offenses or medical expenses are covered by one or more than one Zurich underwriting company policy.

4. Any existing provisions under Paragraph **4. Other Insurance** under Section **IV – Commercial General Liability Conditions** that may be contrary to the provisions of this endorsement are amended to comply with the changes in coverage as stipulated in Paragraphs **1.**, **2.**, and **3.** above.

This provision does not apply to any Coverage Part or policy issued by us or any other Zurich underwriting company affiliated with us specifically to apply as excess insurance over this Coverage Part.

N. Your Work Redefined

Paragraph **a.(1)** of the "your work" definition under the **Definitions** Section is replaced by the following:

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf, but does not include work or operations performed by another entity who joined with you to form a partnership or joint venture not shown as a Named Insured in the Declarations, which terminated or ended prior to the effective date of this policy; and

All other terms and conditions of this policy remain unchanged.

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Additional Insured – Automatic – Owners, Lessees Or Contractors

ZURICH®

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO3888939	05/01/2016	05/01/2017	05/01/2016	09192-00	N/A	N/A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Underwood Brothers, Inc. DBA AAA Landscape

Address (including ZIP Code): 3747 E. Southern Ave., Phoenix, AZ 85040

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section **II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or

2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and

2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

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C. The following is added to Paragraph **2.** Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;

2. We receive written notice of a claim or "suit" as soon as practicable; and

3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

a. The additional insured is a Named Insured under such other insurance; and

b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the Other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section **III – Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph **A.** of this endorsement; or

2. Available under the applicable Limits of Insurance shown in the Declarations,

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

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WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
ANY PERSON OR ORGANIZATION THAT REQUIRES YOU TO WAIVE YOUR RIGHTS OF RECOVERY, IN A WRITTEN CONTRACT OR AGREEMENT WITH THE NAMED INSURED THAT IS EXECUTED PRIOR TO THE ACCIDENT OR LOSS.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):
A GENERAL AGGREGATE LIMIT APPLIES TO EACH CONSTRUCTION PROJECT WHERE THE NAMED INSURED IS PERFORMING OPERATIONS, HOWEVER, A GENERAL AGGREGATE LIMIT DOES NOT APPLY TO ANY CONSTRUCTION PROJECT WHERE THE NAMED INSURED IS PERFORMING OPERATIONS THAT ARE INSURED UNDER A WRAP UP OR ANY OTHER CONSOLIDATED OR SIMILAR INSURANCE PROGRAM.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A,** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
   - **a.** Insureds;
   - **b.** Claims made or "suits" brought; or
   - **c.** Persons or organizations making claims or bringing "suits".
3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

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B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.

C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Section **III** – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Underwood Brothers, Inc. DBA AAA Landscape

Endorsement Effective Date: 5/1/2016

SCHEDULE

Name Of Person(s) Or Organization(s): ONLY WHERE YOU ARE REQUIRED TO PROVIDE ADDITIONAL INSURED STATUS OR ADDITIONAL INSURED STATUS ON A PRIMARY, NON-CONTRIBUTORY BASIS, IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT EXECUTED PRIOR TO LOSS, EXCEPT WHERE SUCH CONTRACT OR AGREEMENT IS PROHIBITED BY LAW.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Underwood Brothers, Inc. DBA AAA Landscape

Endorsement Effective Date: 5/1/2016

SCHEDULE

Name(s) Of Person(s) Or Organization(s): ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS OR ORGANIZATIONS WHEN REQUIRED BY A WRITTEN CONTRACT.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 5/1/2016 Policy No. WC3888938 Endorsement No.

Insured Underwood Brothers, Inc. DBA AAA Landscape Premium $

Insurance Company Zurich American Insurance Company Countersigned By _____

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TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. (☐) Specific Waiver
   Name of person or organization

   (☒) Blanket Waiver
   Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:
   ALL PROJECTS, WHEN REQUIRED BY A WRITTEN CONTRACT

3. Premium:
   The premium charge for this endorsement shall be 0% percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: INCLUDED

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EXHIBIT E
LEGAL NOTICES

TOWN:	CONTRACTOR:
L. Kelly Udall, Town Manager Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **with a copy to:** Daniel J. Hochuli, Town Attorney Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **and:** Sheila M. Bowen, P.E. Public Works Director / Town Engineer Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629	Robert L. Underwood, CEO Underwood Bros., Inc., dba AAA Landscape 4742 N. Romero Road Tucson, AZ 85705 **With a copy to:** NONE

APPROVED
Town of Sahuarita
Department of Law

COOPERATIVE PURCHASING CONTRACT

Town of Sahuarita, Arizona

Department:	Public Works
Contractor:	M. Anderson Construction Corp.
Project Name:	JOC for Landscape Construction Services
Project Number:	N/A
Contract Dates:	Start: 8/24/2016 End: 9/30/2017
Contract Number:	170020
Amount:	Not to Exceed $100,000.00
Funding Source:	Various

TOWN COUNCIL MEMBERS

Mayor Duane Blumberg
Vice Mayor Bill Bracco
Kara Egbert
Gil Lusk
Tom Murphy
Lynne Skelton
Melissa L. Hicks

TOWN MANAGEMENT

L. Kelly Udall, Town Manager
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

COOPERATIVE PURCHASING CONTRACT

THIS CONTRACT is entered into between the Town of Sahuarita, Arizona, an Arizona municipal corporation (hereinafter "Town"), and M. Anderson Construction Corp., an Arizona corporation (hereinafter "Contractor").

W I T N E S S E T H

Whereas, Town requires the services of a vendor and/or contractor qualified and duly licensed in the Town of Sahuarita and the State of Arizona and qualified to provide landscape construction services; and

Whereas, Contractor is qualified and willing to provide such services; and

Whereas, Section 3.15.060 (C) of the Sahuarita Town Code provides that in the event of a purchase made by, through, or with any public agency as defined in Arizona Revised Statutes § 11-951, the Town Council may approve such purchases or award such contracts for services without a formal bidding process, and Contractor meets all such requirements.

A G R E E M E N T

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter provided, it is agreed between the Town and the Contractor as follows:

1 **INCORPORATION OF CONTRACT.** The parties hereby incorporate that certain contract between Contractor and the City of Tucson attached hereto as Exhibit "A" (the "Underlying Contract") as if fully set forth herein, and agree that (i) the Town shall be substituted in place of the other governmental entity, (ii) the Underlying Contract shall bind the parties to the fullest extent possible, and (iii) any clarifications or modifications to the Underlying Contract shall be set forth herein.

2 **TERM.** This Contract shall commence on August 24, 2016, and shall terminate on September 30, 2017, unless sooner terminated or further extended.

3 **SCOPE OF WORK.**

3.1 The work to be performed under this Contract is that work which is requested pursuant to the Scope of Work, list of materials, or other specifications attached hereto as Exhibit "B" and incorporated herein by this reference. Any clarifications, substitutions, corrections, additions, or other modifications to the Underlying Contract shall also be set forth on Exhibit "B."

4 **PAYMENT.**

4.1 In consideration of the services specified in this Contract, the Town agrees to pay the Contractor as set forth in the Underlying Contract, as clarified or modified as set forth in Exhibit "C" to this Agreement.

4.2 Contractor shall not perform work in excess of the contract amount without prior authorization by an amendment executed by all parties to this Contract. Work performed in excess of the contract amount without prior authorization by amendment shall be at Contractor's own risk.

5 **CONFLICT OF INTEREST.** This Contract is subject to the provisions of A.R.S. § 38-511.

6 **NOTICES.** Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as provided on Exhibit "E" to this Contract.

7 **Non-Discrimination.** Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/680 which is hereby

incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

8 **COMPLIANCE WITH FEDERAL AND STATE LAWS.** In the event this contract refers to services, the following shall apply. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1988. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

8.1 Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the Town that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Town in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

9. **NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Sahuarita Town Council does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, Town shall have no further obligation to Contractor, other than for services rendered prior to termination.

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

TOWN OF SAHUARITA, ARIZONA

_____
Duane Blumberg
Mayor

Date: _____

ATTEST:

_____
Lisa Cole, MMC, Town Clerk

TOWN OF SAHUARITA

_____
L. Kelly Udall, Town Manager/Purchasing Director

DEPARTMENT HEAD:

_____
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

CONTRACTOR:
M. ANDERSON CONSTRUCTION CORP.

_____
Name: Mark Anderson
Title: President

Date: _____

Federal Tax ID Number: 86-0336146

APPROVED AS TO FORM:

_____
Daniel J. Hochuli, Town Attorney

Federal Tax ID Number: 86-0777111

D-U-N-S Number: 963704101

EXHIBIT A
UNDERLYING CONTRACT (WITH ALL AMENDMENTS TO DATE)

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: (520) 837-4118 / FAX: (520) 791-4735
sandra.alcorn@tucsonaz.gov
ISSUE DATE: May 23, 2016

CONTRACT #130762-02
CONTRACT AMENDMENT NUMBER: THREE (3)

SA/pp
CONTRACT OFFICER: SANDRA ALCORN

JOC for LANDSCAPE CONSTRUCTION SERVICES

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM ONE (1): RENEWAL
In accordance Special Terms and Conditions, Section 4, Contract Term and Renewal, the City of Tucson is hereby exercising its option to renew the contract for an additional one-year period from **October 1, 2016 through September 30, 2017.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING
The estimated dollar value of this contract for renewal period is **one hundred thousand dollars ($100,000.00).** In accordance with Arizona Revised Statute and the City's Construction Services Agreement, the Contractor must provide payment and performance surety bonds for this amount. Pursuant to Arizona Revised Statute, bonds may be provided as follows: annual bonds in the amount designated by the agency **($100,000.00),** or bonding per each individual job. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value.

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR: M. Anderson Construction

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Mark Anderson 5/26/2016
Signature of person authorized to sign Date

Mark Anderson
Name and Title (typed or printed legibly)

M. Anderson Construction Corp.
Company Name

4650 N Kain Avenue
Address

mandersoncc@excite.com
Email Address

Tucson AZ 85705
City State Zip

Contact information for Sales/Account Representative for daily business operations:

Anita Squires, Office Manager
Name and Title (typed or printed legibly)

520/887-0823
Phone Number

mandersoncc@excite.com
Email Address

CITY OF TUCSON:

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 1 DAY OF June, 2016, AT TUCSON, ARIZONA.

Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM
as Director of Procurement and not personally

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

__X__ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

M. Anderson Construction Corp.
Company Name

Mark Anderson
Signature of Person Authorized to Sign

Mark Anderson
Printed Name

Client#: 1079986 MAND1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/07/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
USI Insurance Services LLC
2375 E. Camelback Rd, Suite 250
Phoenix, AZ 85016

CONTACT NAME: Laurie Jakobs
PHONE (A/C, No, Ext): 602-374-1353 FAX (A/C, No):
E-MAIL ADDRESS: phx.certificates@usi.biz

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Westfield Insurance Company	24112
INSURER B : CopperPoint Mutual Insurance Co	14216
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
M. Anderson Construction Corp.
4650 N. Kain Avenue
Tucson, AZ 85705

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	TRA0995141	04/01/2016	04/01/2017	EACH OCCURRENCE	$2,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$500,000
							MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY	X	X	TRA0995141	04/01/2016	04/01/2017	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR			TRA0995141	04/01/2016	04/01/2017	EACH OCCURRENCE	$5,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$5,000,000
	DED X RETENTION $0							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		X	1014890	04/01/2016	04/01/2017	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000
A	Leased/Rented Equipment			TRA0995141	04/01/2016	04/01/2017	$450,000 Limit $2,500 Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE:Contract#37195, RFQ 130762 JOC for Landscape Services.

The General Liability policy includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder and RTA as additional insured when there is a written contract that requires such status,and only with regard to work performed on behalf of the named insured.Per project aggregate applies to General Liability policy as per the attached endorsement.

CERTIFICATE HOLDER

City of Tucson
Department of Procurement
255 W Alameda
Tucson, AZ 85726

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

William W. Olsen

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PO Date: 10/16/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR	
Vendor ID: 0052160	Phone: (520) 887-0823 Fax: (520) 292-9049
M. ANDERSON CONSTRUCTION **4650 N Kain Ave** **Tucson, AZ 85705-1918**	

Blanket PO Number

37195

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO	INVOICE
Contact Gary Witwer 520-791-5100	**City of Tucson** **Finance/Accounts Payable** **PO Box 27450** **Tucson, AZ 85726-7450** **(520) 791-4031** **AccountsPayable-Finance@tucsonaz.gov**

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762-02,		Net 15	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	0 EA	0.00	0.00	0.00	0.00
2	CONTRACT 130762-02:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.	0 EA	0.00	0.00	0.00	0.00
3	CONTRACT 130762 JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016. Contact Gary Witwer 520-791-5100	0 EA	0.00	0.00	0.00	0.00
4	CONTRACT 130762-02. PER AMENDMENT NO 3 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2016 TO SEPTEMBER 30, 2017. Contact Gary Witwer 520-791-5100	0 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Sandra Alcorn SA
Contract Officer

(520) 837 - 4118
Phone

(Rev. 5/25/2016) PO_S.rpt

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Reismont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

D. **ADDITIONAL INSURANCE REQUIREMENTS:** All policies shall include, or be endorsed to include, the following provisions:

1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor.
2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

E. **NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.

F. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

G. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department of Procurement.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Resimont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

************END OF AMENDMENT************

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Mark Anderson 8/13/2015
Signature Date

Mark Anderson - President
Print Name and Title

M Anderson Construction Corp.
Company Name

4650 N Kain Avenue
Address

Tucson Arizona 85705
City State Zip

mandersoncc@excite.com
E-Mail Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 23rd DAY OF October, 2015 AT TUCSON, ARIZONA.

Marcheta Gillespie C.P.M., CPPO, CPPB, CPM
As Director of Procurement and not personally

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

__X__ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

M. Anderson Construction Corp.
Company Name

Mark Anderson
Signature of Person Authorized to Sign

Mark Anderson
Printed Name

PO Date: 10/16/2013
Change Order Date: 11/06/2015

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0052160 Phone: (520) 887-0823
Fax: (520) 292-9049

M. ANDERSON CONSTRUCTION
4650 N Kain Ave
Tucson, AZ 85705-1918

Change Order Number
2
Blanket PO Number
37195
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO

Contact Gary Witwer 520-791-5100

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,		Net 15	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
3	CONTRACT 130762 JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016. Contact Gary Witwer 520-791-5100		0.00	0.00	0.00	0.00

Previous PO Total: $0.00 **New PO Total: $0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Dan Longanecker **(520) 837 - 4125**
Contract Officer **Phone**

(Rev. 4/27/2009) PO_CHG_S.rpt

Client#: 1079986 MAND1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/02/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
USI Insurance Services LLC
2201 E. Camelback Rd Suite 220A
Phoenix, AZ 85016
602 279-5800

CONTACT NAME:
PHONE (A/C, No, Ext): 855 874 0101 FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Westfield Insurance Company	24112
INSURER B : CopperPoint Mutual Insurance Co	14216
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
M. Anderson Construction Corp.
4650 N. Kain Avenue
Tucson, AZ 85705

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X	X	TRA0995141	04/01/2015	04/01/2016	EACH OCCURRENCE	$2,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$500,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$1,000,000
							GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$2,000,000
	POLICY X PRO-JECT LOC							$
A	AUTOMOBILE LIABILITY	X	X	TRA0995141	04/01/2015	04/01/2016	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR			TRA0995141	04/01/2015	04/01/2016	EACH OCCURRENCE	$5,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$5,000,000
	DED RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		X	1014890	04/01/2015	04/01/2016	X WC STATU-TORY LIMITS OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000
A	Leased/Rented Eq			TRA0995141	04/01/2015	04/01/2016	$250,000 Lmt/$2500 Ded	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: RFQ 130762 JOC for Landscape Services.
The General Liability policy includes an automatic Additional Insured endorsement that provides Additional Insured status to the Certificate Holder only when there is a written contract that requires such status, and only with regard to work performed on behalf of the named insured.
Per project aggregate applies to General Liability policy as per the attached endorsement.

CERTIFICATE HOLDER

City of Tucson
Department of Procurement
255 W Alameda
Tucson, AZ 85726

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Ann F Ellington

© 1988-2010 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):
ALL PROJECTS
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A,** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard," and for medical expenses under Coverage **C** regardless of the number of:
   - **a.** Insureds;
   - **b.** Claims made or "suits" brought; or
   - **c.** Persons or organizations making claims or bringing "suits."
3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

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B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A,** and for all medical expenses caused by accidents under Section **I** – Coverage **C,** which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.

C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Section **III** – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

Copyright, Insurance Services Office, Inc., 2008

PO Date: 10/16/2013
Change Order Date: 10/08/2014

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR	
Vendor ID: 0052160	Phone: (520) 887-0823 Fax: (520) 292-9049
M. ANDERSON CONSTRUCTION **4650 N Kain Ave** **Tucson, AZ 85705-1918**	

Change Order Number
1
Blanket PO Number
37195
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO	INVOICE
	City of Tucson **Finance/Accounts Payable** **PO Box 27450** **Tucson, AZ 85726-7450** **(520) 791-4031**

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762, -02		Net 15	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
2	CONTRACT 130762-02:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.		0.00	0.00	0.00	0.00

Previous PO Total: $0.00 **New PO Total: $0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

DEL **Dan Longanecker** — **Contract Officer**
(520) 837 - 4125 — **Phone**

(Rev. 4/27/2009) PO_CHG_S.rpt

CONTRACT AMENDMENT M. Anderson

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-02
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

ITEM ONE (1): RENEWAL

In accordance with Section III, Contract Term and Renewal, the City of Tucson is renewing **Contract 130762: JOC for Landscaping Construction Services,** for an additional one-year period from **October 1, 2014 through September 30, 2015.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING

The estimated dollar value of this contract for renewal period is **ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00).** In accordance with Arizona Revised Statute and Special Terms and Conditions 7: Bonding, the Contractor must provide payment and performance surety bonds for this amount. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value. Bonds may be provided as follows: annual bonds in the amount designated above, or bonding per each individual job.

ITEM THREE (3): DAVIS BACON WAGE DETERMINATION(S)

Davis-Bacon Wage Determinations, if applicable, will be provided to the contractor on an individual project basis.

ITEM THREE (3): IMODIFICATIONS TO GENERAL CONDITONS FOR CONSTRUCTION

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1: Indemnification with:

"To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and the Regional Transit Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City."

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-02
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

Replace Section 11.4: Independent Contractor with:

"It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees."

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

10/1/2014
Signature Date

MARK ANDERSON, PRESIDENT
Printed Name and Title

MANDERSON CONSTRUCTION CORP.
Company Name

4650 N. KAIN AVENUE
Address

TUCSON ARIZONA 85705
City State Zip

manderson cc@excite.com
Email Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 7th DAY OF October, 20____, AT TUCSON, ARIZONA.

for Marcheta Gillespie, C.P.M., CPPO, CPPB, CPM
as Director of Procurement and not personally

BONDING OPTIONS

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

X "Bond per Job"; each project bonded individually prior to Notice to Proceed.

____ "Annual" bonds in the amount of $100,000; each project over $100K or concurrent projects totaling more than $100K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney In Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

M. ANDERSON CONSTRUCTION CORP.
Company Name

Signature of Person Authorized to Sign

MARK ANDERSON
Printed Name

130762-02
Contract Number

10/1/2014
Date

Return this completed form along with your signed amendment

PO Date: 10/16/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0052160 Phone: (520) 887-0823
Fax: (520) 292-9049

M. ANDERSON CONSTRUCTION
4650 N Kain Ave
Tucson, AZ 85705-1918

Blanket PO Number

37195

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,		Net 15	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	0 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Matt Hausman — Contract Officer

(520) 837 - 4123 — Phone

CITY OF TUCSON

Contract 130762-02

JOC for Landscape
Construction Services

M. Anderson Construction

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT NO. 130762
CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

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III. Contract Term and Renewal

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V. Pricing

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B. General Conditions for Construction

C. Federal Terms and Conditions, to include the following:

- HUD REQUIREMENTS
  - 5369
  - 5369-A
  - 5370
  - 4010
  - Anti-Kickback Act
  - SECTION 3 Requirements

D. SBE /DBE Program Provisions for Job Order Contracts (JOC)

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

I. INTRODUCTION

The City of Tucson (COT) has conducted a competitive one-step process to retain up to FOUR (4) Contractors for a Job Order Contract (JOC) to provide miscellaneous landscape services at various locations for various City Departments. Housing and Urban Development (HUD), Regional Transportation Authority (RTA) and local funding sources will be used. As such, HUD requirements are hereby incorporated into the contract in Exhibit C. For Federal Aid projects, Contractors shall be provided with the most current and appropriate wage determination by the user department with the request for job order pricing. Individual job orders shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement. For federally funded projects, Contractors must comply with all Davis-Bacon Act requirements before any work can commence. The estimated budget for the first year is $850,000 and bonding per job will be an option. The term of this contract will be one year with FOUR (4) one-year renewal options. Services will be requested on an as-needed, if-needed basis and the resultant contract is neither exclusive nor a commitment by the COT that the Contractor's services will be required.

1. JOB ORDER CONTRACTING BACKGROUND

Job Order Contracting is an alternative delivery method for construction of public works projects. JOC's differ from the standard project-specific, low bid contracts in that they are indefinite-quantity contracts, which can be awarded on the basis of qualifications. Best value may be considered in awarding job orders under the resulting contract.

During the term of the JOC, work is performed by way of individual job orders. Each job order, initiated by the City, is defined cooperatively by the City and contractor. Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in an executed Notice to Proceed letter prior to proceeding with the work.

I. SPECIAL CONSIDERATIONS:

A. Project Pricing

Upon identification of a project, contractor(s) will be provided any/all details, construction drawings and specifications. The City intends to solicit proposals from the all contractors for the work indicated by the project documents. Individual job orders will be awarded based on the contractors qualifications, the proposed cost, and consideration of the firm's ability to complete the work expeditiously. When quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

B. Award of individual Job Orders

Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work. Each individual job order shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement prior to services being rendered. For any individual job $50,000 or greater that results in the establishment of DBE/SBE goals, contractor shall submit a DBE/SBE plan for OEOP review, per DBE/SBE program requirements outlined herein. Davis Bacon eligible projects will be identified in the request for price and schedule proposals for individual projects the most recent wage determination will be provided at that time.

C. Miscellaneous

- Use of subcontractors is allowed; however, each subcontractor must be identified and approved by the City Representative prior to commencement of work.
- All correspondence and data submitted by the Contractor under this contract shall reference the contract number, title, and full purchase order number.

D. Permitting:

The contractor is responsible for submitting and securing all necessary City and County permits. The City is responsible for the City required permit fees. The contractor is responsible for any Pima County fees, such as Pima County Wastewater fees.

II. SCOPE OF WORK

The scope of work will vary with each individual job order. It is expected that the specific Scope of Work and any Special Provisions, Plans, Specifications and Details shall be provided by the user Department prior to soliciting bids for individual job orders. Project pricing is anticipated to be by Unit Price or Lump Sum.

SECTION 1: SPECIAL CONDITIONS

A. Work Under This Contract

The work to be done under this Contract shall include the furnishing of all labor, material, and equipment necessary for or incidental to the construction and completion of all work indicated by the individual job orders. This consists of, but is not necessarily limited to:

The planting of trees, shrubs, and cacti; grading, excavation, ripping of soils, installation of hydroseeding; the placement of decorative rock and boulders; the installation of an irrigation systems, and controls and all incidental work required to complete in place; sidewalks and/or walking/bike paths; drainage pipes/scuppers; fencing; non load-bearing walls; signage; erosion control/SWPPP; rip rap; hand seeding, hand watering and mulching. Some projects may require a Certified Arborist.

All work in the public rights-of-way shall be done in accordance with the 2003 City of Tucson / Pima County Standard Specifications and Standard Details for Public Improvements, and TDOT Standard Details unless directed otherwise by the City's Project Manager for that particular Job Order. The work, when performed in the public rights-of-way, for the Department of Transportation, shall not require an Excavation Permit. This shall not preclude the contractor from obtaining permits required from other agencies and organizations that may be required for the performance of a job order. Permits may be required for work on real property belonging to the City or other private property, as required by ordinance, State or Federal Law. The term Engineer, shall represent the Contract Representative on projects constructed in the public rights-of-way.

B. Description of Work

This Contract was prepared to provide an expeditious means to meet landscaping requirements and needs on existing and future City facilities and public rights-of-way. The work to be performed consists

of furnishing all labor, material, equipment, and supplies in a workmanlike manner, in accordance to the 2003 City of Tucson / Pima County Standard Specifications for Public Improvements (hereto referred to as the Standard Specifications).

C. Location of Project

The individual job orders will be located at facilities throughout the City and Pima County. Job orders may also be issued for work in the public rights-of-way.

D. Special Provisions

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107-6 Archaeological Features: of the Standard Specifications is modified to add:

In the event that archaeological or historical features are encountered, cease work that could damage the features and contact Jonathan Mabry at the City of Tucson Historic Preservation Office at 837-6965 or 791-4171 and the engineer.

SECTION 109 -- MEASUREMENT AND PAYMENT

109-5(B)(3)(a) Rental Rates (Without Operators): of the Standard Specifications is modified to add:

The Rental Rate Blue Book adjustment factor (F) will be 0.933.

SECTION 701 - MAINTENANCE AND PROTECTION OF TRAFFIC

701-1 Description: of the Standard Specifications is modified to add:

All work shall be performed during daylight hours unless a written program from the Contractor is received and approved by the City Engineer. If night work is approved, all other specifications, such as temperature requirements, must be met. Night work shall consist only of those items specifically approved by the City Engineer. If night work is approved, the City Representative may terminate all, or any portions, of the night work at any time. The remaining portion of this section shall further restrict all work, including night work.

Traffic Control Plan

No less than 5 working days prior to commencement of any work on any site or job order that will impact traffic movement, in the public rights-of-way, the Contractor shall submit for approval a detailed traffic control plan. The traffic control plans shall be on paper reproducible on a copier or blueprint machine (maximum paper size for copier prints is 8-1/2" x 14"). The plans shall be submitted to the Project Administrator/ Manager, Field Engineering Section, located in the County/City Public Works Center, 201 North Stone Avenue, 4th floor.

No separate payment shall be made for the traffic control plans. The costs shall be included in the overall cost of the project. The overall cost shall also include applicable plan review and permit fees.

Traffic Control/Lane Closures must be in accordance with the Manual on Uniform Traffic Control Devices as amended by the State of Arizona and the 2005 edition of Additions by the City of Tucson,

available at the City of Tucson Traffic Engineering Division, located in the County/City Public Works Center, 201 North Stone Avenue, 5th floor, and at http://dot.tucsonaz.gov/traffic/barricading.cfm.

No Arterial or Collector Street restriction between 7-9 a.m. and 4-6 p.m., Monday through Friday.

The Contractor must obtain permission a minimum of three (3) days in advance, except in an emergency, before closing or barricading any street or public right-of-way.

Barricading shall be in accordance with the approved barricading plan.

If the Contractor is allowed to temporarily eliminate parking on any streets, the Contractor shall arrange 24 hours in advance to have the meters hooded by the City of Tucson Parkwise Division. Parkwise may be contacted at (520) 791-5071 and information obtained at http://tucsonaz.gov/parkwise. The Contractor shall absorb any costs.

701-2 Materials: of the Standard Specifications is revised to add:

(A) Conformance:

Except as specified herein, all equipment, procedures used by workers, devices and facilities shall conform to the requirements of the MUTCD and associated Traffic Engineering Supplement.

(B) Safety:

(1) General Requirements:

All traffic control devices listed below as Category I and Category II devices shall meet the evaluation criteria for Test Level III per NCHRP (National Cooperative Highway Research Program) Report 350.

At the pre-construction conference the contractor shall submit a letter certifying that all such traffic control devices to be used on the project will meet the above-referenced criteria. The certification shall contain the following:

(a) A list of all Category I and II traffic control devices to be used on the project.

(b) The project number.

(c) A statement verifying that these devices, and their application, meet the requirements of NCHRP Report 350 Test Level III.

(d) The name, title and signature of a person having legal authority to bind the manufacturer or supplier of the Category I and II devices. The binding authority shall be in accordance with Subsection 106.05(B)(5).

If additional Category I or II devices are required at a later date, the contractor shall provide an amended certification letter to the Engineer specifying that such devices also comply with the requirements of NCHRP Report 350 Test Level III.

For all Category I and Category II devices used on the project, the contractor shall also acquire or have access to reports which verify that such devices meet the above-referenced criteria. The reports shall

contain the name and model of the tested traffic control devices, detailed drawings or product literature of each, and under what conditions the devices passed. The traffic control devices detailed in the report shall be the complete warning devices, including warning lights, flags, ballast and any other auxiliary attachment allowed. Reports for Category II devices are prepared by the Federal Highway Administration (FHWA). For Category I devices, the supplier is responsible for testing the product and providing a report which verifies that the device meets the criteria of NCHRP Report 350, Test Level III. If requested by the Engineer, the contractor shall provide copies of such reports within one working day.

(2) Category I Devices:

Category I devices are low-mass traffic control devices that will not cause an appreciable change in speed of an impacting vehicle, nor is it likely that any part of the device will intrude into the passenger compartment. The following traffic control devices will be considered Category I devices: rubber or plastic traffic cones, rubber or plastic tubular markers, single-piece plastic drums, plastic or fiberglass delineators. No warning lights, signs, flags or other auxiliary devices are allowed on Category I devices. Should any of these attachments be added to a Category I device, the Category I device will be considered a Category II device. Ballast at the base, such as a rubber tire, is an acceptable attachment to Category I devices. The single-piece plastic drum refers to the construction of the body of the drum exclusive of a separate base, if any.

(3) Category II Devices:

Category II devices are low-mass traffic control devices that will not cause a significant change in speed of an impacting vehicle. The following traffic control devices will be considered Category II devices: type I, II, and III barricades with or without warning lights; vertical panels with or without warning lights; signs and sign stand (all types) with or without warning lights and/or flags; drums, other than those listed in Category I, with or without warning lights; and any Category I devices with attached warning lights.

701-2.03 Temporary Concrete Barrier: of the Standard Specifications is revised to read:

Temporary concrete barrier shall conform to the requirements of Subsections 910-2 and 910-3 of the standard specifications for precast sections except that the dimensions of the connecting pin shall be 1 ¼ inch diameter by two feet five inches in length.

701-2.04 Temporary Pavement Markings: is revised to read:

Paint for temporary striping shall be white or yellow in accordance with the Manual on Uniform Traffic Control Devices. Temporary striping shall be 3-1/2 inches in width. The finished line shall have well defined edges and be free from waviness. Lateral deviation of the temporary stripe shall not exceed 1 inch in 100 feet.

Symbols (such as arrows) and legends (such as only) shall not be applied as temporary installations.

701-3.01 General: of the Standard Specifications is modified to add:

Traffic control does not include any devices or services used solely for the convenience of the Contractor, or to protect the Contractor's work. Excluded from Traffic Control (for the convenience of

the Contractor) is the use of devices and services (flagpersons and uniformed officers) which serve only to save the Contractor time and/or expense in his daily operations.

An example would be the use of flagpersons to control traffic at an equipment crossing in the construction zone in order to provide the right-of-way to construction equipment. Another example is the use of barricading devices around excavations in lieu of backfilling the excavation. Similarly, when a permanent below ground structure, which is to be surrounded or protected by a permanent device such as a wall or fence, is completed to the point where the permanent protection could be installed, the continued use of temporary protection [barricades, temporary concrete barriers (new installation), etc.] is for the Contractor's convenience.

701-3.02 Basic Maintenance and Protection of Traffic is modified to add:

The contractor shall provide and maintain, at all times, safe and adequate, emergency access lane for all affected directions at arterial and collector intersections. This lane shall be used for emergency vehicles only and will be adequately signed.

Should it become impossible to maintain an emergency access lane, a point control by a police officer will be provided to wave emergency vehicles through. The contractor shall notify the affected parties (police, fire, ambulance, hospitals, etc.) a minimum of 24 hours in advance of the disruption of the emergency access lane. The emergency access lane shall be restored as soon as possible.

701-3.06 Temporary Concrete Barriers: of the Standard Specifications is modified to add:

The Contractor shall provide temporary concrete barriers any time that traffic is adjacent to an open trench.

701-3.11 Flagging Services: of the Standard Specifications is modified to add:

The Contractor shall furnish verification to the Engineer that all civilian flaggers have completed a recognized training and certification program. Flaggers certified by the American Traffic Safety Services Association (A.T.S.S.A.) or by the National Safety Council shall be acceptable. Certification through other programs offering flagger training must be approved by the Engineer. Flagger certification must be current. Training and certification shall be required at least once every two years.

701-3.14 Traffic and Work Restrictions: of the Standard Specifications is modified to added:

It shall be the Contractor's responsibility to contact the adjacent and/or impacted property owners and tenants one week prior to construction. The City will furnish the written communication to be delivered by the Contractor (to be hand-delivered or left at doorway).

The Contractor shall provide vehicular access to property owners/tenants unless absolutely impossible to do so. Accessibility will be provided at the first opportunity.

There shall be no separate pay item for the cost of the resident notification and shall be included as a part of the overall project.

701-4.02 **Construction Area Elements:** of the Standard Specifications is modified to add:

The Agency will reimburse the contractor for the work under this section on the basis of bid prices or the predetermined reimbursement rates as specified in the Special Provisions.

(A) **Elements of Work (Complete-in-Place):** The elements of work listed under this subsection will be measured for payment upon the satisfactory completion of the initial installation or obliteration. Except as hereinafter specified under Basis of Payment, no subsequent measurements will be made:

Element of Work	Unit	Rate($)
Supply/Install/Remove		
Temporary Concrete Barriers	L.F.	5.00
Temporary Impact Attenuation (Sand Barrel)		
(Installation & Removal)	Each	5.00
Specialty Sign		Invoice + 10%
Preformed Pavement Marking (Type II)	L.F.	1.60
Preformed Pavement Marking (Type III)	L.F.	1.00
Temporary Pavement Marking (Painted Line)	L.F.	0.13
Pavement Marking, Preformed (Type I), Legend	Each	125.00
Pavement Marking, Preformed (Type I), Single Arrow	Each	100.00
Pavement Marking, Preformed (Type I), Merge Arrow	Each	115.00
Obliterate Pavement Marking	L.F.	0.25
Obliterate Pavement Legends	Each	25.00
Obliterate Pavement Arrows (Single, Double or Merge)	Each	22.00
Delineator (ADOT Std. Dwg. 4-M-4.01)(Temporary)	Each	20.00
Reflective Raised Pavement Marker (Temporary)	Each	4.00
Reflective Raised Pavement Marker (Permanent)		
(Used as Temporary)	Each	4.50
Non Reflective Raised Pavement Markers (Temporary)	Each	2.50
Remove Raised Pavement Markers	Each	1.00
Chip-Seal Pavement Marker (Single Capped)	Each	2.00
Chip-Seal Pavement Marker (Double Capped)	Each	3.00
Embedded Sign Post (Installation, Use & Removal)	Each	35.00

(B) **Elements of Work (In-Use) and Flagging:** The elements of work listed under this subsection will be measured for payment from the time at which the element is put into active use on the project and accepted by the Engineer until such time that the Engineer determines that the element is no longer required. Individual flags and sandbags used in conjunction with the traffic elements of work shall be considered incidental items. No separate payment shall be made for flags or sandbags and their cost shall be included in their respective elements of work. The work shall also include all maintenance, cleaning, and repair of all elements. The Engineer must also approve the use of Flagging Services. Flagging Services will be paid as indicated in this subsection.

Element of Work	Unit	Rate($)
Temporary Concrete Barrier (In Use)	L.F./Day	0.04
Temporary Impact Attenuation (Sand Barrel)(In-Use)	Each/Day	0.20
Flashing Arrow Panel	Each/Day	96.00
	Hour	5.00
Pilot Truck and Driver	Hour	30.00
Attenuator Truck and Driver	Hour	42.24
Vertical Panels	Each/Day	0.50
Traffic Cones (18 inch) (450mm)	Each/Day	0.10
Traffic Cones (28 inch) (710mm)	Each/Day	0.15
Barricade (Type II)	Each/Day	0.50
Barricade (Type III)	Each/Day	0.75
Flashing Warning Light (Type A)	Each/Day	0.25
Flashing Warning Light (Type B)	Each/Day	2.50
Steady-Burning Warning Light (Type C)	Each/Day	0.80
Standard Intensity Reflective Sheeting:		
Small Sign (Less Than 10 S.F.) (0.9m2)	Each/Day	0.50
Large Sign (10 S.F. or more) (0.9m2)	Each/Day	0.80
Portable Sign Stand (Spring Type)	Each/Day	2.10
Portable Sign Stand (Large Sign, 10 S.F. or more) (0.9m2)	Each/Day	1.00
Portable Sign Stand (Small Sign, Less Than 10 S.F.) (0.9m2)	Each/Day	0.70
High Level Flag Tree Sign Stand	Each/Day	0.40
Drum (18" x 36") (450mm x 900mm)	Each/Day	1.20
Orange Safety Fence (4ft. min. by 50 ft.) (1.2m min. x 15m)	Each/Day	1.50
Changeable Message Board (Pre-approved)	Each/Day	100.00
Chain Link Fence	L.F./Day	0.04
Flagging Services (Civilian)	Hour	15.18
Flagging Services (Civilian)(Federal Aid Proj.)	Hour	Prev. Wage
Flagging Services (Uniformed Officer)(Off Duty)	Hour	Invoice + 10%
Official Police Vehicle (Off Duty)	Hour	Invoice + 10%

701-4.04 Flagging Services: of the Standard Specifications is modified to add:

Overtime hours will be converted to straight times for measurement.

701-5 Basis of Payment: of the Standard Specifications is modified to add:

The traffic control bid item (Construction Area Traffic Control Elements) in the proposal is for bidding purposes only. Traffic Control will be paid according to the predetermined reimbursement rates listed herein.

The Contractor is responsible for the proper placement/maintenance of all traffic control elements in accordance with MUTCD requirements. The Basic Maintenance and Protection of Traffic Control Elements item shall be paid for at a lump sum as bid (Item 7010001).

701-5.02(A) General: of the Standard Specifications is modified to add:

The Agency will reimburse the Contractor for the work of providing and maintaining traffic control elements on the basis of the predetermined reimbursement rates for the Elements of Work listed in

Section 701-4.02 (A) and (B) as listed herein. (The pre-determined amount shown on Item 7010006 is for proposal submittal purposes only.)
Until determined otherwise, the City of Tucson, Contract Representative will pay for Traffic Control elements of work according to the schedules listed herein.

III. CONTRACT TERM AND RENEWAL

The term of this contract shall be OCTOBER 1, 2013, through SEPTEMBER 30, 2014, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, as its sole option, to renew the Contract for four (4) additional one-year periods, or portions thereof. If the City chooses to exercise this option, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of fee basis and minor scope additions and/or deletions.

1. PRICE ADJUSTMENT: The City will review fully documented requests for fee basis adjustments after any contract has been in effect for one (1) year. Adjustments will only be made at the time of contract renewal or extension, except for financial emergencies, and will be a factor in the renewal/extension review process. The City will determine whether the requested adjustment or an alternate option is in the best interest of the City. Any adjustment will be effective on the first day of the contract renewal or extension.

IV. SPECIAL TERMS AND CONDITIONS

1. **ANNUAL ESTIMATE:** The estimated dollar value of this contract for the initial one-year term is TWO HUNDRED THOUSAND DOLLARS ($200,000).

2. **BASIS FOR AWARDING INDIVIDUAL JOB ORDERS:** In the event the City awards more than one contract for these services, individual job orders will be awarded based upon consideration of the firm's ability to complete the work expeditiously and the proposed cost. The City intends to request price and schedule proposals from all contracted firms for each individual job order. However, when quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

   Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work.

   The Contractor shall be available on a five-day work basis throughout the term of the contract unless notified in writing by the City that this requirement may be temporarily waived due to the Contractor's approved written request or a reduced need by the City. The Contractor must be available to commence work on assignments within one week from award of an individual job order.

3. **COMPENSATION AND METHOD OF PAYMENT**: In consideration of the performance of the services described in the Scope of Services of each individual job order and pursuant to the master Scope of Work herein, the City shall pay the Contractor in accordance with the negotiated contract rates, and the Contractor shall charge the City only in accordance with those same rates.

   Compensation under this contract should not exceed $50,000 per individual job order unless a waiver is requested of and granted by the Director of Procurement.

The City will pay the Contractor following the submission of itemized invoice(s) for the service rendered. No payment shall be issued prior to receipt of material or service and correct invoice.

All requests for payment shall follow a format to be approved by the City Representative. Invoices shall be submitted monthly on a job-by-job basis.

4. **BONDING REQUIREMENTS:** Contractor shall file with the City, prior to the time of execution of the contract and annually, if the term of this contract is extended by the City, payment and performance bonds in the forms prescribed by the City unless bonding per project. The bonds must cover all construction performed under job orders. The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement, as provided under A.R.S. 34-610. Bonds may be provided as follows: annual bonds in the amount designated by the agency, or bonding per each individual job. Successful contractor(s) will designate bonding methodology prior to contract award.

5. **DBE PROGRAM REQUIREMENTS:**

The Job Order Contractor shall be required to comply with DBE Program requirements, if goals are applicable, on federally funded projects that exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed bidder's statement of proposed DBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The DBE Plan must include:
1. The names and addresses of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction as well as a DBE Acknowledgment of Participation which provides signed confirmation from the DBE(s) that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

A signed offer in response to this RFQ represents the offerors's intent to comply with the DBE program.

Also See EXHIBIT D - DBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

6. **SBE PROGRAM REQUIREMENTS:**

The Job Order Contractor shall be required to comply with SBE Program requirements, if goals are applicable, on projects that meet or exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed offeror's statement of proposed SBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The SBE Plan must include:
1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction.

A signed offer in response to this RFQ represents the offerors's intent to comply with the SBE program.

Also see: EXHIBIT D - SBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

7. **PERFORMANCE RATING:** At the completion of each term or termination of this contract, the City will evaluate the Contractor based on performance under this Contract. This rating will be used in the overall evaluation of the Contractor when applying for future work with the City.

8. **AUDIT AND INSPECTION OF RECORDS:** The Contractor shall permit the authorized representatives of the City Of Tucson to inspect and audit any books, documents, papers, data and records relating to its performance under the contract until the expiration of three years after final payment under this contract. The City shall have the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by the City to be incomplete or erroneous.

The following access to records requirements apply to this Contract:
The Contractor agrees to provide the City of Tucson or any of its authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City of Tucson or any of its duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

9. **CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:

A) Amend the contract or enter into supplemental verbal or written agreements;
B) Grant time extensions or contract renewals;
C) Otherwise modify the scope or terms and provisions of the contract.

The contract shall only be modified with the approval of the Department of Procurement. Except in the case of documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Department of Procurement through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

10. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

11. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to

A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

12. **CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-397**: By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-397. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.

13. **CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at http://www.tucsonaz.gov/etax. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.

14. **FEDERALLY FUNDED PROJECTS:** For projects that are identified as being federally funded, Federal Labor Standards will be applicable to that project. All Federal forms are attached and will be incorporated into any resulting contract(s)*. It shall be mandatory upon the Contractor(s) to whom the contract is awarded, and upon subcontractors working on this project to comply with the following:

    A. Davis Bacon Act: (AZ Wage Decision) Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions.
    B. Work Hour and Safety Standards Act: overtime pay and safety.
    C. Mandatory Preconstruction meeting for Prime Contractor and all listed subcontractors

15. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See **www.tucsonaz.gov/procure** and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf for a listing of participating agencies. The parties agree that these lists are subject to change.

    Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

    The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

V. PRICING

A. On the ensuing page are labor and/or equipment rates to be used in pricing the work under this contract. This pricing list is not all inclusive of the work that may be required. Those items of work which are not included may be negotiated on a job order by job order basis.

B. The rates established under this contract are not to exceed prices for those items of work identified. Proposals on individual job orders may not exceed those unit prices but may be less than that at the contractors discretion as they compete for each individual job order.

REGISTRAR OF CONTRACTORS
LICENSE NUMBERS:

074636
074637
093276

m. anderson construction corp.

August 23, 2013

MR. MATT HAUSMAN – PRINCIPAL CONTRACT OFFICER
CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 WEST ALAMEDA, 6TH FLOOR
TUCSON, AZ 85701

PH: 520/437-4123
FX: 520/791-4735

Re: **REQUEST FOR QUALIFICATIONS NUMBER 130762**
JOB ORDER CONTRACT (JOC) FOR LANDSCAPE CONSTRUCTION SERVICES

Dear Mr. Hausman:

Per your request, please see the below rate schedule for labor and equipment use for the above referenced contract:

Labor	Hourly Rate		Equipment
			Vermeer Trencher
Landscape Labor	$18.50		Ditch Witch Trencher 2310/6510
Irrigation Labor	$22.50		Gannon HD4280 scraper
Landscape Supervision	$32.00		NH 555E Backhoe
Irrigation Supervision	$32.00		Ford Water Truck
Fencing Labor	$27.00		721 C Wheel Loader (3 CY)
Fencing Supervision	$32.00		Chevrolet Dump Truck
Trencher and Operator	$45/65.00		NH 545D Loader/Tractor (4)
Backhoe and Operator	$45/55.00		Mustang 960 Skiploader
Water Truck and Driver	$45.00		Mustang Skidsteer 2054 (2)
Wheel Loader and Operator	$75.00		Mustang Skidsteer 2064
Dump Truck and Driver	$45.00		NH TC40 Loader/Tractor
Loader/Tractor and Operator	$52.00		Spray Rigs
Skidsteer and operator	$45.00		Land Pride Scraper
Grader and Operator	$85.00		Land Pride Seeder PS1572
			Barber Rock Picker
			140 G Blade

These rates do not apply if a project is federally funded and Davis Bacon Prevailing wages are required.

Thank you for the opportunity to work with you and the City of Tucson.

Sincerely,
M. ANDERSON CONSTRUCTION CORP.

Mark Anderson

Mark Anderson
President

If the job is worth doing, it is worth doing right – A.L. Anderson (February 21, 1922 to August 19, 2001)

4650 North Kain Ave. · Tucson, Arizona 85705-1918 · (520) 887-0823 · Fax (520)292-9049

VI. CONSTRUCTION SERVICES AGREEMENT

CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this_____day of OCT 9 2013, 20 ____, by and between the City of Tucson, a municipal corporation organized and existing

under the laws of the State of Arizona, hereinafter called the "City", and M. Anderson Const. Corp

of the City of Tucson, County of Pima, and State of AZ hereinafter called the "Contractor".

WITNESSETH: That the Contractor and the City, in consideration of the mutual covenants herein contained, agree as follows:

Contract Number: 130762
Contract Name: Job Order Contract (JOC) for Landscape Construction Services

1. **Pricing - See Section V. of the Contract**

2. **Notice to Proceed, Completion Time, and Liquidated Damages**

2.1 It is agreed that the City Representative will issue the Notice To Proceed with the Work to be performed under this Contract within twenty (20) consecutive calendar days after the date of execution of this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

2.2 The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

2.3 Liquidated Damages. Completion times will be specified in the Notice to Proceed. Applicable liquidated damages shall be assessed for each day the Work remains incomplete after the scheduled completion date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the City will sustain on account of late completion.

3. **Miscellaneous**

3.1 Guarantee. The Contractor shall guarantee all work under this Agreement against defects of material and workmanship for a minimum of two years from the date of Final Completion unless otherwise specified.

3.2 Contract Documents. The following listed documents constitute the Contract Documents and they are all as fully a part of this Agreement as if repeated herein:

1. Any and all Amendments
2. Any and all Supplementary General Conditions, Special Requirements and/or Special Provisions included herein.
3. This Agreement.
4. Standard Terms & Conditions or General Conditions for Construction
5. Construction Specifications, including any and all Standard, Special, Technical, and Supplementary Specifications included herein.

6. Project Plans, if applicable
7. SBE/DBE Plan, if applicable
8. Performance and Payment Bonds
9. Insurance Requirements

3.3 Precedence. In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved by giving precedent to the terms of the above documents in the order listed. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Agreement shall be a part of the Agreement between the parties and shall take precedence over all of the other Contract Documents.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date and year first written above.

CITY OF TUCSON, a municipal corporation

By: _____
As Procurement Director and Not Personally

M. Anderson Construction Corp.
Contractor

By: _____

Title: President

APPROVED AS TO FORM this 15th
day of Oct, 2013

_____
As City Attorney and not personally

NOTE: The City's Contract Representative is:

GARY WITTWER (520) 837-6618

SAMPLE FORMS

STATUTORY PERFORMANCE BOND
(Penalty of this bond must be 100% of the specified Contract amount.)

KNOW ALL MEN BY THESE PRESENTS: That the City of Tucson, Arizona, a municipal

corporation, by action of the Purchasing Agent on _____, 20___

has awarded to _____

hereinafter designated as the "Principal", a Contract for the construction of _____

_____

which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein; and

WHEREAS, said Principal is required under the terms of said Contract, and the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we the Principal and _____

_____

a corporation organized and existing under the laws of the State of _____
_____

with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Tucson, a municipal corporation, (hereinafter called the Obligee), in the penal amount of _____

_____ Dollars ($_____),
for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

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

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court of a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named, on the _____day of _____
20 _____.

_____
Principal

By _____

ATTEST:

_____
Title

_____
Surety

By _____
Attorney in Fact

_____
Agency of Record

_____
Agency Address

_____
City and State

ATTEST:

_____
Title

APPROVED AS TO FORM THIS _____

DAY OF_____, 20 _____.

_____
City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

STATUTORY PAYMENT BOND

(Penalty of bond must be 100% of the specified Contract Amount.)

KNOW ALL MEN BY THESE PRESENTS:

That _____,

as Principal, and _____

as Surety, are held and firmly bound unto the City of Tucson, Arizona, a municipal

corporation (hereinafter called the Obligee). in the penal sum of _____

_____Dollars ($_____), for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract with said Obligee

dated _____, 20 _____, hereinafter called the Contract, for _____

_____

which Contract shall be deemed a part hereof as fully as if set forth herein, and under the terms thereof the Principal has agreed to furnish a bond such as herein set forth;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, or in any amendment or extension of or addition to said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all rights and remedies on this bond shall insure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to the same extent as if they were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed

by the Principal and Surety named, on the _____day of_____, 20 _____.

_____

Principal

By _____

ATTEST:

_____

Title

_____

Surety

By _____

Attorney in Fact

_____

Agency of Record

_____

Agency Address

_____

City and State

ATTEST:

_____

Title

APPROVED AS TO FORM THIS _____DAY OF_____, 20

_____

City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

CONSENT OF SURETY TO FINAL PAYMENT

The undersigned Surety (hereinafter "Surety"), having provided the City of Tucson (hereinafter "City") with a payment bond for the payment of labor and material provided to the

Contractor _____

(hereinafter "Contractor") in connection with City of Tucson Contract No. _____ (hereinafter the "Project") hereby consents to final payment.

Surety further releases City from all claims, past, present, future, known or unknown which it may assert or could have asserted against City as a result of City's final payment.

This release is only intended to relieve City of any liability or responsibility in connection with final payment to the Contractor in connection with the Project and shall in no way be construed to relieve Surety of any obligation under the payment bond issued for the Project.

IN WITNESS WHEREOF, the Surety has executed this instrument this _____ day of _____, 20 _____.

SURETY

_____ _____

Authorized Representative

Title: _____

STATE OF ARIZONA)
) §.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____,

20 _____, by _____,

on behalf of _____.

_____

NOTARY PUBLIC

MY COMMISSION EXPIRES:

EXHIBIT A

EXHIBIT B

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2.2 Intent of the Contract Documents
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4.3 Materials and Labor; Warranty
4.4 Construction Schedules and Submittals
4.5 Documents and Samples at the Site
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11.6 Provisions Required by Law
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11.10 Right to Assurance

ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Amendment - written or graphic instrument issued prior to the due date which clarifies, corrects or changes the Solicitation.

Architect/Engineer - the person licensed to practice architecture/engineering by the State of Arizona and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract plans, drawings, specifications and related documents. May be utilized to provide construction administration services.

Bonds - bid, performance and payment bonds and other instruments of security.

Change Order - a document approved by the City Contract Representative and which is signed by the Contractor and the City's Director of Procurement or duly authorized designee and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Completion time, issued on or after the effective date of the Contract.

City - means the City of Tucson, Arizona, a municipal corporation.

City Contract Representative - the City official administering the Contract for the City of Tucson.

Completion Time - the number of consecutive calendar days agreed to by the City and Contractor for completion of the Work, which may be revised by written Change Order.

Construction – the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real public property.

Construction-Manager-At-Risk – a project delivery method in which there is a separate contract for design services and a separate contract for construction services, with design and construction taking place in sequential or concurrent phases, and in which finance services, maintenance services, operations services and preconstruction services may be included.

Construction Services – either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

a) construction, excluding services, through the construction-manager-at-risk or job-order-contracting project
delivery methods;
b) a combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

Contract - the written agreement and all associated attachments, drawings, amendments and change orders executed between the City and the Contractor covering the Work to be performed.

Contract Price - the amount payable by the City to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order, or, in the case of a job-order contract, in the Notice to Proceed.

Contract Officer - the City official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the City's Director of Procurement and in accordance with the Tucson Procurement Code.

Contractor - the person, firm or corporation with whom the City has entered into the Contract.

Design-Build – the process of entering into and managing a contract between the City and a contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services and preconstruction services.

Design Services – architect services, engineer services or landscape architect services.

Director of Procurement – the person acting as Director of the City's Department of Procurement and who has authority to award and revise City solicitations and contracts for construction, construction services, and construction-related services as necessary.

Drawings - the graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Estimate for Payment - a form furnished by the City or an approved form submitted by the Contractor in lieu of city furnished form, and is required to be used when submitting requests for payments for work actually performed and materials supplied during a an agreed-to preceding period of time.

Field Order - a written order or directive issued by the City Contract Representative that orders minor changes in the Work.

Final Completion Date - the calendar date when the Work is one hundred percent (100%) complete as determined by the City.

Finance Services – financing services for the Work.

Guaranteed Maximum Price or GMP - the sum of the maximum cost of the Work; the Construction Manager @ Risk's or Design Builder's construction fee; general conditions fee; taxes, bonds, insurance costs; and bid contingency as proposed and approved pursuant to this Agreement. The approved GMP will be made part of this Agreement by executing an amendment or additional amendments for phased construction.

Job-Order-Contracting – a project delivery method in which the contract is a requirements contract for indefinite quantities of construction and in which specified job orders are issued during the contract and may include finance services, maintenance services, operations services, preconstruction services and design services.

Liquidated Damages – a sum set forth in the Contract documents that will be deducted from any monies due to the Contractor, not as a penalty, but in lieu of actual damages for late completion of the work.

Maintenance Services – routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Notice to Proceed - a written notice given by the City to the Contractor fixing the date on which the Completion time will commence and upon which the Contractor shall start to perform the

Contractor's obligations under the Contract. In the case of a job order, it may also contain the specifications exclusive to the job order as well as consideration for the Contractor.

Operations Services – routine operation of existing facilities, structures, buildings or real property.

Preconstruction Services – services during the design stage of the Work.
Contract

Public Inspector(s) - that person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes.

Schedule of Values - a schedule submitted by the Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

Shop Drawings - drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

Specifications - those portions of the Contract, or Notice to Proceed if a Job Order, consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Substantial Completion – a written declaration of the date upon which the City, in its sole discretion, determines the Work is substantially complete such that the City has beneficial use and/or occupancy. Upon substantial completion, the right of the City to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within thirty days of substantial completion.

Tucson Procurement Code – in addition to applicable State statutes and applicable Federal regulations and requirements, the municipal ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

The Work - the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract, or, in the case of a job-order contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract and/or Notice to Proceed, as appropriate.

ARTICLE 2. THE CONTRACT ITS EXECUTION AND INTENT

2.1 <u>The Contract</u>

2.1.1 The documents in the Contract include any amendments, drawings, change orders and approved Contractor submittals.

2.1.2 The Contract comprises the entire agreement between the City and the Contractor concerning the Work and supersedes any prior negotiations, representations or

agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

2.2 Intent of the Contract

2.2.1 The intent of the Contract is to include all labor, materials, equipment, transportation and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

2.2.2 The Contractor shall take no advantage of any apparent error or omission in the plans, estimated quantities or specifications. In the event the Contractor discovers such an error or omission after contract award, the Contractor shall immediately notify the City Contract Representative. The City Contract Representative shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the contract.

2.2.3 The Contract shall be construed in accordance with the laws of the State of Arizona, and all such laws regulating the construction of public works by the City are hereby incorporated herein by reference and made a part hereof.

2.2.4 Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

2.2.5 The organization of the Contract into divisions, sections or articles is merely for the purpose of convenient reference, and neither the headings nor divisions shall have any legal or Contractual significance and shall not control the division of the Work by the Contractor among the various subcontractor or trades.

2.2.6 The Contractor shall include all utility fees, permits, licenses, etc. including sewer connection fees in each estimate or proposal submitted.

2.3 Execution

2.3.1 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract.

2.4 Ownership of the Contract

2.4.1 The Contract, including, but not limited to, the drawings and specifications, is the property of the City and is not to be used by the Contractor or any subcontractor on other projects outside the scope of the Work without the express written consent of the City.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.1 Lines of Authority and Communications

3.1.1 The City's Director of Procurement is the City official with overall authority and responsibility for the award and administration of City Contracts. The Director of Procurement or his designated Procurement Department representative after consultation with the City Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Work.

3.1.2 The City Contract Representative is the designated representative of the particular City department for which the Work is being constructed (the "user department") or the City department which is responsible for the oversight of the work.

3.1.3 Day-to-day administration of the Contract is the responsibility of the City Contract Representative. The City Contract Representative is the City's representative during the prosecution of the Work and shall act as surveillance and technical advisor for the City. The City Contract Representative duties are more fully described in Section 3.2 of this Article.

3.1.4 The Contractor shall supervise and direct the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract gives other specific instructions concerning these matters. The Contractor's duties and responsibilities are more fully described in Article 4 of these Contract conditions.

3.1.6 Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall initially communicate with the City Contract Representative.

3.2 **<u>City Contract Representative's General Authority and Responsibilities</u>**

3.2.1 Unless the Contractor is responsible for the design of the Work, the City Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, up to three copies of drawings, specifications and instructions available for the execution of the Work. The City Contract Representative **may** furnish additional clarifications or interpretations in writing or by drawings as may be necessary for the proper progress and execution of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications where needed. All drawings, specifications and copies thereof furnished by the City Contract Representative are City property. They are not to be used on other work and, with the exception of the signed Contract, and are to be returned to the City Contract Representative at the completion of the Work.

3.2.2 The City Contract Representative shall make general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the City Contract Representative will become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.

3.2.3 The City Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished and Work performed and as to the rate of progress of the Work, and all questions which may arise as to the interpretation of the drawings and specifications.

3.2.4 The City Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work. The City Contract Representative's failure during the progress of work to discover or reject materials or work not in accordance with the plans, specifications or contract documents shall not be considered an acceptance of the work or materials or a waiver of defects. Neither the failure of the City Contract Representative to properly perform inspections, tests or approvals required by the contract documents nor the activities or duties of the City Contract Representative

in the administration of this contract shall relieve the Contractor from the contractor's responsibility for the means, methods, techniques, sequences or scheduling of the construction or the obligation to perform the work in strict accordance with the contract documents.

3.2.5 The City Contract Representative shall conduct an initial review of, and approve or deny, written Change Orders submitted by the Contractor, and may prepare Change Orders and provide field clarifications and corrections. All Change Orders shall be approved by the Director of Procurement or his designee prior to any work being done. However, in emergencies endangering life or property, the City Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.

3.2.6 The City Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Contract Officer as to all claims of the Contractor.

3.2.7 The City Contract Representative will review and process the Contractor's monthly Estimates for Payment, as more fully set forth in Article 7 of these General Conditions.

3.2.8 The City Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the Contract Officer.

3.2.9 The City Contract Representative will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility.

3.3 **Public Inspections**

3.3.1 Unless otherwise specifically provided in the Contract, Public Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications and applicable codes, and may provide clarification of any unspecified or unclear item or situation.

3.3.2 If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the City Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the City Contract Representative or the Public Inspectors, the Contractor shall advise the City Contract Representative of the date fixed for such inspection.

3.3.3 All tests, inspections or approvals required to be performed by the City Contract Representative, Public Inspectors, or other authorities or entities shall not relieve the Contractor of their obligation to perform the Work in accordance with the Contract.

3.4 **Special Inspections and Testing of Materials**

3.4.1 All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, will be subject to adequate inspection and testing in accordance with accepted standards, to

establish conformance with specifications and suitability for the use intended, as determined by the City Contract Representative.

3.4.2 The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the City Contract Representative. Except as provided in subsection 3.4.3, the City will pay for approved tests and services rendered by the approved laboratory or agency in addition to the Contract price for construction.

3.4.3 When initial tests indicate that any portion of the Work is not in conformance with the Contract because of faulty workmanship, the Contractor shall be required to pay for necessary re-tests. When initial tests indicate that the work is in conformance with the Contract, any re-testing that's ordered by the City shall be paid for by the City.

ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES

4.1 Contractor's Review of Contract and Site Conditions

4.1.1 It shall be the duty of the Contractor to carefully study and compare all drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the City Contract Representative.

4.1.2 The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale; but in the absence of figured dimensions, scale dimensions may be used with the prior written concurrence of the City Contract Representative. The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, level or grades, walks, driveways or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the City Contract Representative immediately. **It is the responsibility of the Contractor to provide BLUESTAKE verification of underground utilities on and off the construction site.**

4.1.3 Change orders will not be issued to cover any cost, loss or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the City Contract Representative.

4.1.4 The Contractor shall perform the Work in accordance with the Contract and with shop drawings, product data and samples that have been approved by the City Contract Representative.

4.1.5 Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the

City Contract Representative and shall be responsible for any required corrective action.

4.2 **Contractor's Supervision**

4.2.1 The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques and procedures and shall coordinate the sequences of all portions of the Work.

4.2.2 The Contractor shall ensure that the key personnel submitted in response to the Request for Qualifications and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of key personnel, the Contractor shall obtain prior approval from the City for key personnel substitution. The Contractor shall ensure that substituted personnel are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

4.2.3 The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its subcontractors and of persons, either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor.

4.3 **Materials and Labor; Warranty**

4.3.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, equipment, tools, construction equipment and machinery, water, gas, heat, utilities, transportation, and other facilities and services necessary for the execution, completion and delivery of the Work within the specified Completion Time.

4.3.2 **The Contractor shall pay all applicable taxes associated with the Work**

4.3.3 The Contractor warrants to the City that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

4.3.4 The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Agency. The Contractor shall receive, inventory, store, inspect, protect, distribute, and install Agency furnished material unless otherwise specified. The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used. The Contractor shall be held responsible for all material delivered to the contractor. Deductions shall be made from any monies due the Contractor to make good any shortages or deficiencies, from any cause whatsoever and for any damage which may occur after such delivery, and for any late delivery charges.

4.3.5 The Contractor will be held to furnish all work as specified in the Contract. After a price proposal for the Work has been accepted by the City, changes of brand named, trade named, trade marked, patented articles, or any other substitutions will be allowed only by written order signed by the City Contract Representative.

Unless otherwise agreed to via Change Order, the City shall receive all benefits of the difference in costs.

4.3.6 Materials not conforming to the requirements of the specifications, whether in place or not, shall be rejected and shall be promptly removed from the site of the work, unless otherwise directed by the City Contract Representative. No rejected material, the defects of which have been corrected, shall be returned to the work site until such time as approval for its use has been given by the City Contract Representative.

4.4 **Construction Schedules and Submittals**

4.4.1 Before commencing the Work, the Contractor shall provide the City Contract Representative with a construction schedule for the Work, fixing the dates at which various pre-determined events shall occur in order to promote a timely completion of the various parts of the Work in accordance with the Contract. The schedule may be revised from time to time as may be required by conditions of the Work, but shall not exceed time limits, or any extensions thereof, set forth in the Contract or in the individual job order, as appropriate.

4.4.2 The Contractor shall prepare and keep current for the City Contract Representative's approval, a schedule of submittals which shall be coordinated with the Contractor's construction schedule and allow the City Contract Representative reasonable time to review such submittals.

4.4.3 After review, the City Contract Representative, with reasonable promptness, shall approve these shop or setting drawings, product data, samples and sequences for conformance with the design concept of the project, the approved construction schedule, and other requirements of the Contract.

4.4.4 The Contractor shall make any corrections required by the City Contract Representative and re-submit such corrected materials to the City Contract Representative for approval. Any correction or change that will result in a design or function change or in an increase or decrease in the Contract price must also receive the prior approval of the City's Director of Procurement or his designee.

4.4.5 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or schedules until the respective submittals have been approved by the City Contract Representative, and shall not deviate from such submittals after final approval by the City Contract Representative.

4.4.6 As-builts documents must be provided to the City by the Contractor within thirty days of substantial completion. The City reserves the right to withhold final payment until complete as-builts have been received in good order by the City Contract Representative.

4.5 **Documents and Samples at the Work Site**

4.5.1 Unless otherwise directed by the City's Contract Representative, the Contractor shall maintain at the Work site a complete file of the drawings, specifications, amendments, change orders and other approved modifications, in good order and marked to reflect changes and selections made during construction, together with all approved shop drawings, product data, samples and similar required submittals. Such files shall be made available to the City Contract Representative and Public Inspectors upon request.

4.6 **Protection and Use of Site - (Signs, Utilities, Water, Sanitation, Traffic, etc.)**

4.6.1 The City will provide land, rights-of-way and easements for all work specified in the Contract. The Contractor shall confine their apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the City Contract Representative, and shall not unreasonably encumber the premises with their material and equipment.

4.6.2 Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the City harmless from damages for any injury done to such pipes, structures or property during the course of the Work.

4.6.3 Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public.

4.6.4 The Contractor shall supply safe drinking water for all Contractor employees at the Work site. Water from existing fire hydrants may be made available to the Contractor upon his request to the City's Water Department through the City's Contract Representative. In such cases where the City elects to provide hydrant water, the Contractor will be provided a meter for the fire hydrant and will be charged the City's current rate for all water used. A deposit for the meter will be required by the City's Water Department.

4.6.5 If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The City Contract Representative will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the City Contract Representative. Extensions in the Completion time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 10 of these General Conditions.

4.7 **Cleaning Up**

4.7.1 The Contractor shall at all times keep the construction site and surrounding area free from accumulations of waste material or rubbish caused by operations under the Contract. Upon completion of the Work, the Contractor shall remove all rubbish, tools, equipment, scaffolding and surplus materials from the site and surrounding areas and leave the area "broom clean" or its equivalent, unless otherwise instructed by the City Contract Representative.

4.7.2 If the Contractor fails to clean up as provided in the Contract, the City may do so and the cost thereof shall be charged against the Contractor.

4.8 **Emergencies**

4.8.1 In an emergency affecting the safety of life or property, the Contractor, without special instruction or authorization from the City Contract Representative, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury.

4.8.4 Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Contract Representative.

4.8.5 The Contractor shall file with the City Contract Representative the names, addresses and telephone numbers of their employees who can be contacted at any time in case of emergency. These Contractor representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by the City or the Public Inspectors.

4.9 **Permits, Fees and Notices**

4.9.1 The Contractor shall, at their expense, obtain all necessary permits and licenses for work performed under the Contract, and shall give all necessary notices required by laws, ordinances, rules, regulations and lawful orders of public authorities pertaining to performance of the Work, public health and safety.

4.9.2 If the Contractor knowingly performs work which is not in compliance with such laws, ordinances, rules, regulations or orders, without such notice to the City Contract Representative, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

4.10 **Royalties and Patents**

4.10.1 The Contractor shall pay all royalties and license fees.

4.10.2 The Contractor and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark, or copyright, and the Contractor shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or, subject to Engineer's approval, replace same with noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

4.10.3 If appropriate, the Contractor shall furnish the City Contract Representative satisfactory evidence of patent licenses or patent releases covering City-specified proprietary materials, equipment, devices or processes, as the case may be.

4.11 **Protection of Persons and Property**

4.11.1 The Contractor shall be responsible for initiating, maintaining, supervising and directing all safety precautions and programs in connection with the performance of the Contract.

4.11.2 The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated whether in storage on or off the Work site.

4.11.3 The Contractor shall, at their own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the work site or adjacent thereto, and the Contractor and their sureties shall be liable therefore.

4.11.4 The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Article 6 of these General Conditions.

4.11.5 In the event the Contractor encounters on the work site material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop work in the area affected and report the condition to the City Contract Representative.

4.11.6 The Contractor shall take all necessary precautions for the safety of employees on the work site and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

4.11.7 The Contractor warrants it is fully familiar and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or recodified from time to time). Also the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or recodified from time to time), as promulgated by the Federal Government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Section 4.12.

4.12 **Indemnification and Insurance**

4.12.1 To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold

harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City.

4.12.2 The Contractor Agrees to:

.1 Obtain insurance coverage of the types and amounts required in this subsection and keep such insurance coverage in force throughout the life of the Contract. The Contractor will provide satisfactory certificates of the required coverage to the Contracting Officer before beginning the Work. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy.

.2 Include the City and Regional Transportation Authority as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies with respect to liability arising out of the performance of the Work. The Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

.3 Provide and maintain minimum insurance coverage as follows:

Coverage Afforded	Limits of Liability
Workers' Compensation	Statute
Commercial General Liability Insurance including: (a) Products & Completed Operations (b) Blanket Contractual (c) Explosion, Collapse & Underground Hazard	$1,000,000 Bodily Injury and property damage Combined Single Limit
Automobile Liability Insurance including: (a) Non-owned (b) Leased (c) Hired Vehicles	$1,000,000 Bodily Injury and property damage Combined Single Limit
[ ] Checked If applicable: Builder's Risk Insurance including: Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft.	Contract Value (Less site preparation)

Builder's Risk insurance shall be required on all vertical construction.

The City reserves the right, at its sole option, to furnish the Builder's Risk Insurance at the City's expense in the event that the City exercises such right, Contractor shall reduce General Conditions and overhead accordingly.

.4 In the event any of the Work is subcontracted, the Contractor shall require the subcontractor to provide Workers' Compensation insurance for all of the subcontractor's employees engaged in the Work, unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation insurance. In case any class of employees engaged in hazardous work under the Contract is not protected under the Workers' Compensation statute, the Contractor

shall provide, and shall cause each subcontractor to provide, adequate employer's general liability insurance for the protection of such of their employees as are not otherwise protected.

ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS

5.1 Subcontracts

5.1.1 The Contractor shall ensure that the assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of subcontractors, the Contractor shall obtain prior approval from the City for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

5.1.3 In job-order-contracting, by appropriate written agreement, the Contractor agrees that each subcontractor has been notified in writing of the negotiated amount or coefficient agreed to for billing purposes. Furthermore, by appropriate written agreement, the Contractor agrees that each subcontractor shall be bound to the Contractor by the terms of this Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.

5.1.4 Contractor shall ensure that each subcontract shall preserve and protect the rights of the City under the Contract with respect to the work to be performed by the subcontractor. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor will be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.

5.1.5 Each subcontract will require the subcontractor to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment to the City in a timely manner, including any claims for extras, extensions of time, and damages for delays or otherwise to the Contractor in the manner provided in the Contract for like claims by the Contractor upon the City.

5.1.6 The Contractor further agrees:

.1 To be bound to the subcontractor by all the obligations that the City assumes to the Contractor under this Contract, and by all provisions thereof affording remedies and redress to the Contractor from the City.

.2 To promptly pay the subcontractor in accordance with applicable State statute.

.3 That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them. Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.

.4 To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.

.5 To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the City in making payments to the Contractor for any cause not the fault of the subcontractor.

.6 To share or forward, as appropriate, with its subcontractors or, as appropriate, with the City, any fire insurance money received by the Contractor under the insurance provisions of the Contract.

.7 That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

.8 To give the subcontractor an opportunity to be present and to submit evidence in any Contractual claim, controversy or dispute.

5.1.7 Nothing in this Article shall create any obligation on the part of the City to pay to, or to see to the payment of, any sums to any subcontractor, except as may otherwise be required by law.

5.1.8 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

.1 Assignment is effective at the sole option of the City and only upon termination of the Contract for cause pursuant to Article 9 of these General Conditions, and only for those subcontract agreements which the City determines to accept by notifying the subcontractor in writing, and

.2 Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 **<u>Separate Contracts</u>**

5.2.1 The City reserves the right to perform construction or operations related to the Work with the City's own forces and to let separate Contracts in connection with other portions of the Work or other construction or operations on the Work site.

5.2.2 The Contractor shall afford other Contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

5.2.3 The City Contract Representative shall coordinate the activities of the City's own forces and of each separate Contractor with the work of the Contractor. The Contractor and all other Contractors on the Work site shall be required to review their construction schedules and cooperate with the City Contract Representative in coordinating the various portions of the Work with the schedules of such separate contractors.

5.2.4 If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the City Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the

reception of the Contractor's Work, except as to defects not then reasonably discoverable.

5.2.5 Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.

5.2.6 If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall defend such proceedings and, if any judgment against the City arises therefrom, the Contractor shall pay or satisfy it.

5.2.7 Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the City shall not be held responsible or liable therefore in any way other than extensions of completion time in accordance with Article 6 of these General Conditions.

ARTICLE 6. TIME FACTORS; LIQUIDATED DAMAGES

6.1 Time

6.1.1 Unless otherwise provided in the Contract, the Completion Time is the number of calendar days, including authorized time extensions, specified for completion of the Work.

6.1.2 Completion Time shall commence on the day specified in the Notice to Proceed. The date shall not be postponed on account of the failure of the Contractor, or of any of its subcontractors to take any action required to commence the Work.

6.1.3 The date of Substantial Completion is the date certified by the City Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

6.1.4 The term "day" as used in the Contract shall mean calendar day.

6.1.5 By execution of the Contract documents, or by concurrence with the Notice to Proceed in the case of a job order, the Contractor acknowledges that the time described is a reasonable period for a competent Contractor to complete the Work.

6.1.6 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

6.2 Liquidated Damages

6.2.1 The amount of liquidated damages shall be as specified in the Contract documents, or, in the case of a job-order, in the Notice to Proceed.

6.2.2 The Contractor has been put on notice that the City shall enforce the liquidated damages set forth in the Contract documents or Notice to Proceed.

6.2.3 The Contractor agrees that the City will incur damages if the Contractor fails to complete the Work within the Completion time or any approved extensions thereof and that the liquidated damages specified in the Contract or, in the case of a job-order, in the Notice to Proceed, represents a fair and equitable approximation of the City's damages.

Each calendar day that the Contractor shall fail to achieve Substantial Completion after the calendar date agreed to for the completion of the Work provided for in the Contract, the sum set forth in the Contract documents will be deducted from any monies due the Contractor, not as penalty, but as liquidated damages; provided however, that due account will be taken of any adjustments of the Completion time for the completion of the work allowed under the Contract.

Permission allowing the Contractor to continue and finish any part of the Work after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Once substantial completion is granted, the Contractor shall achieve final completion within thirty (30) calendar days, unless otherwise agreed upon. If final completion does not occur within the agreed upon number of days, liquidated damages will commence on the first day after the agreed days, until final completion occurs.

6.3 **Delays and Time Extensions**

6.3.1 It is agreed that the City's only liability for any delay from any cause shall be limited to granting a time extension to the Contractor and that no extended general conditions for any delay will be applicable unless agreed to by the City. There is no other obligation, express or implied, on the part of the City to the Contractor for delay from any cause.

6.3.2 **Force Majeure**

6.3.2.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the parties affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a sub-contractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

6.3.2.2 If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.3.3 The completion time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority or allocation order duly issued by the Federal Government.

6.3.4 Time extensions shall only be granted for delays caused by the City, changes authorized in accordance with Article 8 of this agreement, or delays pursuant to sections 6.3.2 and 6.3.3.

6.3.4 Should a dispute arise between the Contractor and the City regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

ARTICLE 7. PAYMENTS TO THE CONTRACTOR

7.1 Contract Price; Request for Payment; Schedule of Values

7.1.1 The Contract amount or coefficient stated in the Contract documents or, in the case of a job order, in the Notice to Proceed, plus or minus any authorized adjustments, is the amount payable by the City to the Contractor for performance of the Work under the Contract or for a specific job order.

7.1.2 During the course of construction, the Contractor shall request payment for work actually performed during the preceding month or some other time period as mutually agreed to, using "ESTIMATE FOR PAYMENT" forms, which are furnished by the City or a City approved form submitted by the Contractor. Completed forms shall be submitted to the City Contract Representative. A schedule of values and an updated project schedule shall accompany the request for payment.

7.2 Certification and Payment

7.2.1 The City by mutual agreement may make progress payments on Contracts of less than ninety days and shall make monthly progress payments on all other Contracts as provided for in this paragraph. Payment to the Contractor on the basis of a duly certified and approved estimate for payment of the work performed during the preceding calendar month under the Contract may include payment for material and equipment. An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the City or the City's designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the City on submission to any person designated by the City for the submission, review or approval of the estimate of the work.

7.2.2 On completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified in paragraph 7.2.5, payment may be made in full, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the architect, engineer or other person, as specified in the Contract.

7.2.3 The Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no Contract for construction services may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. The payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the Contractor or subcontractor of payments received for work performed on a Contract, or failure to reasonably account for the application or use of those payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The subcontractor or material supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

7.2.4 A subcontractor may notify the City in writing requesting that the subcontractor be notified by the City in writing within five days from payment of each progress payment made to the Contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.

7.2.5. Nothing in this section prevents the Contractor or subcontractor, at the time of application and certification to the City or Contractor, from withholding the application and certification to the City or Contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention.

7.2.6 If any payment to a Contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.7 If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.8 Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services Contract for construction and does not apply to amounts payable in a construction services Contract for design services, preconstruction services, finance services, maintenance services, operations services and other related services.

7.2.9 The City Contract Representative, with reasonable dispatch, will review the contents of the ESTIMATE FOR PAYMENT submitted by the Contractor, determine the sufficiency of the estimate, satisfy himself that the City has received full value, certify the estimate and submit it through normal channels for payment.

7.2.10 Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work.

7.3 **Payment Withheld**

7.3.1 If the City Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the ESTIMATE FOR PAYMENT, the City Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the City Contract Representative shall promptly notify the Contractor. If the City Contract Representative and the Contractor cannot agree on a revised amount, the City Contract Representative will promptly issue a certificate for payment in an amount they determines is justified.

7.3.2 The City Contract Representative or other City official, as a result of subsequently discovered evidence, may also withhold or nullify the whole or a part of any certification to such extent as may be necessary to protect the City from loss on account of:

.1 Defective work not remedied.

.2 Third party claims filed or reasonable evidence indicating probable filing of such claims.

.3 Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment.

.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount, or reasonable evidence that the Work will not be completed within the Completion time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

.5 Damage to another contractor or to the City.

.6 Damage to the real or personal property of another and failure to repair or replace the same.

.7 Persistent failure to carry out the Work in accordance with the Contract.

7.3.3 When the grounds for withholding payment have been corrected to the satisfaction of the City Contract Representative or other City official concerned, the City shall proceed to process any amounts due.

7.4 **Substantial Completion**

7.4.1 When the Contractor considers that the Work, or a portion thereof which the City has agreed to accept separately, is ready for its intended use, it shall notify the City Contract Representative in writing that the Work, or the agreed upon portion thereof, is substantially complete and request the City Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the City Contract Representative will make an inspection of the Work, or the designated portion thereof, to determine the status of completion. If the inspection discloses any item that is not in accordance with the Contract, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for a re-inspection by the City Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the City Contract Representative will prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the City and Contractor, pending final payment by the City, for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list attached to the certificate.

7.4.2 Warranties required by the Contract shall commence on the date of Final Completion for a period of two years, except where a specific provision of the Contract provides otherwise.

7.5 **Final Completion and Final Payment**

7.5.1 Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the City Contract Representative will determine that all items on the punch list have been completed or corrected and the City will make payment for such work or portion thereof as provided for in the Contract.

7.6 **Consent of Surety/ Lien Waivers and As-Built Drawings**

7.6.1 Final payment shall become due when the Contractor provides to the Contract Officer a Consent of Surety Certificate from their bonding company, or lien waivers, at the Contract Officer's discretion and all completed as-built drawings.

7.7 **Partial Utilization**

7.7.1 The City may occupy or use any portion of the Work which the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City without significant interference with the Contractor's performance of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided the City and the Contractor have accepted in writing their mutual responsibilities regarding the used portion, including but not limited to insurance coverage, maintenance and utilities.

7.7.2 Partial use or occupancy of the Work by the City shall not constitute acceptance of Work not complying with the requirements of the Contract.

ARTICLE 8. UNCOVERING AND CORRECTION OF WORK; CHANGES IN THE WORK

8.1 Uncovering of Work

8.1.1 Piping, wiring, ducts, etc., shall not be covered up before proper inspection, approval and certificates, if required, are issued. Should any work that is designated for inspection by the City Contract Representative or the Contract before covering is covered before such inspection, it must be uncovered by the Contractor at their expense when examination is ordered by the City Contract Representative.

8.1.2 If a portion of the Work not designated by the City Contract Representative or the Contract for inspection has been covered and the City Contract Representative or a Public Inspector orders such work uncovered for inspection, the Contractor shall immediately uncover such work. If such uncovered work is found to be in accordance with the Contract, an appropriate Change Order shall be issued to compensate the Contractor for the expense of uncovering and replacing the work. If such work is found to be not in compliance with the Contract, the Contractor shall pay such costs, unless the condition was caused by the City or a separate Contractor.

8.1.3 The City shall not be responsible for or bear the cost of any re-examination and replacement occasioned by defects in the work caused by subcontractors.

8.2 Correction of Work

8.2.1 Correction of Work Before Final Payment: The Contractor shall promptly remove from the site of the Work all materials and/or associated portions of the Work rejected by the City Contract Representative as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract, without expense to the City, and shall bear the expense of making good the work of other contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such rejected Work and/or materials within a reasonable time, fixed by written notice, the City may remove it and may store the materials at the expense of the Contractor.

8.2.2 Should the Contractor fail to repair such defective material and/or workmanship or to make replacements within five (5) calendar days after written notice by the City, it is agreed that the City may, at its sole discretion, make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor or his surety.

8.3 Changes in the Work

8.3.1 The City Contract Representative may order extra work or make changes by altering, adding to or deducting from the Work, the Contract price being adjusted accordingly by Change Order without invalidating the Contract. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

8.3.2 If, instead of requiring corrections or removal of work not conforming to the requirements of the contract, the work is determined to be acceptable with diminished value in the sole judgment of the City Contract Representative, a change order shall be issued incorporating the necessary revisions in the contract, including

an appropriate reduction in the contract price. Such a change order does not require the signature or approval of the Contractor. Such acceptance of non-conforming work shall not constitute a waiver of any other work required under this contract.

8.3.3 The value of any extra work or change ordered under the Contract shall be determined in one or more of the following ways:

.1 By estimate and acceptance in a lump sum.

.2 By unit prices in the Contract or subsequently agreed upon prices.

.3 By a fixed fee.

ARTICLE 9. SUSPENSION OR TERMINATION OF THE WORK

9.1 Suspension of the Work for Cause; City's Right to Perform the Work

9.1.1 If the Contractor fails to correct Work which is not in accordance with the Contract, or persistently fails to carry out the Work in accordance with the Contract, the Contract Officer, after consultation with the City Contract Representative, may order the Contractor in writing to stop the Work, or any portion of the Work, until the cause for such order has been eliminated.

9.1.2 If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the City may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the City may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and its surety shall be liable to the City for such deficiency.

9.2 Termination by the City for Cause

9.2.1 The City, upon certification by the City Contract Representative, without prejudice to any other right or remedy of the City and after giving the Contractor seven (7) days written notice, may terminate this Contract as to all or any part of the Work for any of the following reasons:

.1 If the Contractor abandons the Work, or unnecessarily delays the Work.

.2 If the Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractor.

.3 If the Contractor fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the Contractor and the subcontractor or as expressly set forth herein.

.4 If the Contractor persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract.

.5 If the Contractor should be adjudged bankrupt.

.6 If the Contractor should make a general assignment for the benefit of its creditors,

or if a receiver should be appointed on account of its insolvency.

.7 If the Contractor is otherwise in substantial breach of a provision of the Contract as determined by the City.

9.2.2 Upon termination of the Contract for any of the above reasons, the City, subject to any prior rights of the surety, may:

.1 Take possession of the Work and of all materials, equipment, tools, and construction equipment and machinery at the Work site or adjacent thereto belonging to the Contractor.

.2 Accept assignment of subcontracts pursuant to Subsection 5.1.8 of Article 5 of these
General Conditions.

.3 Finish the Work by whatever reasonable method the City may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the City may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the City's possession and may make all necessary repairs and replacements thereto.

9.2.3 If the City terminates the Contract for one of the reasons stated in Subsection 9.2.1, the Contractor shall not be entitled to receive any further payment.

9.2.4 The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the City to other Contractors, all costs of repairs and replacements of machinery, implements, tools and plant of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including but not limited to the cost of the City Contract Representative's additional services and added expenses made necessary by the termination of the Contract.

9.2.5 If the unpaid balance of the Contract price exceeds costs of finishing the Work, such excess may, at the City's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the City may sell all materials, supplies, machinery, implements, tools and plant of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) days notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay such deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.

9.3 **<u>Suspension by the City for Convenience</u>**

9.3.1 The City may, without cause, order the Contractor in writing to suspend or interrupt the Work in whole or in part for such period of time as the City may determine whenever such suspension or interruption would be in the best interest of the City.

9.3.2 If the City suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:

.1 That performance is, was or would have been so suspended or interrupted by another cause for which the Contractor is responsible, or

.2 That an equitable adjustment is made or denied by the City.

9.4 **Termination by the City for Convenience**

9.4.1 The performance of the Work under this Contract may be terminated by the City, in whole or in part, in accordance with this clause whenever the City reasonably determines that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

9.4.2 If the Contract is terminated by the City as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated profit on unperformed Work.

9.4.3 In the event the City terminates the Work, in whole or in part, for cause pursuant to Section 9.2 of this Article 9 and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 9.4 shall apply.

9.4.3 Termination of the Contract or portion thereof by the City for convenience shall not relieve the Contractor of their contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

9.5 **Contractor's Right to Terminate Contract**

9.5.1 The Contractor may terminate the Contract for any of the following reasons:

.1 If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month through no act or fault of the Contractor or of anyone directly or indirectly employed by him.

.2 If the City has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the City Contract Representative, or

.3 If repeated suspensions or interruptions ordered by the City pursuant to Section 9.3 total in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

9.5.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days, written notice to the City Contract Representative, stop Work and terminate the Contract and recover payment from the City for all Work executed and accepted by the City and any loss sustained upon any plant or materials and reasonable profit and damages.

ARTICLE 10. CLAIMS AND DISPUTES

10.1 **City Contract Representative's Resolution of Claims and Disputes; Review by Contract Officer**

10.1.1 This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.

10.1.2 All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the City Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

10.1.3 Claims by either party must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

10.1.4 Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract.

10.1.5 The City Contract Representative shall, within twenty-one (21) days of receipt of a claim, issue one of the following:

(1) Issue a decision either rejecting or approving the claim.
(2) Suggest an equitable compromise of the claim.
(3) Provide a schedule to the Contractor indicating when they expect to be able to take action, which shall be within a reasonable time.

10.1.6 The City Contract Representative may require the submission of additional documentation from the Contractor to facilitate a decision.

10.1.7 The Contractor shall have ten (10) days from the date of the City Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of the Contractor to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Contract Officer for de novo review.

10.1.8 The Contract Officer shall have sixty (60) days from receipt of a written objection by the Contractor to the City Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the Tucson Procurement Code. During such period, the Contract Officer may require such additional documentation or testimony as deemed necessary to support his/her response.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Governing Law

11.1.1 The Contract shall be governed and construed according to the laws of the Tucson City Code and the State of Arizona.

11.2 Written Notice

11.2.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

11.3 Conflict of Interest

11.3.1 The City shall also have the right to terminate this Contract pursuant to the conflict-of-interest provisions of A.R.S. Sec. 38-511 and to exercise any and all remedies provided in such statute. The City may cancel this Contract if any person significantly involved in negotiating, drafting, securing or obtaining this Contract for or on behalf of the City of Tucson becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Contract.

11.4 Independent Contractor

11.4.1 It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

11.4.2 Contractor shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

11.4.3 The City of Tucson will not provide any insurance coverage to Contractor, including Workers' Compensation coverage. The Contractor is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

11.5 Gratuities

11.5.1 The City may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

11.6 Provisions Required By Law

11.6.1 Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly

inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

11.7 **Severability**

11.7.1 The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

11.8 **Interpretation – Parol Evidence**

11.8.1 This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

11.9 **Rights and Remedies**

No provision in this document or in the Contractor's response shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

11.10 **Right to Assurance**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.

EXHIBIT C

HUD-5369

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Instructions to Bidders for Contracts Public and Indian Housing Programs

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

(1) Integrity;

(2) Compliance with public policy;

(3) Record of past performance; and

(4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding $25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website **http://www.fms.treas.gov/c570/index.html**, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

HUD-5369A

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding $50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [ ] has, [ ] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding $100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the bidder; or,

(b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

[ ] Black Americans	[ ] Asian Pacific Americans
[ ] Hispanic Americans	[ ] Asian Indian Americans
[ ] Native Americans	[ ] Hasidic Jewish Americans

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding $2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding $10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed $10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding $100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding $50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"

[ ] is, [ ] is not included with the bid.

13. Bidder's Signature

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

_____
(Signature and Date)

_____
(Typed or Printed Name)

_____
(Title)

_____
(Company Name)

(Company Address)

HUD-5370

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. This form is applicable to any construction/development contract greater than $100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).
The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.
Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.
The information requested does not lend itself to confidentiality.
HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

(a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

(b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.

(d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.

(e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.

(f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

(g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.

(j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(l) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.

(b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.

(c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

(f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.

(g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

(h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

(b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

(c) The Architect's duties and responsibilities may include but shall not be limited to:

(1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

(2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;

(3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,

(4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress Schedule

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads;(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

(b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

(h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

(i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

(a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."

(b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

(c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

(a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:
  (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
  (2) Protect the lives, health, and safety of other persons;
  (3) Prevent damage to property, materials, supplies, and equipment; and,
  (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:
  (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
  (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

(f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
(g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
(h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
(i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
(j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
(k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

(a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
(b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contactor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

20. Inspection and Acceptance of Construction

(a) Definitions. As used in this clause -
(1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
(2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
(3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
(c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
(d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The PHA may conduct routine inspections of the construction site on a daily basis.

(g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.

(i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

(a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of Construction

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.

(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
   (1) The Contractor's failure to conform to contract requirements; or
   (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
   (1) Obtain all warranties that would be given in normal commercial practice;
   (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
   (3) Enforce all warranties for the benefit of the PHA.

(g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required under this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

(a) The PHA shall pay the Contractor the price as provided in this contract.

(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

(d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:
I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

_____
Name:

_____
Title:

_____
Date:

(f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

(h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.

(i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) PHA-furnished facilities, equipment, materials, services, or site; or,
(4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.

(2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

(3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

(g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

(h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.

(i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

(j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

(a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.

(d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.

(f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

(b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of $_____ Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.

(b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA in completing the work.

(c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

(a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non -owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

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

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

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

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

(a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds $2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved 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 29 CFR 5.5(a)(1)(iv); 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 regular 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 in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employee 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 HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

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

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

(3) 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.

(4) 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.

(b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

(1) 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 in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of 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.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

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

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;

(B) 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 29 CFR Part 3; and

(C) 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.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, 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, HUD or its designee 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. 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.

(d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, 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 OATELS 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 in this paragraph, 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 of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in 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 in 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 in 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 in 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.

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

(e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(i) Certification of eligibility.

(1) 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 contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 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 provisions set forth in subparagraph (j)(2) of this clause.

(k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
   (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

HUD-4010

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. 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 l(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 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, 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 subparagraph 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 HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses 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 this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

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

10. (i) Certification of Eligibility. 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

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

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ANTI-KICKBACK ACT

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS

SO CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR.
UNITED STATES DEPARTMENT OF LABOR

TITLE 18. U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1932 (48 Stat. 948, 40 U.S.C.,
sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whenever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than $5,00 or imprisoned not more than five years, or both.

SECTION 2 OF THE ACT OF JUNE 13, 1932, AS AMENDED (48 Stat. 948, 62 Stat. 862,
63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec. 276c)

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or building or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements.

---XXX---

Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A., Code of Federal Regulations, Part 3. The term "this part," as used in the regulations hereinafter set forth, refer to Part 3 last above mentioned. Said regulations are as follows:

TITLE 29 - LABOR

Subtitle A - Office of Secretary of Labor

PART 3 - CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Section 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

3.3 - Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, ``Statement of Compliance", or on an identical form on the back of WH 347, ``Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982]

SECTION 3 REQUIREMENTS

SECTION 3 RESIDENTS AND BUSINESS CONCERNS

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or

2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;

2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or

3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

INCOME LIMITS

New Income Limits for Tucson and Pima County were issued May 31, 2011. The Area Median Family Income is $59,600. The following Income Limits are effective June 1, 2011.

Income Limits

Family Size	30% of Median Income	50% of Median Income	80% of Median Income
	Extremely Low Income	Very Low Income	Low Income
1 Person	$12,550	$20,900	$33,400
2 Persons	$14,350	$23,850	$38,200
3 Persons	$16,150	$26,850	$42,950
4 Persons	$17,900	$29,800	$47,700
5 Persons	$19,350	$32,200	$51,550
6 Persons	$20,800	$34,600	$55,350
7 Persons	$22,200	$37,000	$59,150
8 Persons	$23,650	$39,350	$63,000

See Notice PDR 2011-02 for families with more than 8 persons.

CITY OF TUCSON

SECTION 3 OPPORTUNITIES PLAN
STATEMENT OF INTENT TO FULFILL OBLIGATION

PROJECT: _____

CONTRACT #: _____

CONTRACTOR NAME: _____

OPPORTUNITIES PLAN

☐ The Contractor has identified _____ employment opportunities during the term of the contract (if no opportunities have been identified, enter 0). The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of work of this Contract.

☐ The Contractor has identified _____ subcontracting opportunities.

☐ The Contractor qualifies as a Section 3 Business Enterprise. ***(See section below)***

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or

   _____YES _____ NO

2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or

   _____YES _____ NO

3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises.

   _____YES _____ NO

Contractor's Signature: _____

Title: _____ Date: _____

CITY OF TUCSON

INDIVIDUAL CERTIFICATION FOR SECTION 3 RESIDENT ELIGIBILITY

This form is to be used by individual persons requesting to be certified by the City of Tucson as a Section 3 Resident for purposes of Section 3 employment opportunities on HUD-funded construction projects.

Project: _____ Contract #: _____

Contractor Name: _____

Job Title: _____ Hire Date: _____

Name: _____ Phone Number: _____

Physical Address: _____
(No P.O. Box Addresses)

City State Zip: _____ Email Address: _____

Please complete Part A (Household Size and Income) OR Part B (Public Housing Resident)

A. Household Size and Income

My household size (total persons in household) is: _____

My total annual household income is: _____

My total current monthly household income is: _____

B. Public Housing Resident

I currently receive the following housing assistance:

Check box: ☐ Public Housing ☐ Section 8 (Housing Choice Voucher)

City Use Only

Income at/below: _____

Verified: _____ Date: _____

Public Housing Resident/
Sec. 8/HCV Participant: _____

Verified: _____ Date: _____

Certification

I hereby certify, under penalty of perjury, that all of the information provided above is true and correct. I agree to provide acceptable documentation, if requested, that confirms the accuracy of my residency, household size, income, and employment.

Employee Name (Print): _____ **Date:** _____

Employee Signature: _____

CITY OF TUCSON

SECTION 3 ELIGIBLE BUSINESS CERTIFICATION

Instructions

To be considered for certification as a Section 3 Business Concern, a business must complete this form and provide all required supporting documentation. An *Individual Certification for Section 3 Resident Eligibility Form* must be completed and signed by each Section 3 Resident owner or employee certifying that each individual meets the HUD definition of a Section 3 Resident.

BUSINESS LEGAL STATUS

Business Name: _____ Phone: _____

Address: _____ Fax: _____

City: _____ State: _____ Zip: _____

Email Address: _____

☐ Sole Proprietor ☐ Corporation ☐ Partnership ☐ Limited Liability

Date Business Established _____ Federal Tax ID or Social Security Number _____

Total Number of Employees: _____ *Number of Section 3 Employees: _____ Percentage of Section 3 Employees: _____%

*Must provide completed Individual Certification forms for each employee

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or _____YES _____ NO
2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or _____YES _____ NO
3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises. _____YES _____ NO

A Section 3 Resident is a public housing resident or an individual who resides in the covered metropolitan area and is a low income person as identified by HUD, *(see certification instructions for HUD definitions and income limits).*

Owner' Name (printed): _____ Title: _____

Signature: _____ Date: _____

EXHIBIT D

SBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Small Business Enterprise Participation goal for this project is as follows:

__X____ % SBE

I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - Is defined as the performance of real and actual services in the discharge of any contractual endeavor. An SBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

Contractor - The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City. For the purposes of SBE plan evaluation, any Offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the contractor SBE program compliance requriements.

Eligible Contract - Any contract undertaken by the City, unless otherwise precluded by law, *provided* the estimate meets or exceeds fifty thousand dollars ($50,000). An Eligible Contract does not include any project in which the estimated contract value is below fifty thousand dollars ($50,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the City Procurement Code.

Joint Venture – An association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the Joint Venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the Joint Venture, may be counted towards relevant SBE participation goals.

Small Business Enterprise (SBE) – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification with the City of Tucson, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).

Subcontractor and Subconsultant – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

B. APPLICABILITY

The SBE program and policies are codified in Chapter 28, Article XIII of the City Procurement Code. It is the responsibility of all contractors, subcontractors, vendors, suppliers and others who are interested in contracting with the City of Tucson to read and become familiar with this section of the City Code.

Only firms that are certified by the City of Tucson under Chapter 28, Article XIII of the City Code, ***at time of SBE Plan submittal***, are eligible to fulfill SBE goals for City of Tucson projects.

In addition to subcontractors, contractors may use their own participation towards fulfillment of the SBE participation goal if they are certified through the City of Tucson SBE program.

The City of Tucson's most recent SBE Directory contains the ***complete*** listing of those firms which are currently certified with the City, and therefore eligible to participate as an SBE on a project. If the name of an SBE firm does not appear in directories, it shall be the contractors responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. The contractor may accomplish this by calling the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593 for assistance.

ALL CONTRACTORS, INCLUDING SBEs, MUST COMPLY. Contractors who are SBEs must also comply with all requirements stated herein. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's SBE goal and comply with all aspects of the SBE Program requirements.

C. SBE PARTICIPATION

An SBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. An SBE shall be responsible for a clearly defined portion of the work to be performed.

D. SBE GOALS

To satisfy SBE goals, a certified SBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Contractors may meet the SBE project goals through the following methods:

Prime Contractor Participation – SBE prime contractors may use their own participation towards fulfillment of the SBE participation goals. Credit will only be given for the dollar value of actual work performed by the prime contractor's work force.

Subcontractor Participation - Contractors may utilize one or more certified SBE subcontractors to satisfy its SBE participation commitment and may claim the value of the commercially useful function to be performed by such subcontractor(s) to obtain credit toward the satisfaction of the applicable goal.

1. Contractors who utilize certified SBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar

value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values and cannot be specified as a range.

2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, contractors are required to identify and report the use of any second tier subcontractors on the project on the Statement of Proposed SBE Plan form.

3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE's subcontractor is itself a SBE.

Supplier Participation - The contractor may contract with one or more certified SBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credit toward SBE goals. The value of the commercially useful function to be performed by such SBE's and credited toward satisfaction of the applicable SBE goals is as follows:

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.

2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer's representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.

3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

Joint Venture - Where a contractor engages in a joint venture to satisfy its SBE commitment, the SBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. The SBE joint venture partner must submit information for determining joint venture eligibility. ***The SBE joint venture must be approved as a SBE joint venture prior to SBE Plan submittal.*** The OEOP shall determine the degree of SBE participation resulting from the joint venture which may be credited toward the applicable SBE goal of the project.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF AN SBE PLAN

The SBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The SBE Plan must include:

1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

B. REVIEW OF SBE PLANS

The OEOP Director may determine that the contractor is nonresponsive where the contractor: (1) failed to provide a completed Statement of Proposed SBE Plan; (2) failed to identify SBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable SBE goal for that project; (3) failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the SBE goal.

III. GOOD FAITH EFFORT

If the SBE plan does not meet the project goals, the contractor may seek a waiver. The application for a waiver shall be in writing and **must be completed and submitted with the project proposal.** The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and an SBE plan must also be submitted. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals. Evidence of the good faith efforts shall include, but is not limited to the following:

a. Documentation of communication with the OEOP Director seeking technical/professional assistance identifying available SBE's.
b. Copies of written notification to Certified SBE's regarding subcontracting opportunities on a project.
c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
d. Documentation of efforts to assist and negotiate with SBE's for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE's who were contacted and reason for the rejection.
e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.
f. Written quotes or records of verbal quotes solicited from all SBE's seeking subcontract work at the time of the proposal submittal.
g. Verification that the offeror rejected available SBE's because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City's OEOP Director shall review the waiver and approve the waiver where the contractor has demonstrated good faith efforts or deem the contractor nonresponsive where they failed to meet the good faith efforts and shall recommend that the Project Manager reject the proposal.

Right to Appeal Good Faith Effort Waiver or Plan Decision An aggrieved party has a right to protest a good faith waiver request or plan decision made by the OEOP Director as follows:

1. An aggrieved party may submit a protest in writing to the OEOP Director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.
2. Within five (5) days of receipt of the protest, the OEOP Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
3. The decision of the director is final and not appealable.

General Waiver or Reduction of SBE Goals If, after consultation with appropriate City departments, the OEOP Director determines that SBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that SBE's are not in fact available or that the amount of work, which occurred under the contract, was insufficient to support the established goals.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified SBE's, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-SBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that SBE's are not available to provide the needed labor and materials at competitive prices.

A contractor may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a proposal.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND / OR CLARIFY INFORMATION AS IT RELATES TO THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND / OR THE STATEMENT OF PROPOSED SBE PLAN.

IV. MISCELLANEOUS PROVISIONS

A. CONTRACT PERFORMANCE

The contractor's distinct contract items of work to be awarded to SBE's shall be performed by the designated SBE or SBE substitute approved by the OEOP. SBE contract work items shall not be performed by the contractor in lieu of subcontracting, without the OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for SBE participation. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all SBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY SBE's

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the Office of Equal Opportunity Programs and the Project Manager and provide all facts surrounding the matter. Such failure on the part of an SBE will not relieve the contractor of responsibility for meeting the SBE participation goal on the contract. The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE to perform an equal or greater dollar value of the work. The substitute SBE's name, description of work and dollar value of the work shall be submitted to the OEOP and OEOP's approval must be obtained prior to the substitute SBE beginning the work.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the SBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

CITY OF TUCSON - OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF PROPOSED SBE PLAN

ALL SBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A SBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE SBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a SBE)	Trade/Industry	Dollar Value of Contract (SBE Only)

Project Amount $ _____

Total Claimed SBE Participation $_____ _____%

I hereby certify by signing below that the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project. The information shown above is a true reflection of the proposed subcontracts expressed as a percentage of the base bid.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED SBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Office of Equal Opportunity Programs

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET SBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE CONTRACTOR WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing SBE firms to meet the City of Tucson's SBE goal. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.

_____
_____
_____
_____
_____

2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to SBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for SBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which SBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to SBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact			Telephone #

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the SBE goal.) Attach necessary documentation.

Yes ____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide SBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist SBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which SBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of SBE Firm	Explanation for Rejecting Quotes

10. Were any bids from SBE Subcontractors that were no more than 15% or $250,000 greater than the accepted Non-SBE Subcontractor rejected?
If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

DBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Disadvantaged Business Enterprise Participation goal for this project is as follows:

__X____ % DBE

I. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - The performance of real and actual services in the discharge of any contractual endeavor. A DBE is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE firm is not performing a commercially useful function and no DBE credit may be awarded toward the DBE goal.

Contract - A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor - One who participates, through a contract or subcontract (at any tier), in a federally funded program. For the purposes of DBE Plan evaluation, any offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the Contractor DBE program compliance requirements.

Disadvantaged Business Enterprise or DBE - A for-profit small business concern certified under the Arizona Unified Certification Program (AZUCP) --
(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Good Faith Efforts - Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture - An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Primary Industry Classification - The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA 22261). NTIS also makes materials available through its web site (www.ntis.gov/products/naics.aspx).

Program - Any undertaking on the City of Tucson's part to use federal financial assistance, authorized by the laws to which this part applies.

Race and Gender-Conscious - A measure or program that is focused specifically on assisting only DBEs.

Race and Gender-Neutral - A measure or program that is, or can be, used to assist all small businesses.

Recipient - Any entity, public or private, to which federal financial assistance is extended, whether directly or through another recipient, or who has applied for such assistance.

Set-Aside - A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Concern - With respect to firms seeking to participate as a DBE, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and Economically Disadvantaged Individual - Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --
(a) Any individual who the City of Tucson finds to be a socially and economically disadvantaged individual on a case-by-case basis.
(b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Lorea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americans," which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

B. APPLICABILITY

The City of Tucson has received federal financial assistance and has established a DBE Diversity Program for Contracts in accordance with 49 CFR 26, which is incorporated herein by this reference. The DBE Diversity Program applies to all City and subrecipient contracts that are funded, in whole or in part, by federal financial assistance. In the event of any conflicts or inconsistencies between 49 CFR 26 and this DBE Diversity Program, 49 CFR 26 shall prevail.

ALL CONTRACTORS INCLUDING DBEs MUST COMPLY. Contractors who are DBEs must also comply with all requirements stated herein. However, a DBE on a prime contract may meet the contract goal by virtue of the work it performs on the prime contract with its own forces. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's DBE goals and federal regulations.

Firms that are certified ***at time of DBE Plan submittal*** through the Arizona Unified Certification Program (AZUCP) under 49 CFR 26 are eligible to participate as DBEs on City of Tucson contracts that are federally funded wholly or in part.

The Arizona Unified Certification Program (AZUCP) Database contains the ***complete*** listing of those firms which are certified and therefore eligible to participate as a DBE on a project. DBE participation is NOT limited to Pima County firms. Any DBE firm recognized through the AZUCP is eligible to be recognized as a certified DBE. The AZUCP Database can be accessed through the following internet address: (http://www.azdbe.org/). If the name of a firm does not appear in the AZUCP database, it shall be the bidder's responsibility to ascertain the certification status of the firm.

Questions regarding the AZUCP and the City's DBE Program can be addressed to the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593.

The City of Tucson has provided an overall DBE goal for this project. Prime contractors should be aware that **your obligation is to meet the DBE goal or submit an Affidavit of Good Faith Effort** to waive any or all of the portion of the goal not met.

C. DBE PARTICIPATION

A DBE goal may only be met by a certified DBE firm performing a commercially useful function. A DBE may participate as a prime contractor, subcontractor, second-tier

subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE shall be responsible for a specific contract amount and a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control. Open ended contracts or reimbursable contracts may not be used to meet a DBE goal at the time of bid submission. A copy of an executed subcontract must be submitted upon request by the City of Tucson.

D. DBE GOALS

To satisfy the DBE goals, a certified DBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Unless specific subcontractor participation goals are expressed in the specifications, contractors may meet the DBE project goals through the following methods:

Subcontractor Participation - Where a prime contractor utilizes one or more certified DBE subcontractor(s) to satisfy its DBE participation commitment, the prime contractor may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

1. Prime Contractors who utilize certified DBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the DBE firm and may only take credit for the dollar value of that contract towards satisfying its DBE commitment in their proposed DBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.

2. When a DBE participates in a contract, only the work actually performed by the DBE will count toward DBE goals.

a. Credit will be given for the entire amount of that portion of a contract by the DBE performing a commercially useful function, including the cost of supplies and materials obtained by the DBE for the work of the contract (including supplies purchased or equipment leased by the DBE except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

b. Credit will be given for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a federally funded contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The value of work that a non-DBE subcontractor subcontracts (second-tier) to a DBE firm may count toward DBE goals. Therefore, **prime contractors are required to identify and report the use of any second tier subcontractors on the project on the DBE Plan form.**

d. Credit will be given when a DBE subcontracts part of the work of its contract to another firm only if the DBE's subcontractor is itself a DBE.

3. When a DBE is used as the source for materials or supplies:

a. If a DBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable DBE participation goal.

b. If a DBE supplier is a regular dealer (a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock, and regularly sold or leased to the public), 60% of the cost of the materials or supplies will be credited toward DBE goals.

4. Where a contractor engages in a joint venture to satisfy its DBE commitment, the DBE joint venture partner must be responsible for a distinct and clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. DBE joint ventures do not have to be certified as a joint venture by the City prior to bid opening. However, prime contractors must submit information at the time of bid opening that includes a copy of the joint venture agreement and clearly outlines the work to be performed by the DBE joint venture partner, including the dollar amount and percentage of the contact to be performed.

When a DBE performs as a joint venture, the OEOP will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF A DBE PLAN

The DBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The DBE Plan must include:

1. The names of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

If the completed Statement of Proposed DBE Plan or, if necessary, a documented waiver application is not included with the proposal, the proposal will be considered non-responsive.

B. DBE ACKNOWLEDGMENT OF PARTICIPATION

The Contractor will be required to submit to the Office of Equal Opportunity Programs (OEOP), a DBE Acknowledgment of Participation for each DBE listed on the proposed

DBE Plan which provides signed confirmation that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

C. REVIEW OF DBE PLANS

The OEOP Director may determine that the Plan and/or Affidavit of Good Faith Effort is nonresponsive where the contractor, (1) failed to provide a completed Statement of Proposed DBE Plan; (2) failed to identify DBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable DBE goals for this project; (3) failed to achieve the dollar value of credible participation by certified DBEs as necessary to meet the project goals; (4) failed to provide written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal prior to contract execution; or (5) failed to meet the requirements for a waiver of the DBE goals. The OEOP Director's determination shall be in writing and shall state the basis for such decision.

III. GOOD FAITH EFFORT

A contractor must, in order to be responsive, make good faith efforts to meet the goal. The contractor can meet this requirement in either of two ways. First, the contractor can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the goal, the contractor can document adequate good faith efforts. This means that the contractor must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

The application for a waiver shall be in writing and must be submitted with the project proposal. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such wavier must be indicated. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals.

The following is a list of types of actions which the City will consider as part of the good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE

participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. **(1)** Negotiating in good faith with interested DBEs. It is the contractors responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve them of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Tucson or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

I. Communicating with the Office of Equal Opportunity Programs (OEOP) seeking technical or professional assistance in identifying available DBEs and requesting the most current Arizona Unified Certification Program (AZUCP) directory of certified DBE firms.

J. In determining whether a contractor has made good faith efforts, the OEOP may take into account the performance of other bidders in meeting the contract. For example, when the Apparent Low Bidder (ALB) fails to meet the contract goal, but others

meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the ALB could have met the goal. If the ALB fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the City may view this, in conjunction with other factors, as evidence of having made good faith efforts.

The City's OEOP Director shall review the waiver application and approve the waiver where the contractor has demonstrated good faith efforts or deem them nonresponsive where they failed to meet the good faith efforts.

IV. ADMINISTRATIVE RECONSIDERATION

If it is determined by the City's OEOP Director that the contractor has failed to meet the goal and/or document adequate good faith efforts, the contractor shall have the opportunity for administrative reconsideration. Therefore, within five (5) working days of being notified by OEOP that it is not responsive because it has not met the goal or documented adequate good faith efforts, a contractor may request administrative reconsideration. Contractors must make this request in writing to the following individual:

Procurement Director
City of Tucson
255 W. Alameda – PO Box 27210
Tucson, Arizona 85726.

The request for reconsideration must include the reasons and factual grounds for reconsideration with any supporting documents. The Procurement Director shall appoint a Reconsideration Official who will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. The Reconsideration Official shall hold a hearing within ten (10) working days of the request for reconsideration. The contractor will have the opportunity to meet in person with the City's Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Reconsideration Official can also take testimony from City employees.

The City will send the contractor, via certified mail, a written decision on reconsideration, explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts to do so. The decision will be sent within five (5) working days of the Reconsideration Hearing. The result of the reconsideration process is not administratively appealable. Copies of the reconsideration documentation, including supporting documents and the Reconsideration Officials final decision, shall be maintained in the contract file at Procurement and OEOP.

FAILURE TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE CONTRACTOR TO BE DEEMED NONRESPONSIVE.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND/OR CLARIFY INFORMATION AND REQUEST RESUBMITTAL OF INFORMATION BASED ON CLARIFICATION AS IT RELATES TO

THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND/OR THE STATEMENT OF PROPOSED DBE PLAN.

V. GENERAL WAIVER OR REDUCTION OF DBE GOALS

If after consultation with appropriate City departments, the OEOP Director determines that DBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that DBEs are not in fact available.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified DBEs, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-DBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that DBEs are not in fact available to provide the needed labor and materials at competitive prices.

VI. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. This reporting requirement also extends to any certified DBE subcontractor. As part of the contract documents requirement, the contractor will submit company procedures and policy for prompt payment of work and prompt release of retention to subcontractors.

Prime contractors are required to pay **all** subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson. Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release. Required timelines are indicated below:

A. When a subcontractor has completed all the tasks called for in the subcontract, the subcontractor will submit a written request to the prime contractor for an acceptance inspection and release of all retention.
B. Within 10 days of receipt of an inspection request by a subcontractor, the contractor shall schedule an inspection / walk through for acceptance of the work.
C. Within 30 days of the acceptance of a subcontractors work, the prime contractor shall pay all retention owed to a subcontractor.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

Prime contractors are asked to submit the attached Certification of Payments, for each DBE subcontractor utilized on this project, once that portion of the work has been completed and the subcontractor has been paid in full.

Prime contractors will report the actual value of any contract to DBE firms for work committed to them at the time of the contract award. Contractors must submit the attached Supplier & Subcontractor Utilization List Final Payment Record to OEOP with their request for final payment. The Final Payment Record will record total dollar amounts paid to both DBE and non-DBE suppliers and subcontractors.

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the DBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

VII. MISCELLANEOUS PROVISIONS

A. CONTRACT PROVISIONS

The contractor's distinct contract items of work to be awarded to DBEs shall be performed by the designated DBE or DBE substitute approved by the OEOP and the Procurement Department. DBE contract work items shall not be performed by the contractor in lieu of subcontracting, without OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for DBE participation. The DBE must perform a commercially useful function, that is, the DBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all DBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY DBEs

In the event that a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the OEOP and the Project Manager and provide all facts surrounding the matter. The DBE firm can be terminated only for good cause. Good cause includes a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE participation goal on the contract. The contractor shall immediately take adequate good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of the work. The substitute DBEs name, description of work and all written and signed commitments, and dollar value of the work shall be submitted to the OEOP, and the OEOP's approval must be obtained prior to the substitute DBE beginning work. If the contractor fails or refuses to comply, the OEOP will recommend that the City issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City may terminate the contract for cause and/or pursue any other remedy available to the City.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. RECORD-KEEPING

The City of Tucson will require prime contractors to maintain records and documents of payments to DBE for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. The reporting requirement also extends to any certified DBE subcontractors.

E. FALSE, FRAUDULENT OR DISHONEST CONDUCT

The City of Tucson will bring to the attention of the federal government any false, fraudulent or dishonest conduct in connection with the DBE Diversity Program for Contracts so that the federal government can take steps (e.g., referral to the Department of Justice for criminal prosecution, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109. The City will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

F. NON-DISCRIMINATION

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

CITY OF TUCSON
OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF
PROPOSED DBE PLAN

ALL DBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A DBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE DBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a DBE)	Trade/Industry	Proposed Dollar Value of Contract (DBE Only)

Project Amount $ _____

Total Claimed DBE Participation $_____ _____%

I hereby certify by signing below that the foregoing firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED DBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Equal Opportunity Office

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET DBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing DBE firms to meet the City of Tucson's DBE goals. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a DBE plan must also be submitted.

_____

_____

_____

_____

_____

2. Provide a brief summary of why the DBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to DBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for DBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which DBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to DBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact			Telephone #

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the DBE goals.) Attach necessary documentation.

Yes _____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide DBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist DBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which DBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of DBE Firm	Explanation for Rejecting Quotes

10. Were any proposals from DBE subcontractors that were no more than 15% or $250,000 greater than the accepted Non-DBE subcontractor rejected? If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

MUST BE SUBMITTED WITH THE PROPOSAL

City of Tucson
Office of Equal Opportunity Programs (OEOP)

DBE ACKNOWLEDGMENT OF PARTICIPATION

CONTRACT NO._____ PROJECT NAME: _____

TRADE/INDUSTRY/SUPPLY/EQUIPMENT:_____

DOLLAR VALUE OF THE CONTRACT: _____

DBE Firm: _____

DBE Signature: _____

Phone No. _____ Date: _____

Name: _____

Title: _____

I hereby certify that _____ is participating in the contract as provided in the Proposed DBE Plan and that the information shown above is a true reflection of the proposed subcontract.

Prime Contractor's Signature: _____

MUST BE SUBMITTED WITH REQUEST FOR FINAL PAYMENT

City of Tucson
Office of Equal Opportunity Programs (OEOP)

SUPPLIER AND SUBCONTRACTOR UTILIZATION LIST
FINAL PAYMENT RECORD

Pursuant to administrative procedures and policies, the OEOP Director may verify and/or clarify and request resubmittal of information to verify or clarify information as it relates to the contractor's Final Payment Record.

CONTRACT No. _____ Bid Amount: _____ Project Name: _____

FIRM NAME	DBE	TRADE/INDUSTRY	SUPPLIER TOTAL PAYMENT MADE		
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__

CERTIFICATION OF PAYMENTS TO DBE FIRMS

Project Name:_____
COT Job No.: _____ Contract No.: _____
Fed Job No.: _____ State TRACS No.: _____

The undersigned prime contractor on the above named City of Tucson project hereby, certifies that full payment was made to the firm indicated for material and/or work performed under this project's contract as follows:

Firm Name _____, was paid $ _____

The subcontract was completed on _____

Full Retention has been released to the Subcontractor by the Prime Contractor Yes / No

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contracts, all documentation supporting the contractors position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Prime Contractor

By: _____

Title: _____

Date: _____

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Subcontractor/Supplier/Manufacturer

By: _____

Title: _____

Date: _____

MUST BE SUBMITTED WITH THE PROPOSAL

SUBCONTRACTOR PROMPT PAYMENT REQUIREMENTS

CONTRACT NO: _____

PROJECT NAME: _____

DBE Contract Provisions – Section V. Monitoring Payments to Subcontractors

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson.

Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

By signing below I acknowledge and agree to the DBE subcontractor prompt payment requirements.

Company Name: _____

Signature: _____

Name & Title: _____

Date: _____

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

✓ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

____ "Annual" bonds in the amount of $50,000; each project over $50K or concurrent projects totaling more than $50K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

M. ANDERSON CONSTRUCTION CORP.
Company Name

Mark Anderson
Signature of Person Authorized to Sign

MARK ANDERSON
Printed Name

130762
Contract Number

10/2/2013
Date

Client#: 676501 ANDECONS7

ACORD # CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/20/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
HUB International Ins Svcs Inc
2375 E. Camelback Road #250
Phoenix, AZ 85016
800 688-7472

CONTACT NAME: Christine Nouzovsky
PHONE (A/C, No, Ext): 602-749-4139 FAX (A/C, No): 866-489-8776
E-MAIL ADDRESS: Christine.nouzovsky@hubinternational.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : AMCO Insurance Company	19100
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F : HUB CA Resident Lic #0757776	

INSURED
M. Anderson Construction Corp.
4650 N Kain Avenue
Tucson, AZ 85705

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			ACP7215542814	04/01/2013	04/01/2014	EACH OCCURRENCE	$1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$10,000
	X PD Ded:1,000						PERSONAL & ADV INJURY	$1,000,000
							GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$2,000,000
	POLICY PRO-JECT LOC							$
A	AUTOMOBILE LIABILITY			ACP7215542814	04/01/2013	04/01/2014	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Leased/Rented Equipment			ACP7215542814	04/01/2013	04/01/2014	$250,000 $2,500 Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Project: RFQ # 130762 City of Tucson JOC for Landscape Services. City of Tucson is named as an additional insured with respects to general liability per attached form CG7323 0510 and auto liability per attached form CA2048 0299. Per project general aggregate limit applies per attached form CG7323 0510.

CERTIFICATE HOLDER

City of Tucson
Department of Procurement
Attn: Matt Hausman
255 W Alameda 6th Floor
Tucson, AZ 85701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Robert L. Mashcock

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS ENHANCEMENT PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

LOST KEY COVERAGE

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, coverage is extended to include the following:

If a customer's master or grand key, excluding electronic key card, is lost while in your care, custody or control we will pay the cost of replacing the keys, including the master lock and all keys used in the same lock, the cost of adjusting locks to accept the new keys, or the cost to replace the locks, whichever is less.

Limit of Insurance - The most we will pay for "loss" arising out of any one "occurrence" is $5,000.

SECTION V DEFINITIONS is amended as follows:

The following definition applies to Lost Key Coverage:

"Loss" means unintentional physical damage or destruction to tangible property, including theft or disappearance. Tangible property does not include money or securities.

VOLUNTARY PROPERTY DAMAGE

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, coverage is extended to include the following:

At your request, we will pay for "property damage" to property of others caused by you or while in your possession, arising out of your business operations and occurring during the policy period.

Limit of Insurance - The most we will pay for "loss" arising out of any one "occurrence" is $500.

SECTION V – DEFINITIONS is amended as follows:

The following definition applies to Voluntary Property Damage coverage:

"Loss" means unintentional damage or destruction but does not include disappearance, theft, or loss of use.

NON-OWNED WATERCRAFT

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is amended as follows:

g. **Aircraft, Auto Or Watercraft (2) (a)** is replaced with:

(a) Less than 51 feet long; and

EXPANDED PROPERTY DAMAGE COVERAGE

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is amended as follows:

j. **Damage to Property** is replaced with:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Personal property in the care, custody, or control of the insured:

1) for storage or sale at premises you own, rent or occupy; or

2) while being transported by any aircraft, "auto" or watercraft owned or operated by or rented to or loaned to any insured.

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(4) "Property damage" arising out of the disappearance or loss of use of personal property.

(5) "Property damage" included in the "products-completed operations hazard."

Paragraphs **(1)** and **(3)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section **III** – Limits Of Insurance.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraph **(3)** of this exclusion does not apply to liability assumed under a sidetrack agreement.

Limit of Insurance - The most we will pay for "property damage" provided by this coverage in any one "occurrence" is $5,000.

Deductible - Our obligation to pay for a covered loss applies only to the amount of loss in excess of $250.

This insurance is excess over any other valid and collectible insurance.

DAMAGE TO PREMISES RENTED TO YOU

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, the last paragraph of **2. Exclusions** of is replaced by the following:

If **Damage to Premises Rented to You** is not otherwise excluded, exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III**-Limits of Insurance.

SECTION III – LIMITS OF INSURANCE, paragraph 6 is replaced with:

6. Subject to **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke or sprinkler leakage, while rented to you or temporarily occupied by you with permission of the owner. The limit is increased to $300,000.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. **Other Insurance, b. Excess Insurance (1) (a) (ii)** is replaced with:

(ii) That is Fire, Lightning, Explosion, Smoke or Sprinkler leakage insurance for premises rented to you or temporarily occupied by you with permission of the owner.

SUPPLEMENTARY PAYMENTS

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended as follows:

1. **1. b.** replaced with:

b. Up to $2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. **1. d.** replaced with:

d. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

NEWLY FORMED AND ACQUIRED ORGANIZATIONS

SECTION II – WHO IS AN INSURED is amended as follows:

1. **3. a.** is replaced with:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

ADDITIONAL INSURED – WHEN REQUIRED IN AN AGREEMENT OR CONTRACT WITH YOU PRIMARY AND NON-CONTRIBUTORY

The following is added to SECTION II – WHO IS AN INSURED

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a. **Who Is An Insured** is amended to include any person(s) or organization(s) with whom you have agreed in a valid written contract or written agreement that such person or organization be added as an additional insured on your policy during the policy period shown in the Declarations. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury".

b. The person or organization added as an insured by this endorsement is an insured only to the extent you are held liable due to:

1. **Lessors of Leased Equipment**

   Maintenance, operation or use of equipment leased to you by such person or organization. This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

   However, their status as additional insured under this policy ends when their lease, contract or agreement with you for such leased equipment expires.

2. **Managers or Lessors of Premises**

   The ownership, maintenance or use of that part of the premises you own, rent, lease or occupy.

   This insurance does not apply to:

   a. Any "occurrence" which takes place after you cease to be a tenant in that premises.

   b. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization.

   However, their status as additional insured under this policy ends when you cease to be a tenant of such premises.

3. **State or Political Subdivision - Permits**

   Operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

   This insurance does not apply to:

   a. "Bodily injury" or "property damage" or "personal or advertising injury" arising out of operations performed for the state or municipality; or

   b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

   However, such state or political subdivision's status as additional insured under this policy ends when the permit ends.

4. **Owners, Lessees, or Contractors**

   Your ongoing operations performed for that additional insured, whether the work is performed by you or on your behalf.

   The insurance does not apply to:

   a. "bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of or the failure to render any professional architectural, engineering or survey services, including:

      1. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, survey, field orders, change orders or drawings and specifications: or

      2. Supervisory, inspection, architectural or engineering activities.

   b. "Bodily injury" or "property damage" occurring after:

      1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

      2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

   However, a person or organization's status as additional insured under this policy ends when your operations for that additional insured are completed.

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D. With respect to the insurance afforded to these additional insureds, Condition **4. Other Insurance** of **Section IV – Commercial General Liability Conditions** is replaced by the following:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary if you have agreed in a written contract or written agreement:

(1) That this insurance be primary. If other insurance is also primary, we will share with all that other insurance as described in **c.** below; or

(2) The coverage afforded by this insurance is primary and non-contributory with the additional insured's own insurance.

Paragraphs **(1)** and **(2)** do not apply to other insurance to which the additional insured has been added as an additional insured or to other insurance described in paragraph **b.** below.

b. Excess Insurance

This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(b) That is fire, lightning, or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section I – Coverage **A** – Bodily Injury And Property Damage Liability.

(e) That is any other insurance available to an additional insured under this endorsement covering liability arising out of the premises or operations, or products completed operations, for which the additional insured has been added as an additional insured by that other insurance.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance available to the additional insured permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

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If any of the other insurance available to the additional insured does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

EMPLOYEE BODILY INJURY TO ANOTHER EMPLOYEE

SECTION II – WHO IS AN INSURED The following Paragraph is added to **2.a.(1)**

Paragraphs **2.a.(1)(a), (b) and (c)** do not apply to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business.

BROAD FORM NAMED INSURED

SECTION II – WHO IS AN INSURED The following Paragraph is added to **2.**

e. Any business entity incorporated or organized under the laws of the United State of America (including any State thereof), its territories or possessions or Canada (including any Province thereof) in which the Named Insured shown in the Declarations owns, during the policy period, an interest of more than fifty percent. If other valid collectible insurance is available to any business entity covered by this solely by reason of ownership by the Named Insured shown in the Declarations in excess of fifty percent, this insurance is excess over the other insurance, whether primary, excess, contingent, or on any other basis.

AGGREGATE LIMIT PER LOCATION

SECTION III – LIMITS OF INSURANCE The following paragraph is added to paragraph **2**:

The General Aggregate Limit under Section **III** Limits of Insurance applies separately to each of your locations owned by or rented to you or temporarily occupied by you with the permission of the owner. For the purposes of this provision, location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a public street, roadway, waterway or railroad right-of-way.

AGGREGATE LIMIT PER PROJECT

SECTION III – LIMITS OF INSURANCE The following paragraph is added to paragraph **2**:

The General Aggregate Limit under Section **III** Limits of Insurance applies separately to each of your construction projects away from premises owned by or rented to you.

MEDICAL PAYMENTS

SECTION III – LIMITS OF INSURANCE, Paragraph **7.** is replaced:

7. Subject to **5.** above, the higher of:

a. $10,000; or

b. The amount shown in the Declarations for Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by one person.

This coverage does not apply if Coverage **C – Medical Payments** is excluded either by the provisions of any coverage forms attached to the policy or by endorsement.

KNOWLEDGE OF AN OCCURRENCE

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, The following is added to **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit condition**:

e. Knowledge of an occurrence, offense, claim or suit by an agent or employee of any insured shall not in itself constitute knowledge of the insured unless you, a partner, if you are a partnership; or an executive officer or insurance manager, if you are a corporation receives such notice of an occurrence, offense, claim or suit from the agent or employee.

f. The requirements in **Section IV – Conditions Paragraph 2.b.** will not be considered breached unless there is knowledge of occurrence as outlined in paragraph **e.** above.

UNINTENTIONAL FAILURE TO DISCLOSE HAZARD

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, **6. Representations** is amended to include:

d. Your failure to disclose all hazards or prior "occurrences" or offenses existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all

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hazards or prior "occurrences" or offenses is not intentional. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

WAIVER OF SUBROGATION

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, **8. Transfer of Rights of Recovery Against Others to Us** is amended to include:

If required by a written contract executed prior to loss, we waive any right of subrogation we may have against the contracting person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazards".

LIBERALIZATION

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, **10. Liberalization** is added as follows:

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

BROADENED BODILY INJURY DEFINITION (MENTAL ANGUISH)

SECTION V – DEFINITIONS is amended as follows:

1. **3.** "Bodily injury" is deleted and replaced with the following:

   "Bodily injury" means physical injury, sickness or disease to a person and, if arising out of the foregoing, mental anguish, mental injury, shock or humiliation, including death at any time resulting therefrom.

All terms and conditions of this policy apply unless modified by this endorsement.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name of Person(s) or Organization(s):
City of Tucson Department of Procurement

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

Copyright, Insurance Services Office, Inc., 1998

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/20/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

SCF Arizona and its subsidiaries
3030 N. 3rd Street

Phoenix AZ 85012-3068

CONTACT NAME: SCF Arizona
PHONE (A/C, No, Ext): 602.631.2600 or 866.284.2694 FAX (A/C, No): 602.631.2599
E-MAIL ADDRESS: askscf@scfaz.com or webcerts@scfaz.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : SCF Western Insurance Company	13209
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

M Anderson Construction Corp
4650 N Kain Ave

Tucson AZ 85705

COVERAGES **CERTIFICATE NUMBER:** 170 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	POLICY PRO-JECT LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N	N / A		W20576	04/01/2013	04/01/2014	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Job #: RFQ #130762 JOC Location: Various locations in Tucson Arizona

FENCE-METAL/VINYL/WOOD /PREFAB CONCRETE PANELS-HAND INSTL, LANDSCAPE GARDENING, LAWN SPRINK SYST INSTAL UNDERGROUND

This waiver of subrogation is effective only with respect to the Certificate Holder for the project described herein, and shall not benefit any other person or organization.

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will

CERTIFICATE HOLDER

City of Tucson
Department of Procurment
255 W Alameda
P O Box 27210
Tucson AZ 85726

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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The ACORD name and logo are registered marks of ACORD

AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

AGENCY		NAMED INSURED
		M Anderson Construction Corp 4650 N Kain Ave Tucson, AZ 85705
POLICY NUMBER W20576		
CARRIER SCF Western Insurance Company	NAIC CODE 13209	EFFECTIVE DATE: 04/01/2013-04/01/2014

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance

endeavor to mail 30 days written notice to the certificate holder named, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents and representatives.

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EXHIBIT B
SCOPE OF WORK, LIST OF MATERIALS, SPECIFICATIONS AND OTHER MODIFICATIONS TO UNDERLYING CONTRACT

SEE EXHIBIT A

EXHIBIT C
PAYMENT & COMPENSATION TERMS

SEE EXHIBIT A

EXHIBIT D
INSURANCE REQUIREMENTS

COVERAGE AFFORDED	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Commercial General Liability Insurance Including:	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

A. Products & Completed Operations
B. Blanket Contractual
C. Premises-Operations-Personal Injury

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which require automobile travel by Contractor.

Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

SPECIAL CONDITIONS:

1. THE TOWN OF SAHUARITA WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the Town.
3. Deductibles will be stated on the certificate of insurance and are subject to the review and approval of the Town.
4. Contractor shall provide Town with proof of compliance with the insurance provisions and requirements within ten (10) days of the date this Contract is executed by all parties by providing a current certificate of insurance and the associated endorsement to the policy. Failure of Contractor to comply with the insurance requirements at any time shall result in a breach of this Agreement, and shall, among other things, allow immediate termination of this Agreement.
5. Contractors performing any portion of a Project that shall acquire funding from the Regional Transportation Authority (RTA) shall name the RTA as additional insured and additional indemnitee. The RTA shall be identified as an additional insured with respect to insurance policies for general liability, automobile liability and defects in design. Contractor is also required to name the RTA as an additional beneficiary in any performance and payment related assurances posted for the Project.

EXHIBIT E
LEGAL NOTICES

TOWN:	CONTRACTOR:
L. Kelly Udall, Town Manager Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **with a copy to:** Daniel J. Hochuli, Town Attorney Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **and:** Sheila M. Bowen, P.E. Public Works Director / Town Engineer Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629	Mark Anderson, President M. Anderson Construction Corp. 4650 E. Kain Avenue Tucson, AZ 85705 **With a copy to:** NONE

APPROVED
Town of Sahuarita
Department of Law

COOPERATIVE PURCHASING CONTRACT

Town of Sahuarita, Arizona

Department:	Public Works
Contractor:	Northwest Landscaping, LLC
Project Name:	JOC for Landscape Construction Services
Project Number:	N/A
Contract Dates:	Start: 8/24/2016 End: 9/30/2017
Contract Number:	170021
Amount:	Not to Exceed $100,000.00
Funding Source:	Various

TOWN COUNCIL MEMBERS

Mayor Duane Blumberg
Vice Mayor Bill Bracco
Kara Egbert
Gil Lusk
Tom Murphy
Lynne Skelton
Melissa L. Hicks

TOWN MANAGEMENT

L. Kelly Udall, Town Manager
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

COOPERATIVE PURCHASING CONTRACT

THIS CONTRACT is entered into between the Town of Sahuarita, Arizona, an Arizona municipal corporation (hereinafter "Town"), and Northwest Landscaping, LLC, an Arizona L.L.C. (hereinafter "Contractor").

W I T N E S S E T H

Whereas, Town requires the services of a vendor and/or contractor qualified and duly licensed in the Town of Sahuarita and the State of Arizona and qualified to provide landscape construction services; and

Whereas, Contractor is qualified and willing to provide such services; and

Whereas, Section 3.15.060 (C) of the Sahuarita Town Code provides that in the event of a purchase made by, through, or with any public agency as defined in Arizona Revised Statutes § 11-951, the Town Council may approve such purchases or award such contracts for services without a formal bidding process, and Contractor meets all such requirements.

A G R E E M E N T

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter provided, it is agreed between the Town and the Contractor as follows:

1 **INCORPORATION OF CONTRACT.** The parties hereby incorporate that certain contract between Contractor and the City of Tucson attached hereto as Exhibit "A" (the "Underlying Contract") as if fully set forth herein, and agree that (i) the Town shall be substituted in place of the other governmental entity, (ii) the Underlying Contract shall bind the parties to the fullest extent possible, and (iii) any clarifications or modifications to the Underlying Contract shall be set forth herein.

2 **TERM.** This Contract shall commence on August 24, 2016, and shall terminate on September 30, 2017, unless sooner terminated or further extended.

3 **SCOPE OF WORK.**

3.1 The work to be performed under this Contract is that work which is requested pursuant to the Scope of Work, list of materials, or other specifications attached hereto as Exhibit "B" and incorporated herein by this reference. Any clarifications, substitutions, corrections, additions, or other modifications to the Underlying Contract shall also be set forth on Exhibit "B."

4 **PAYMENT.**

4.1 In consideration of the services specified in this Contract, the Town agrees to pay the Contractor as set forth in the Underlying Contract, as clarified or modified as set forth in Exhibit "C" to this Agreement.

4.2 Contractor shall not perform work in excess of the contract amount without prior authorization by an amendment executed by all parties to this Contract. Work performed in excess of the contract amount without prior authorization by amendment shall be at Contractor's own risk.

5 **CONFLICT OF INTEREST.** This Contract is subject to the provisions of A.R.S. § 38-511.

6 **NOTICES.** Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as provided on Exhibit "E" to this Contract.

7 **Non-Discrimination.** Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/680 which is hereby

incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

8 **COMPLIANCE WITH FEDERAL AND STATE LAWS.** In the event this contract refers to services, the following shall apply. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1988. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

8.1 Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the Town that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Town in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

9. **NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Sahuarita Town Council does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, Town shall have no further obligation to Contractor, other than for services rendered prior to termination.

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

TOWN OF SAHUARITA, ARIZONA

_____
Duane Blumberg
Mayor

Date: _____

ATTEST:

_____
Lisa Cole, MMC, Town Clerk

TOWN OF SAHUARITA

_____
L. Kelly Udall, Town Manager/Purchasing Director

DEPARTMENT HEAD:

_____
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

APPROVED AS TO FORM:

_____
Daniel J. Hochuli, Town Attorney

Federal Tax ID Number: 86-0777111

D-U-N-S Number: 963704101

CONTRACTOR:
NORTHWEST LANDSCAPING, LLC

_____
Name: Steven Chrismer
Title: Vice President

Date: _____

Federal Tax ID Number: 86-1047336

D-U-N-S Number:

EXHIBIT A
UNDERLYING CONTRACT (WITH ALL AMENDMENTS TO DATE)

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: (520) 837-4118 / FAX: (520) 791-4735
sandra.alcorn@tucsonaz.gov
ISSUE DATE: May 23, 2016

CONTRACT #130762-04
CONTRACT AMENDMENT NUMBER: THREE (3)

SA/pp
CONTRACT OFFICER: SANDRA ALCORN

JOC for LANDSCAPE CONSTRUCTION SERVICES

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM ONE (1): RENEWAL
In accordance Special Terms and Conditions, Section 4, Contract Term and Renewal, the City of Tucson is hereby exercising its option to renew the contract for an additional one-year period from **October 1, 2016 through September 30, 2017.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING
The estimated dollar value of this contract for renewal period is **one hundred thousand dollars ($100,000.00).** In accordance with Arizona Revised Statute and the City's Construction Services Agreement, the Contractor must provide payment and performance surety bonds for this amount. Pursuant to Arizona Revised Statute, bonds may be provided as follows: annual bonds in the amount designated by the agency **($100,000.00),** or bonding per each individual job. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value.

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR: Northwest Landscaping

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Glenn Brchan 6-23-16
Signature of person authorized to sign Date

Glenn Brchan President
Name and Title (typed or printed legibly)

Northwest Landscaping
Company Name

4927 N Jersey Ct
Address

glennb@nwlandscaping.com
Email Address

Tucson Az 85705
City State Zip

Contact information for Sales/Account Representative for daily business operations:

Steven Chrismer VP
Name and Title (typed or printed legibly)

520-631-6654
Phone Number

stevenc@nwlandscaping.com
Email Address

CITY OF TUCSON:

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 16th DAY OF June, 2016, AT TUCSON, ARIZONA.

Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM
as Director of Procurement and not personally

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

_X_ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

Northwest Landscaping
Company Name

Glenn Brehan
Signature of Person Authorized to Sign

Glenn Brehan
Printed Name

PO Date: 11/06/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0007158
Phone: (520) 888-0669
Fax: (520) 888-6589

Northwest Landscaping
4927 N Jersey Ct
Tucson, AZ 85705

Blanket PO Number

37238

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO

Gary Witwer 520-791-5100

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031
AccountsPayable-Finance@tucsonaz.gov

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762-04,	Unknown	Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	1 EA	0.00	0.00	0.00	0.00
2	CONTRACT 130762-04:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.	1 EA	0.00	0.00	0.00	0.00
3	CONTRACT 130762-04:JOC FOR LANDSCAPING CONSTRUCTION SERVICES RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016. Gary Witwer 520-791-5100	1 EA	0.00	0.00	0.00	0.00
4	CONTRACT 130762-04: RENEWED FOR THE PERIOD OF OCTOBER 1, 2016 TO SEPTEMBER 30, 2017. Gary Witwer 520-791-5100	1 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Sandra Alcorn SA
Contract Officer

(520) 837 - 4118
Phone

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Reismont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

ITEM ONE (1): RENEWAL

In accordance with Section III, Contract Term and Renewal, the City of Tucson is renewing **Contract 130762: JOC for Landscaping Construction Services,** for an additional one-year period from **October 1, 2015 through September 30, 2016.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING

The estimated dollar value of this contract for renewal period is **ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00).** In accordance with Arizona Revised Statute and Special Terms and Conditions 4: Bonding, the Contractor must provide payment and performance surety bonds for this amount. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value. Bonds may be provided as follows: annual bonds in the amount designated above, or bonding per each individual job.

ITEM THREE (3): DAVIS BACON WAGE DETERMINATION(S)

Davis-Bacon Wage Determinations, if applicable, will be provided to the contractor on an individual project basis.

ITEM THREE (3): IMODIFICATIONS TO GENERAL CONDITONS FOR CONSTRUCTION

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1: Indemnification with:

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractors agrees to waive all rights of subrogation against the City of Tucson, it's agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Reismont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/cnr
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM FOUR (4): INSURANCE

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1, Number 3 with:

The Contractor agrees to:

A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least thirty (30) calendar days prior to termination, cancellation, or reduction in coverage in any policy.

B. The Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

C. Provide and maintain minimum insurance limits as applicable.

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability: Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	$1,000,000
General Aggregate Per Project	$2,000,000
Products & Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury	$1,000,000
Blanket Contractual Liability	$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	$1,000,000
III. Workers' Compensation (applicable to the State of Arizona)*1	
Per Occurrence	Statutory
Employer's Liability	$1,000,000
Disease Each Employee	$1,000,000
Disease Policy Limit	$1,000,000

*1 Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Resimont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

D. **ADDITIONAL INSURANCE REQUIREMENTS:** All policies shall include, or be endorsed to include, the following provisions:

1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor.
2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

E. **NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.

F. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

G. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department of Procurement.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Resimont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

************END OF AMENDMENT************

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Signature 9/4/15 Date

STEVEN CHAUSMER VICE PRESIDENT
Print Name and Title

Northwest Landscaping
Company Name

4927 N. JERSEY CT
Address

TUCSON AZ 85705
City State Zip

STEVEN C@NWLANDSCAPING.COM
E-Mail Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 23rd DAY OF October, 2015 AT TUCSON, ARIZONA.

Marcheta Gillespie C.P.M., CPPO, CPPB, CPM
As Director of Procurement and not personally

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

X "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

NORTHWEST LANDSCAPING
Company Name

Signature of Person Authorized to Sign

STEVEN CHRISMER
Printed Name

PO Date: 11/06/2013
Change Order Date: 11/06/2015

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0007158
Phone: (520) 888-0669
Fax: (520) 888-6589

Northwest Landscaping
4927 N Jersey Ct
Tucson, AZ 85705

Change Order Number
2
Blanket PO Number
37238
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO

Gary Witwer 520-791-5100

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,	Unknown	Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
3	CONTRACT 130762-04:JOC FOR LANDSCAPING CONSTRUCTION SERVICES RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016. Gary Witwer 520-791-5100		0.00	0.00	0.00	0.00

Previous PO Total: $0.00

New PO Total: $0.00

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Dan Longanecker — **Contract Officer**

(520) 837 - 4125 — **Phone**

(Rev. 4/27/2009) PO_CHG_S.rpt

PO Date: 11/06/2013
Change Order Date: 10/08/2014

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0007158
Phone: (520) 888-0669
Fax: (520) 888-6589

Northwest Landscaping
4927 N Jersey Ct
Tucson, AZ 85705

Change Order Number
1
Blanket PO Number
37238
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762, -04	Unknown	Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
2	CONTRACT 130762-04:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.		0.00	0.00	0.00	0.00

Previous PO Total: $0.00

New PO Total: $0.00

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

DEL Dan Longanecker — Contract Officer

(520) 837 - 4125 — Phone

(Rev. 4/27/2009) PO_CHG_S.rpt

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-04
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

ITEM ONE (1): RENEWAL

In accordance with Section III, Contract Term and Renewal, the City of Tucson is renewing **Contract 130762: JOC for Landscaping Construction Services**, for an additional one-year period from **October 1, 2014 through September 30, 2015.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING

The estimated dollar value of this contract for renewal period is **ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00).** In accordance with Arizona Revised Statute and Special Terms and Conditions 7: Bonding, the Contractor must provide payment and performance surety bonds for this amount. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value. Bonds may be provided as follows: annual bonds in the amount designated above, or bonding per each individual job.

ITEM THREE (3): DAVIS BACON WAGE DETERMINATION(S)

Davis-Bacon Wage Determinations, if applicable, will be provided to the contractor on an individual project basis.

ITEM THREE (3): IMODIFICATIONS TO GENERAL CONDITONS FOR CONSTRUCTION

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1: Indemnification with:

"To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and the Regional Transit Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City."

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-04
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

Replace Section 11.4: Independent Contractor with:

"It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees."

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

Signature: [signature] Date: 9/9/14

STEVEN CHRISMER, VICE PRESIDENT
Printed Name and Title

NORTHWEST LANDSCAPING
Company Name

4927 N. JERSEY CT
Address

TUCSON AZ 85705
City State Zip

STEVENC@NWLANDSCAPING.COM
Email Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 9 DAY OF SEPTEMBER, 20 14, AT TUCSON, ARIZONA.

[signature]
for Marcheta Gillespie, C.P.M., CPPO, CPPB, CPM
as Director of Procurement and not personally

BONDING OPTIONS

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

X "Bond per Job"; each project bonded individually prior to Notice to Proceed.

____ "Annual" bonds in the amount of $100,000; each project over $100K or concurrent projects totaling more than $100K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

NORTHWEST LANDSCAPING
Company Name

Signature of Person Authorized to Sign

STEVEN CHRISMER
Printed Name

130762-04
Contract Number

9/9/14
Date

Return this completed form along with your signed amendment

PO Date: 11/06/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0007158 Phone: (520) 888-0669
Fax: (520) 888-6589

Northwest Landscaping
4927 N Jersey Ct
Tucson, AZ 85705

Blanket PO Number

37238

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,	Unknown	Net 30	0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	1 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Matt Hausman — Contract Officer

(520) 837 - 4123 — Phone

CITY OF TUCSON

Contract 130762-04

JOC for Landscape
Construction Services

Northwest Landscape

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT NO. 130762
CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

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II. Scope of Work

III. Contract Term and Renewal

IV. Special Terms and Conditions

V. Pricing

VI. Construction Services Agreement

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B. General Conditions for Construction

C. Federal Terms and Conditions, to include the following:

- HUD REQUIREMENTS
  - 5369
  - 5369-A
  - 5370
  - 4010
  - Anti-Kickback Act
  - SECTION 3 Requirements

D. SBE /DBE Program Provisions for Job Order Contracts (JOC)

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

I. INTRODUCTION

The City of Tucson (COT) has conducted a competitive one-step process to retain up to FOUR (4) Contractors for a Job Order Contract (JOC) to provide miscellaneous landscape services at various locations for various City Departments. Housing and Urban Development (HUD), Regional Transportation Authority (RTA) and local funding sources will be used. As such, HUD requirements are hereby incorporated into the contract in Exhibit C. For Federal Aid projects, Contractors shall be provided with the most current and appropriate wage determination by the user department with the request for job order pricing. Individual job orders shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement. For federally funded projects, Contractors must comply with all Davis-Bacon Act requirements before any work can commence. The estimated budget for the first year is $850,000 and bonding per job will be an option. The term of this contract will be one year with FOUR (4) one-year renewal options. Services will be requested on an as-needed, if-needed basis and the resultant contract is neither exclusive nor a commitment by the COT that the Contractor's services will be required.

1. JOB ORDER CONTRACTING BACKGROUND

Job Order Contracting is an alternative delivery method for construction of public works projects. JOC's differ from the standard project-specific, low bid contracts in that they are indefinite-quantity contracts, which can be awarded on the basis of qualifications. Best value may be considered in awarding job orders under the resulting contract.

During the term of the JOC, work is performed by way of individual job orders. Each job order, initiated by the City, is defined cooperatively by the City and contractor. Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in an executed Notice to Proceed letter prior to proceeding with the work.

I. SPECIAL CONSIDERATIONS:

A. Project Pricing

Upon identification of a project, contractor(s) will be provided any/all details, construction drawings and specifications. The City intends to solicit proposals from the all contractors for the work indicated by the project documents. Individual job orders will be awarded based on the contractors qualifications, the proposed cost, and consideration of the firm's ability to complete the work expeditiously. When quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

B. Award of individual Job Orders

Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work. Each individual job order shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement prior to services being rendered. For any individual job $50,000 or greater that results in the establishment of DBE/SBE goals, contractor shall submit a DBE/SBE plan for OEOP review, per DBE/SBE program requirements outlined herein. Davis Bacon eligible projects will be identified in the request for price and schedule proposals for individual projects the most recent wage determination will be provided at that time.

C. Miscellaneous

- Use of subcontractors is allowed; however, each subcontractor must be identified and approved by the City Representative prior to commencement of work.
- All correspondence and data submitted by the Contractor under this contract shall reference the contract number, title, and full purchase order number.

D. Permitting:

The contractor is responsible for submitting and securing all necessary City and County permits. The City is responsible for the City required permit fees. The contractor is responsible for any Pima County fees, such as Pima County Wastewater fees.

II. SCOPE OF WORK

The scope of work will vary with each individual job order. It is expected that the specific Scope of Work and any Special Provisions, Plans, Specifications and Details shall be provided by the user Department prior to soliciting bids for individual job orders. Project pricing is anticipated to be by Unit Price or Lump Sum.

SECTION 1: SPECIAL CONDITIONS

A. Work Under This Contract

The work to be done under this Contract shall include the furnishing of all labor, material, and equipment necessary for or incidental to the construction and completion of all work indicated by the individual job orders. This consists of, but is not necessarily limited to:

The planting of trees, shrubs, and cacti; grading, excavation, ripping of soils, installation of hydroseeding; the placement of decorative rock and boulders; the installation of an irrigation systems, and controls and all incidental work required to complete in place; sidewalks and/or walking/bike paths; drainage pipes/scuppers; fencing; non load-bearing walls; signage; erosion control/SWPPP; rip rap; hand seeding, hand watering and mulching. Some projects may require a Certified Arborist.

All work in the public rights-of-way shall be done in accordance with the 2003 City of Tucson / Pima County Standard Specifications and Standard Details for Public Improvements, and TDOT Standard Details unless directed otherwise by the City's Project Manager for that particular Job Order. The work, when performed in the public rights-of-way, for the Department of Transportation, shall not require an Excavation Permit. This shall not preclude the contractor from obtaining permits required from other agencies and organizations that may be required for the performance of a job order. Permits may be required for work on real property belonging to the City or other private property, as required by ordinance, State or Federal Law. The term Engineer, shall represent the Contract Representative on projects constructed in the public rights-of-way.

B. Description of Work

This Contract was prepared to provide an expeditious means to meet landscaping requirements and needs on existing and future City facilities and public rights-of-way. The work to be performed consists

of furnishing all labor, material, equipment, and supplies in a workmanlike manner, in accordance to the 2003 City of Tucson / Pima County Standard Specifications for Public Improvements (hereto referred to as the Standard Specifications).

C. Location of Project

The individual job orders will be located at facilities throughout the City and Pima County. Job orders may also be issued for work in the public rights-of-way.

D. Special Provisions

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107-6 Archaeological Features: of the Standard Specifications is modified to add:

In the event that archaeological or historical features are encountered, cease work that could damage the features and contact Jonathan Mabry at the City of Tucson Historic Preservation Office at 837-6965 or 791-4171 and the engineer.

SECTION 109 – MEASUREMENT AND PAYMENT

109-5(B)(3)(a) Rental Rates (Without Operators): of the Standard Specifications is modified to add:

The Rental Rate Blue Book adjustment factor (F) will be 0.933.

SECTION 701 - MAINTENANCE AND PROTECTION OF TRAFFIC

701-1 Description: of the Standard Specifications is modified to add:

All work shall be performed during daylight hours unless a written program from the Contractor is received and approved by the City Engineer. If night work is approved, all other specifications, such as temperature requirements, must be met. Night work shall consist only of those items specifically approved by the City Engineer. If night work is approved, the City Representative may terminate all, or any portions, of the night work at any time. The remaining portion of this section shall further restrict all work, including night work.

Traffic Control Plan

No less than 5 working days prior to commencement of any work on any site or job order that will impact traffic movement, in the public rights-of-way, the Contractor shall submit for approval a detailed traffic control plan. The traffic control plans shall be on paper reproducible on a copier or blueprint machine (maximum paper size for copier prints is 8-1/2" x 14"). The plans shall be submitted to the Project Administrator/ Manager, Field Engineering Section, located in the County/City Public Works Center, 201 North Stone Avenue, 4th floor.

No separate payment shall be made for the traffic control plans. The costs shall be included in the overall cost of the project. The overall cost shall also include applicable plan review and permit fees.

Traffic Control/Lane Closures must be in accordance with the Manual on Uniform Traffic Control Devices as amended by the State of Arizona and the 2005 edition of Additions by the City of Tucson,

available at the City of Tucson Traffic Engineering Division, located in the County/City Public Works Center, 201 North Stone Avenue, 5th floor, and at http://dot.tucsonaz.gov/traffic/barricading.cfm.

No Arterial or Collector Street restriction between 7-9 a.m. and 4-6 p.m., Monday through Friday.

The Contractor must obtain permission a minimum of three (3) days in advance, except in an emergency, before closing or barricading any street or public right-of-way.

Barricading shall be in accordance with the approved barricading plan.

If the Contractor is allowed to temporarily eliminate parking on any streets, the Contractor shall arrange 24 hours in advance to have the meters hooded by the City of Tucson Parkwise Division. Parkwise may be contacted at (520) 791-5071 and information obtained at http://tucsonaz.gov/parkwise. The Contractor shall absorb any costs.

701-2 Materials: of the Standard Specifications is revised to add:

(A) Conformance:

Except as specified herein, all equipment, procedures used by workers, devices and facilities shall conform to the requirements of the MUTCD and associated Traffic Engineering Supplement.

(B) Safety:

(1) General Requirements:

All traffic control devices listed below as Category I and Category II devices shall meet the evaluation criteria for Test Level III per NCHRP (National Cooperative Highway Research Program) Report 350.

At the pre-construction conference the contractor shall submit a letter certifying that all such traffic control devices to be used on the project will meet the above-referenced criteria. The certification shall contain the following:

(a) A list of all Category I and II traffic control devices to be used on the project.

(b) The project number.

(c) A statement verifying that these devices, and their application, meet the requirements of NCHRP Report 350 Test Level III.

(d) The name, title and signature of a person having legal authority to bind the manufacturer or supplier of the Category I and II devices. The binding authority shall be in accordance with Subsection 106.05(B)(5).

If additional Category I or II devices are required at a later date, the contractor shall provide an amended certification letter to the Engineer specifying that such devices also comply with the requirements of NCHRP Report 350 Test Level III.

For all Category I and Category II devices used on the project, the contractor shall also acquire or have access to reports which verify that such devices meet the above-referenced criteria. The reports shall

contain the name and model of the tested traffic control devices, detailed drawings or product literature of each, and under what conditions the devices passed. The traffic control devices detailed in the report shall be the complete warning devices, including warning lights, flags, ballast and any other auxiliary attachment allowed. Reports for Category II devices are prepared by the Federal Highway Administration (FHWA). For Category I devices, the supplier is responsible for testing the product and providing a report which verifies that the device meets the criteria of NCHRP Report 350, Test Level III. If requested by the Engineer, the contractor shall provide copies of such reports within one working day.

(2) Category I Devices:

Category I devices are low-mass traffic control devices that will not cause an appreciable change in speed of an impacting vehicle, nor is it likely that any part of the device will intrude into the passenger compartment. The following traffic control devices will be considered Category I devices: rubber or plastic traffic cones, rubber or plastic tubular markers, single-piece plastic drums, plastic or fiberglass delineators. No warning lights, signs, flags or other auxiliary devices are allowed on Category I devices. Should any of these attachments be added to a Category I device, the Category I device will be considered a Category II device. Ballast at the base, such as a rubber tire, is an acceptable attachment to Category I devices. The single-piece plastic drum refers to the construction of the body of the drum exclusive of a separate base, if any.

(3) Category II Devices:

Category II devices are low-mass traffic control devices that will not cause a significant change in speed of an impacting vehicle. The following traffic control devices will be considered Category II devices: type I, II, and III barricades with or without warning lights; vertical panels with or without warning lights; signs and sign stand (all types) with or without warning lights and/or flags; drums, other than those listed in Category I, with or without warning lights; and any Category I devices with attached warning lights.

701-2.03 Temporary Concrete Barrier: of the Standard Specifications is revised to read:

Temporary concrete barrier shall conform to the requirements of Subsections 910-2 and 910-3 of the standard specifications for precast sections except that the dimensions of the connecting pin shall be 1 ¼ inch diameter by two feet five inches in length.

701-2.04 Temporary Pavement Markings: is revised to read:

Paint for temporary striping shall be white or yellow in accordance with the Manual on Uniform Traffic Control Devices. Temporary striping shall be 3-1/2 inches in width. The finished line shall have well defined edges and be free from waviness. Lateral deviation of the temporary stripe shall not exceed 1 inch in 100 feet.

Symbols (such as arrows) and legends (such as only) shall not be applied as temporary installations.

701-3.01 General: of the Standard Specifications is modified to add:

Traffic control does not include any devices or services used solely for the convenience of the Contractor, or to protect the Contractor's work. Excluded from Traffic Control (for the convenience of

the Contractor) is the use of devices and services (flagpersons and uniformed officers) which serve only to save the Contractor time and/or expense in his daily operations.

An example would be the use of flagpersons to control traffic at an equipment crossing in the construction zone in order to provide the right-of-way to construction equipment. Another example is the use of barricading devices around excavations in lieu of backfilling the excavation. Similarly, when a permanent below ground structure, which is to be surrounded or protected by a permanent device such as a wall or fence, is completed to the point where the permanent protection could be installed, the continued use of temporary protection [barricades, temporary concrete barriers (new installation), etc.] is for the Contractor's convenience.

701-3.02 Basic Maintenance and Protection of Traffic is modified to add:

The contractor shall provide and maintain, at all times, safe and adequate, emergency access lane for all affected directions at arterial and collector intersections. This lane shall be used for emergency vehicles only and will be adequately signed.

Should it become impossible to maintain an emergency access lane, a point control by a police officer will be provided to wave emergency vehicles through. The contractor shall notify the affected parties (police, fire, ambulance, hospitals, etc.) a minimum of 24 hours in advance of the disruption of the emergency access lane. The emergency access lane shall be restored as soon as possible.

701-3.06 Temporary Concrete Barriers: of the Standard Specifications is modified to add:

The Contractor shall provide temporary concrete barriers any time that traffic is adjacent to an open trench.

701-3.11 Flagging Services: of the Standard Specifications is modified to add:

The Contractor shall furnish verification to the Engineer that all civilian flaggers have completed a recognized training and certification program. Flaggers certified by the American Traffic Safety Services Association (A.T.S.S.A.) or by the National Safety Council shall be acceptable. Certification through other programs offering flagger training must be approved by the Engineer. Flagger certification must be current. Training and certification shall be required at least once every two years.

701-3.14 Traffic and Work Restrictions: of the Standard Specifications is modified to added:

It shall be the Contractor's responsibility to contact the adjacent and/or impacted property owners and tenants one week prior to construction. The City will furnish the written communication to be delivered by the Contractor (to be hand-delivered or left at doorway).

The Contractor shall provide vehicular access to property owners/tenants unless absolutely impossible to do so. Accessibility will be provided at the first opportunity.

There shall be no separate pay item for the cost of the resident notification and shall be included as a part of the overall project.

701-4.02 **Construction Area Elements:** of the Standard Specifications is modified to add:

The Agency will reimburse the contractor for the work under this section on the basis of bid prices or the predetermined reimbursement rates as specified in the Special Provisions.

(A) **Elements of Work (Complete-in-Place):** The elements of work listed under this subsection will be measured for payment upon the satisfactory completion of the initial installation or obliteration. Except as hereinafter specified under Basis of Payment, no subsequent measurements will be made:

Element of Work	Unit	Rate($)
Supply/Install/Remove		
Temporary Concrete Barriers	L.F.	5.00
Temporary Impact Attenuation (Sand Barrel)		
(Installation & Removal)	Each	5.00
Specialty Sign		Invoice + 10%
Preformed Pavement Marking (Type II)	L.F.	1.60
Preformed Pavement Marking (Type III)	L.F.	1.00
Temporary Pavement Marking (Painted Line)	L.F.	0.13
Pavement Marking, Preformed (Type I), Legend	Each	125.00
Pavement Marking, Preformed (Type I), Single Arrow	Each	100.00
Pavement Marking, Preformed (Type I), Merge Arrow	Each	115.00
Obliterate Pavement Marking	L.F.	0.25
Obliterate Pavement Legends	Each	25.00
Obliterate Pavement Arrows (Single, Double or Merge)	Each	22.00
Delineator (ADOT Std. Dwg. 4-M-4.01)(Temporary)	Each	20.00
Reflective Raised Pavement Marker (Temporary)	Each	4.00
Reflective Raised Pavement Marker (Permanent)		
(Used as Temporary)	Each	4.50
Non Reflective Raised Pavement Markers (Temporary)	Each	2.50
Remove Raised Pavement Markers	Each	1.00
Chip-Seal Pavement Marker (Single Capped)	Each	2.00
Chip-Seal Pavement Marker (Double Capped)	Each	3.00
Embedded Sign Post (Installation, Use & Removal)	Each	35.00

(B) **Elements of Work (In-Use) and Flagging:** The elements of work listed under this subsection will be measured for payment from the time at which the element is put into active use on the project and accepted by the Engineer until such time that the Engineer determines that the element is no longer required. Individual flags and sandbags used in conjunction with the traffic elements of work shall be considered incidental items. No separate payment shall be made for flags or sandbags and their cost shall be included in their respective elements of work. The work shall also include all maintenance, cleaning, and repair of all elements. The Engineer must also approve the use of Flagging Services. Flagging Services will be paid as indicated in this subsection.

Element of Work	Unit	Rate($)
Temporary Concrete Barrier (In Use)	L.F./Day	0.04
Temporary Impact Attenuation (Sand Barrel)(In-Use)	Each/Day	0.20
Flashing Arrow Panel	Each/Day	96.00
	Hour	5.00
Pilot Truck and Driver	Hour	30.00
Attenuator Truck and Driver	Hour	42.24
Vertical Panels	Each/Day	0.50
Traffic Cones (18 inch) (450mm)	Each/Day	0.10
Traffic Cones (28 inch) (710mm)	Each/Day	0.15
Barricade (Type II)	Each/Day	0.50
Barricade (Type III)	Each/Day	0.75
Flashing Warning Light (Type A)	Each/Day	0.25
Flashing Warning Light (Type B)	Each/Day	2.50
Steady-Burning Warning Light (Type C)	Each/Day	0.80
Standard Intensity Reflective Sheeting:		
Small Sign (Less Than 10 S.F.) (0.9m2)	Each/Day	0.50
Large Sign (10 S.F. or more) (0.9m2)	Each/Day	0.80
Portable Sign Stand (Spring Type)	Each/Day	2.10
Portable Sign Stand (Large Sign, 10 S.F. or more) (0.9m2)	Each/Day	1.00
Portable Sign Stand (Small Sign, Less Than 10 S.F.) (0.9m2)	Each/Day	0.70
High Level Flag Tree Sign Stand	Each/Day	0.40
Drum (18" x 36") (450mm x 900mm)	Each/Day	1.20
Orange Safety Fence (4ft. min. by 50 ft.) (1.2m min. x 15m)	Each/Day	1.50
Changeable Message Board (Pre-approved)	Each/Day	100.00
Chain Link Fence	L.F./Day	0.04
Flagging Services (Civilian)	Hour	15.18
Flagging Services (Civilian)(Federal Aid Proj.)	Hour	Prev. Wage
Flagging Services (Uniformed Officer)(Off Duty)	Hour	Invoice + 10%
Official Police Vehicle (Off Duty)	Hour	Invoice + 10%

701-4.04 Flagging Services: of the Standard Specifications is modified to add:

Overtime hours will be converted to straight times for measurement.

701-5 Basis of Payment: of the Standard Specifications is modified to add:

The traffic control bid item (Construction Area Traffic Control Elements) in the proposal is for bidding purposes only. Traffic Control will be paid according to the predetermined reimbursement rates listed herein.

The Contractor is responsible for the proper placement/maintenance of all traffic control elements in accordance with MUTCD requirements. The Basic Maintenance and Protection of Traffic Control Elements item shall be paid for at a lump sum as bid (Item 7010001).

701-5.02(A) General: of the Standard Specifications is modified to add:

The Agency will reimburse the Contractor for the work of providing and maintaining traffic control elements on the basis of the predetermined reimbursement rates for the Elements of Work listed in

Section 701-4.02 (A) and (B) as listed herein. (The pre-determined amount shown on Item 7010006 is for proposal submittal purposes only.)
Until determined otherwise, the City of Tucson, Contract Representative will pay for Traffic Control elements of work according to the schedules listed herein.

III. CONTRACT TERM AND RENEWAL

The term of this contract shall be OCTOBER 1, 2013, through SEPTEMBER 30, 2014, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, as its sole option, to renew the Contract for four (4) additional one-year periods, or portions thereof. If the City chooses to exercise this option, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of fee basis and minor scope additions and/or deletions.

1. PRICE ADJUSTMENT: The City will review fully documented requests for fee basis adjustments after any contract has been in effect for one (1) year. Adjustments will only be made at the time of contract renewal or extension, except for financial emergencies, and will be a factor in the renewal/extension review process. The City will determine whether the requested adjustment or an alternate option is in the best interest of the City. Any adjustment will be effective on the first day of the contract renewal or extension.

IV. SPECIAL TERMS AND CONDITIONS

1. **ANNUAL ESTIMATE:** The estimated dollar value of this contract for the initial one-year term is TWO HUNDRED THOUSAND DOLLARS ($200,000).

2. **BASIS FOR AWARDING INDIVIDUAL JOB ORDERS:** In the event the City awards more than one contract for these services, individual job orders will be awarded based upon consideration of the firm's ability to complete the work expeditiously and the proposed cost. The City intends to request price and schedule proposals from all contracted firms for each individual job order. However, when quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

   Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work.

   The Contractor shall be available on a five-day work basis throughout the term of the contract unless notified in writing by the City that this requirement may be temporarily waived due to the Contractor's approved written request or a reduced need by the City. The Contractor must be available to commence work on assignments within one week from award of an individual job order.

3. **COMPENSATION AND METHOD OF PAYMENT**: In consideration of the performance of the services described in the Scope of Services of each individual job order and pursuant to the master Scope of Work herein, the City shall pay the Contractor in accordance with the negotiated contract rates, and the Contractor shall charge the City only in accordance with those same rates.

   Compensation under this contract should not exceed $50,000 per individual job order unless a waiver is requested of and granted by the Director of Procurement.

The City will pay the Contractor following the submission of itemized invoice(s) for the service rendered. No payment shall be issued prior to receipt of material or service and correct invoice.

All requests for payment shall follow a format to be approved by the City Representative. Invoices shall be submitted monthly on a job-by-job basis.

4. BONDING REQUIREMENTS: Contractor shall file with the City, prior to the time of execution of the contract and annually, if the term of this contract is extended by the City, payment and performance bonds in the forms prescribed by the City unless bonding per project. The bonds must cover all construction performed under job orders. The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement, as provided under A.R.S. 34-610. Bonds may be provided as follows: annual bonds in the amount designated by the agency, or bonding per each individual job. Successful contractor(s) will designate bonding methodology prior to contract award.

5. DBE PROGRAM REQUIREMENTS:

The Job Order Contractor shall be required to comply with DBE Program requirements, if goals are applicable, on federally funded projects that exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed bidder's statement of proposed DBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The DBE Plan must include:
1. The names and addresses of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction as well as a DBE Acknowledgment of Participation which provides signed confirmation from the DBE(s) that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

A signed offer in response to this RFQ represents the offerors's intent to comply with the DBE program.

Also See EXHIBIT D - DBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

6. SBE PROGRAM REQUIREMENTS:

The Job Order Contractor shall be required to comply with SBE Program requirements, if goals are applicable, on projects that meet or exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed offeror's statement of proposed SBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The SBE Plan must include:
1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction.

A signed offer in response to this RFQ represents the offerors's intent to comply with the SBE program.

Also see: EXHIBIT D - SBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

7. **PERFORMANCE RATING:** At the completion of each term or termination of this contract, the City will evaluate the Contractor based on performance under this Contract. This rating will be used in the overall evaluation of the Contractor when applying for future work with the City.

8. **AUDIT AND INSPECTION OF RECORDS:** The Contractor shall permit the authorized representatives of the City Of Tucson to inspect and audit any books, documents, papers, data and records relating to its performance under the contract until the expiration of three years after final payment under this contract. The City shall have the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by the City to be incomplete or erroneous.

The following access to records requirements apply to this Contract:
The Contractor agrees to provide the City of Tucson or any of its authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City of Tucson or any of its duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

9. **CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:

A) Amend the contract or enter into supplemental verbal or written agreements;
B) Grant time extensions or contract renewals;
C) Otherwise modify the scope or terms and provisions of the contract.

The contract shall only be modified with the approval of the Department of Procurement. Except in the case of documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Department of Procurement through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

10. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

11. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to

A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

12. **CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-397**: By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-397. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.

13. **CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at http://www.tucsonaz.gov/etax. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.

14. **FEDERALLY FUNDED PROJECTS:** For projects that are identified as being federally funded, Federal Labor Standards will be applicable to that project. All Federal forms are attached and will be incorporated into any resulting contract(s)*. It shall be mandatory upon the Contractor(s) to whom the contract is awarded, and upon subcontractors working on this project to comply with the following:

    A. Davis Bacon Act: (AZ Wage Decision) Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions.
    B. Work Hour and Safety Standards Act: overtime pay and safety.
    C. Mandatory Preconstruction meeting for Prime Contractor and all listed subcontractors

15. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See **www.tucsonaz.gov/procure** and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf for a listing of participating agencies. The parties agree that these lists are subject to change.

    Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

    The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

V. PRICING

A. On the ensuing page are labor and/or equipment rates to be used in pricing the work under this contract. This pricing list is not all inclusive of the work that may be required. Those items of work which are not included may be negotiated on a job order by job order basis.

B. The rates established under this contract are not to exceed prices for those items of work identified. Proposals on individual job orders may not exceed those unit prices but may be less than that at the contractors discretion as they compete for each individual job order.

NORTHWEST Landscaping

September 9, 2013

Matt Hausman
City of Tucson Department of Procurement
255 W. Alameda, 6th Floor West
P. O. Box 27210,
Tucson, AZ 85726-7210

Matt,

Here is the labor and equipment rate sheet:

Item Description	Unit	Unit Price
Skid Steer Loader with operator	HR	$45.00
Gannon with operator	HR	$65.00
Excavator with operator	HR	$65.00
Trencher with operator	HR	$55.00
Water Wagon with operator	HR	$50.00
Labor	HR	$23.00
Foreman	HR	$28.00
Irrigation Technician	HR	$45.00

Please call if you have any questions.

Thank You,

Steven Chrismer

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT NO. 130762
CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

VI. CONSTRUCTION SERVICES AGREEMENT

CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of November, 20 13, by and between the City of Tucson, a municipal corporation organized and existing

under the laws of the State of Arizona, hereinafter called the "City", and _____

of the City of Tucson, County of Pima, and State of AZ hereinafter called the "Contractor".

WITNESSETH: That the Contractor and the City, in consideration of the mutual covenants herein contained, agree as follows:

Contract Number: 130762
Contract Name: Job Order Contract (JOC) for Landscape Construction Services

1. **Pricing - See Section V. of the Contract**

2. **Notice to Proceed, Completion Time, and Liquidated Damages**

2.1 It is agreed that the City Representative will issue the Notice To Proceed with the Work to be performed under this Contract within twenty (20) consecutive calendar days after the date of execution of this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

2.2 The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

2.3 Liquidated Damages. Completion times will be specified in the Notice to Proceed. Applicable liquidated damages shall be assessed for each day the Work remains incomplete after the scheduled completion date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the City will sustain on account of late completion.

3. **Miscellaneous**

3.1 Guarantee. The Contractor shall guarantee all work under this Agreement against defects of material and workmanship for a minimum of two years from the date of Final Completion unless otherwise specified.

3.2 Contract Documents. The following listed documents constitute the Contract Documents and they are all as fully a part of this Agreement as if repeated herein:

1. Any and all Amendments
2. Any and all Supplementary General Conditions, Special Requirements and/or Special Provisions included herein.
3. This Agreement.
4. Standard Terms & Conditions or General Conditions for Construction
5. Construction Specifications, including any and all Standard, Special, Technical, and Supplementary Specifications included herein.

6. Project Plans, if applicable
7. SBE/DBE Plan, if applicable
8. Performance and Payment Bonds
9. Insurance Requirements

3.3 Precedence. In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved by giving precedent to the terms of the above documents in the order listed. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Agreement shall be a part of the Agreement between the parties and shall take precedence over all of the other Contract Documents.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date and year first written above.

CITY OF TUCSON, a municipal corporation

By: _____
As Procurement Director and Not Personally

NORTHWEST LANDSCAPING
Contractor

By: _____

Title: VICE PRESIDENT

APPROVED AS TO FORM this 5th
day of November, 2013

_____
As City Attorney and not personally

NOTE: The City's Contract Representative is:

GARY WITTWER (520) 837-6618

SAMPLE FORMS

STATUTORY PERFORMANCE BOND
(Penalty of this bond must be 100% of the specified Contract amount.)

KNOW ALL MEN BY THESE PRESENTS: That the City of Tucson, Arizona, a municipal

corporation, by action of the Purchasing Agent on _____, 20___

has awarded to _____

hereinafter designated as the "Principal", a Contract for the construction of _____

_____

which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein; and

WHEREAS, said Principal is required under the terms of said Contract, and the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we the Principal and _____

_____

a corporation organized and existing under the laws of the State of _____
_____

with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Tucson, a municipal corporation, (hereinafter called the Obligee), in the penal amount of _____

_____ Dollars ($_____),
for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

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

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court of a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named, on the _____day of _____
20 _____.

_____
Principal

By _____

ATTEST:

_____
Title

_____
Surety

By _____
Attorney in Fact

_____
Agency of Record

_____
Agency Address

_____
City and State

ATTEST:

_____
Title

APPROVED AS TO FORM THIS _____

DAY OF_____, 20 _____.

_____
City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

STATUTORY PAYMENT BOND

(Penalty of bond must be 100% of the specified Contract Amount.)

KNOW ALL MEN BY THESE PRESENTS:

That _____,

as Principal, and _____

as Surety, are held and firmly bound unto the City of Tucson, Arizona, a municipal

corporation (hereinafter called the Obligee). in the penal sum of _____

_____Dollars ($_____), for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract with said Obligee

dated _____, 20 _____, hereinafter called the Contract, for _____

_____

which Contract shall be deemed a part hereof as fully as if set forth herein, and under the terms thereof the Principal has agreed to furnish a bond such as herein set forth;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, or in any amendment or extension of or addition to said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all rights and remedies on this bond shall insure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to the same extent as if they were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed

by the Principal and Surety named, on the _____day of_____, 20 _____.

_____
Principal

By _____

ATTEST:

_____

Title

_____

Surety

By _____

Attorney in Fact

_____

Agency of Record

_____

Agency Address

_____

City and State

ATTEST:

_____

Title

APPROVED AS TO FORM THIS _____DAY OF_____, 20

_____

City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

CONSENT OF SURETY TO FINAL PAYMENT

The undersigned Surety (hereinafter "Surety"), having provided the City of Tucson (hereinafter "City") with a payment bond for the payment of labor and material provided to the

Contractor _____

(hereinafter "Contractor") in connection with City of Tucson Contract No. _____ (hereinafter the "Project") hereby consents to final payment.

Surety further releases City from all claims, past, present, future, known or unknown which it may assert or could have asserted against City as a result of City's final payment.

This release is only intended to relieve City of any liability or responsibility in connection with final payment to the Contractor in connection with the Project and shall in no way be construed to relieve Surety of any obligation under the payment bond issued for the Project.

IN WITNESS WHEREOF, the Surety has executed this instrument this _____ day of _____, 20 _____.

SURETY

_____ _____

Authorized Representative

Title: _____

STATE OF ARIZONA)
) §.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____,

20 _____, by _____,

on behalf of _____.

_____

NOTARY PUBLIC

MY COMMISSION EXPIRES:

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EXHIBIT B

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ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Amendment - written or graphic instrument issued prior to the due date which clarifies, corrects or changes the Solicitation.

Architect/Engineer - the person licensed to practice architecture/engineering by the State of Arizona and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract plans, drawings, specifications and related documents. May be utilized to provide construction administration services.

Bonds - bid, performance and payment bonds and other instruments of security.

Change Order - a document approved by the City Contract Representative and which is signed by the Contractor and the City's Director of Procurement or duly authorized designee and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Completion time, issued on or after the effective date of the Contract.

City - means the City of Tucson, Arizona, a municipal corporation.

City Contract Representative - the City official administering the Contract for the City of Tucson.

Completion Time - the number of consecutive calendar days agreed to by the City and Contractor for completion of the Work, which may be revised by written Change Order.

Construction – the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real public property.

Construction-Manager-At-Risk – a project delivery method in which there is a separate contract for design services and a separate contract for construction services, with design and construction taking place in sequential or concurrent phases, and in which finance services, maintenance services, operations services and preconstruction services may be included.

Construction Services – either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

a) construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods;
b) a combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

Contract - the written agreement and all associated attachments, drawings, amendments and change orders executed between the City and the Contractor covering the Work to be performed.

Contract Price - the amount payable by the City to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order, or, in the case of a job-order contract, in the Notice to Proceed.

Contract Officer - the City official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the City's Director of Procurement and in accordance with the Tucson Procurement Code.

Contractor - the person, firm or corporation with whom the City has entered into the Contract.

Design-Build – the process of entering into and managing a contract between the City and a contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services and preconstruction services.

Design Services – architect services, engineer services or landscape architect services.

Director of Procurement – the person acting as Director of the City's Department of Procurement and who has authority to award and revise City solicitations and contracts for construction, construction services, and construction-related services as necessary.

Drawings - the graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Estimate for Payment - a form furnished by the City or an approved form submitted by the Contractor in lieu of city furnished form, and is required to be used when submitting requests for payments for work actually performed and materials supplied during a an agreed-to preceding period of time.

Field Order - a written order or directive issued by the City Contract Representative that orders minor changes in the Work.

Final Completion Date - the calendar date when the Work is one hundred percent (100%) complete as determined by the City.

Finance Services – financing services for the Work.

Guaranteed Maximum Price or GMP - the sum of the maximum cost of the Work; the Construction Manager @ Risk's or Design Builder's construction fee; general conditions fee; taxes, bonds, insurance costs; and bid contingency as proposed and approved pursuant to this Agreement. The approved GMP will be made part of this Agreement by executing an amendment or additional amendments for phased construction.

Job-Order-Contracting – a project delivery method in which the contract is a requirements contract for indefinite quantities of construction and in which specified job orders are issued during the contract and may include finance services, maintenance services, operations services, preconstruction services and design services.

Liquidated Damages – a sum set forth in the Contract documents that will be deducted from any monies due to the Contractor, not as a penalty, but in lieu of actual damages for late completion of the work.

Maintenance Services – routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Notice to Proceed - a written notice given by the City to the Contractor fixing the date on which the Completion time will commence and upon which the Contractor shall start to perform the

Contractor's obligations under the Contract. In the case of a job order, it may also contain the specifications exclusive to the job order as well as consideration for the Contractor.

Operations Services – routine operation of existing facilities, structures, buildings or real property.

Preconstruction Services – services during the design stage of the Work.
Contract

Public Inspector(s) - that person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes.

Schedule of Values - a schedule submitted by the Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

Shop Drawings - drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

Specifications - those portions of the Contract, or Notice to Proceed if a Job Order, consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Substantial Completion – a written declaration of the date upon which the City, in its sole discretion, determines the Work is substantially complete such that the City has beneficial use and/or occupancy. Upon substantial completion, the right of the City to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within thirty days of substantial completion.

Tucson Procurement Code – in addition to applicable State statutes and applicable Federal regulations and requirements, the municipal ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

The Work - the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract, or, in the case of a job-order contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract and/or Notice to Proceed, as appropriate.

ARTICLE 2. THE CONTRACT ITS EXECUTION AND INTENT

2.1 <u>The Contract</u>

2.1.1 The documents in the Contract include any amendments, drawings, change orders and approved Contractor submittals.

2.1.2 The Contract comprises the entire agreement between the City and the Contractor concerning the Work and supersedes any prior negotiations, representations or

agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

2.2 **Intent of the Contract**

2.2.1 The intent of the Contract is to include all labor, materials, equipment, transportation and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

2.2.2 The Contractor shall take no advantage of any apparent error or omission in the plans, estimated quantities or specifications. In the event the Contractor discovers such an error or omission after contract award, the Contractor shall immediately notify the City Contract Representative. The City Contract Representative shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the contract.

2.2.3 The Contract shall be construed in accordance with the laws of the State of Arizona, and all such laws regulating the construction of public works by the City are hereby incorporated herein by reference and made a part hereof.

2.2.4 Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

2.2.5 The organization of the Contract into divisions, sections or articles is merely for the purpose of convenient reference, and neither the headings nor divisions shall have any legal or Contractual significance and shall not control the division of the Work by the Contractor among the various subcontractor or trades.

2.2.6 The Contractor shall include all utility fees, permits, licenses, etc. including sewer connection fees in each estimate or proposal submitted.

2.3 **Execution**

2.3.1 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract.

2.4 **Ownership of the Contract**

2.4.1 The Contract, including, but not limited to, the drawings and specifications, is the property of the City and is not to be used by the Contractor or any subcontractor on other projects outside the scope of the Work without the express written consent of the City.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.1 **Lines of Authority and Communications**

3.1.1 The City's Director of Procurement is the City official with overall authority and responsibility for the award and administration of City Contracts. The Director of Procurement or his designated Procurement Department representative after consultation with the City Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Work.

3.1.2 The City Contract Representative is the designated representative of the particular City department for which the Work is being constructed (the "user department") or the City department which is responsible for the oversight of the work.

3.1.3 Day-to-day administration of the Contract is the responsibility of the City Contract Representative. The City Contract Representative is the City's representative during the prosecution of the Work and shall act as surveillance and technical advisor for the City. The City Contract Representative duties are more fully described in Section 3.2 of this Article.

3.1.4 The Contractor shall supervise and direct the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract gives other specific instructions concerning these matters. The Contractor's duties and responsibilities are more fully described in Article 4 of these Contract conditions.

3.1.6 Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall initially communicate with the City Contract Representative.

3.2 **<u>City Contract Representative's General Authority and Responsibilities</u>**

3.2.1 Unless the Contractor is responsible for the design of the Work, the City Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, up to three copies of drawings, specifications and instructions available for the execution of the Work. The City Contract Representative **may** furnish additional clarifications or interpretations in writing or by drawings as may be necessary for the proper progress and execution of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications where needed. All drawings, specifications and copies thereof furnished by the City Contract Representative are City property. They are not to be used on other work and, with the exception of the signed Contract, and are to be returned to the City Contract Representative at the completion of the Work.

3.2.2 The City Contract Representative shall make general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the City Contract Representative will become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.

3.2.3 The City Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished and Work performed and as to the rate of progress of the Work, and all questions which may arise as to the interpretation of the drawings and specifications.

3.2.4 The City Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work. The City Contract Representative's failure during the progress of work to discover or reject materials or work not in accordance with the plans, specifications or contract documents shall not be considered an acceptance of the work or materials or a waiver of defects. Neither the failure of the City Contract Representative to properly perform inspections, tests or approvals required by the contract documents nor the activities or duties of the City Contract Representative

in the administration of this contract shall relieve the Contractor from the contractor's responsibility for the means, methods, techniques, sequences or scheduling of the construction or the obligation to perform the work in strict accordance with the contract documents.

3.2.5 The City Contract Representative shall conduct an initial review of, and approve or deny, written Change Orders submitted by the Contractor, and may prepare Change Orders and provide field clarifications and corrections. All Change Orders shall be approved by the Director of Procurement or his designee prior to any work being done. However, in emergencies endangering life or property, the City Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.

3.2.6 The City Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Contract Officer as to all claims of the Contractor.

3.2.7 The City Contract Representative will review and process the Contractor's monthly Estimates for Payment, as more fully set forth in Article 7 of these General Conditions.

3.2.8 The City Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the Contract Officer.

3.2.9 The City Contract Representative will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility.

3.3 **Public Inspections**

3.3.1 Unless otherwise specifically provided in the Contract, Public Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications and applicable codes, and may provide clarification of any unspecified or unclear item or situation.

3.3.2 If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the City Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the City Contract Representative or the Public Inspectors, the Contractor shall advise the City Contract Representative of the date fixed for such inspection.

3.3.3 All tests, inspections or approvals required to be performed by the City Contract Representative, Public Inspectors, or other authorities or entities shall not relieve the Contractor of their obligation to perform the Work in accordance with the Contract.

3.4 **Special Inspections and Testing of Materials**

3.4.1 All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, will be subject to adequate inspection and testing in accordance with accepted standards, to

establish conformance with specifications and suitability for the use intended, as determined by the City Contract Representative.

3.4.2 The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the City Contract Representative. Except as provided in subsection 3.4.3, the City will pay for approved tests and services rendered by the approved laboratory or agency in addition to the Contract price for construction.

3.4.3 When initial tests indicate that any portion of the Work is not in conformance with the Contract because of faulty workmanship, the Contractor shall be required to pay for necessary re-tests. When initial tests indicate that the work is in conformance with the Contract, any re-testing that's ordered by the City shall be paid for by the City.

ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES

4.1 Contractor's Review of Contract and Site Conditions

4.1.1 It shall be the duty of the Contractor to carefully study and compare all drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the City Contract Representative.

4.1.2 The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale; but in the absence of figured dimensions, scale dimensions may be used with the prior written concurrence of the City Contract Representative. The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, level or grades, walks, driveways or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the City Contract Representative immediately. **It is the responsibility of the Contractor to provide BLUESTAKE verification of underground utilities on and off the construction site.**

4.1.3 Change orders will not be issued to cover any cost, loss or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the City Contract Representative.

4.1.4 The Contractor shall perform the Work in accordance with the Contract and with shop drawings, product data and samples that have been approved by the City Contract Representative.

4.1.5 Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the

City Contract Representative and shall be responsible for any required corrective action.

4.2 **Contractor's Supervision**

4.2.1 The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques and procedures and shall coordinate the sequences of all portions of the Work.

4.2.2 The Contractor shall ensure that the key personnel submitted in response to the Request for Qualifications and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of key personnel, the Contractor shall obtain prior approval from the City for key personnel substitution. The Contractor shall ensure that substituted personnel are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

4.2.3 The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its subcontractors and of persons, either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor.

4.3 **Materials and Labor; Warranty**

4.3.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, equipment, tools, construction equipment and machinery, water, gas, heat, utilities, transportation, and other facilities and services necessary for the execution, completion and delivery of the Work within the specified Completion Time.

4.3.2 **The Contractor shall pay all applicable taxes associated with the Work**

4.3.3 The Contractor warrants to the City that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

4.3.4 The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Agency. The Contractor shall receive, inventory, store, inspect, protect, distribute, and install Agency furnished material unless otherwise specified. The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used. The Contractor shall be held responsible for all material delivered to the contractor. Deductions shall be made from any monies due the Contractor to make good any shortages or deficiencies, from any cause whatsoever and for any damage which may occur after such delivery, and for any late delivery charges.

4.3.5 The Contractor will be held to furnish all work as specified in the Contract. After a price proposal for the Work has been accepted by the City, changes of brand named, trade named, trade marked, patented articles, or any other substitutions will be allowed only by written order signed by the City Contract Representative.

Unless otherwise agreed to via Change Order, the City shall receive all benefits of the difference in costs.

4.3.6 Materials not conforming to the requirements of the specifications, whether in place or not, shall be rejected and shall be promptly removed from the site of the work, unless otherwise directed by the City Contract Representative. No rejected material, the defects of which have been corrected, shall be returned to the work site until such time as approval for its use has been given by the City Contract Representative.

4.4 **Construction Schedules and Submittals**

4.4.1 Before commencing the Work, the Contractor shall provide the City Contract Representative with a construction schedule for the Work, fixing the dates at which various pre-determined events shall occur in order to promote a timely completion of the various parts of the Work in accordance with the Contract. The schedule may be revised from time to time as may be required by conditions of the Work, but shall not exceed time limits, or any extensions thereof, set forth in the Contract or in the individual job order, as appropriate.

4.4.2 The Contractor shall prepare and keep current for the City Contract Representative's approval, a schedule of submittals which shall be coordinated with the Contractor's construction schedule and allow the City Contract Representative reasonable time to review such submittals.

4.4.3 After review, the City Contract Representative, with reasonable promptness, shall approve these shop or setting drawings, product data, samples and sequences for conformance with the design concept of the project, the approved construction schedule, and other requirements of the Contract.

4.4.4 The Contractor shall make any corrections required by the City Contract Representative and re-submit such corrected materials to the City Contract Representative for approval. Any correction or change that will result in a design or function change or in an increase or decrease in the Contract price must also receive the prior approval of the City's Director of Procurement or his designee.

4.4.5 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or schedules until the respective submittals have been approved by the City Contract Representative, and shall not deviate from such submittals after final approval by the City Contract Representative.

4.4.6 As-builts documents must be provided to the City by the Contractor within thirty days of substantial completion. The City reserves the right to withhold final payment until complete as-builts have been received in good order by the City Contract Representative.

4.5 **Documents and Samples at the Work Site**

4.5.1 Unless otherwise directed by the City's Contract Representative, the Contractor shall maintain at the Work site a complete file of the drawings, specifications, amendments, change orders and other approved modifications, in good order and marked to reflect changes and selections made during construction, together with all approved shop drawings, product data, samples and similar required submittals. Such files shall be made available to the City Contract Representative and Public Inspectors upon request.

4.6 **Protection and Use of Site - (Signs, Utilities, Water, Sanitation, Traffic, etc.)**

4.6.1 The City will provide land, rights-of-way and easements for all work specified in the Contract. The Contractor shall confine their apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the City Contract Representative, and shall not unreasonably encumber the premises with their material and equipment.

4.6.2 Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the City harmless from damages for any injury done to such pipes, structures or property during the course of the Work.

4.6.3 Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public.

4.6.4 The Contractor shall supply safe drinking water for all Contractor employees at the Work site. Water from existing fire hydrants may be made available to the Contractor upon his request to the City's Water Department through the City's Contract Representative. In such cases where the City elects to provide hydrant water, the Contractor will be provided a meter for the fire hydrant and will be charged the City's current rate for all water used. A deposit for the meter will be required by the City's Water Department.

4.6.5 If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The City Contract Representative will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the City Contract Representative. Extensions in the Completion time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 10 of these General Conditions.

4.7 **Cleaning Up**

4.7.1 The Contractor shall at all times keep the construction site and surrounding area free from accumulations of waste material or rubbish caused by operations under the Contract. Upon completion of the Work, the Contractor shall remove all rubbish, tools, equipment, scaffolding and surplus materials from the site and surrounding areas and leave the area "broom clean" or its equivalent, unless otherwise instructed by the City Contract Representative.

4.7.2 If the Contractor fails to clean up as provided in the Contract, the City may do so and the cost thereof shall be charged against the Contractor.

4.8 **Emergencies**

4.8.1 In an emergency affecting the safety of life or property, the Contractor, without special instruction or authorization from the City Contract Representative, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury.

4.8.4 Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Contract Representative.

4.8.5 The Contractor shall file with the City Contract Representative the names, addresses and telephone numbers of their employees who can be contacted at any time in case of emergency. These Contractor representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by the City or the Public Inspectors.

4.9 **Permits, Fees and Notices**

4.9.1 The Contractor shall, at their expense, obtain all necessary permits and licenses for work performed under the Contract, and shall give all necessary notices required by laws, ordinances, rules, regulations and lawful orders of public authorities pertaining to performance of the Work, public health and safety.

4.9.2 If the Contractor knowingly performs work which is not in compliance with such laws, ordinances, rules, regulations or orders, without such notice to the City Contract Representative, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

4.10 **Royalties and Patents**

4.10.1 The Contractor shall pay all royalties and license fees.

4.10.2 The Contractor and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark, or copyright, and the Contractor shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or, subject to Engineer's approval, replace same with noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

4.10.3 If appropriate, the Contractor shall furnish the City Contract Representative satisfactory evidence of patent licenses or patent releases covering City-specified proprietary materials, equipment, devices or processes, as the case may be.

4.11 **Protection of Persons and Property**

4.11.1 The Contractor shall be responsible for initiating, maintaining, supervising and directing all safety precautions and programs in connection with the performance of the Contract.

4.11.2 The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated whether in storage on or off the Work site.

4.11.3 The Contractor shall, at their own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the work site or adjacent thereto, and the Contractor and their sureties shall be liable therefore.

4.11.4 The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Article 6 of these General Conditions.

4.11.5 In the event the Contractor encounters on the work site material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop work in the area affected and report the condition to the City Contract Representative.

4.11.6 The Contractor shall take all necessary precautions for the safety of employees on the work site and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

4.11.7 The Contractor warrants it is fully familiar and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or recodified from time to time). Also the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or recodified from time to time), as promulgated by the Federal Government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Section 4.12.

4.12 **Indemnification and Insurance**

4.12.1 To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold

harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City.

4.12.2 The Contractor Agrees to:

.1 Obtain insurance coverage of the types and amounts required in this subsection and keep such insurance coverage in force throughout the life of the Contract. The Contractor will provide satisfactory certificates of the required coverage to the Contracting Officer before beginning the Work. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy.

.2 Include the City and Regional Transportation Authority as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies with respect to liability arising out of the performance of the Work. The Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

.3 Provide and maintain minimum insurance coverage as follows:

Coverage Afforded	Limits of Liability
Workers' Compensation	Statute
Commercial General Liability Insurance including: (a) Products & Completed Operations (b) Blanket Contractual (c) Explosion, Collapse & Underground Hazard	$1,000,000 Bodily Injury and property damage Combined Single Limit
Automobile Liability Insurance including: (a) Non-owned (b) Leased (c) Hired Vehicles	$1,000,000 Bodily Injury and property damage Combined Single Limit
[ ] Checked If applicable: Builder's Risk Insurance including: Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft.	Contract Value (Less site preparation)

Builder's Risk insurance shall be required on all vertical construction.

The City reserves the right, at its sole option, to furnish the Builder's Risk Insurance at the City's expense in the event that the City exercises such right, Contractor shall reduce General Conditions and overhead accordingly.

.4 In the event any of the Work is subcontracted, the Contractor shall require the subcontractor to provide Workers' Compensation insurance for all of the subcontractor's employees engaged in the Work, unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation insurance. In case any class of employees engaged in hazardous work under the Contract is not protected under the Workers' Compensation statute, the Contractor

shall provide, and shall cause each subcontractor to provide, adequate employer's general liability insurance for the protection of such of their employees as are not otherwise protected.

ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS

5.1 Subcontracts

5.1.1 The Contractor shall ensure that the assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of subcontractors, the Contractor shall obtain prior approval from the City for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

5.1.3 In job-order-contracting, by appropriate written agreement, the Contractor agrees that each subcontractor has been notified in writing of the negotiated amount or coefficient agreed to for billing purposes. Furthermore, by appropriate written agreement, the Contractor agrees that each subcontractor shall be bound to the Contractor by the terms of this Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.

5.1.4 Contractor shall ensure that each subcontract shall preserve and protect the rights of the City under the Contract with respect to the work to be performed by the subcontractor. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor will be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.

5.1.5 Each subcontract will require the subcontractor to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment to the City in a timely manner, including any claims for extras, extensions of time, and damages for delays or otherwise to the Contractor in the manner provided in the Contract for like claims by the Contractor upon the City.

5.1.6 The Contractor further agrees:

.1 To be bound to the subcontractor by all the obligations that the City assumes to the Contractor under this Contract, and by all provisions thereof affording remedies and redress to the Contractor from the City.

.2 To promptly pay the subcontractor in accordance with applicable State statute.

.3 That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them. Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.

.4 To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.

.5 To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the City in making payments to the Contractor for any cause not the fault of the subcontractor.

.6 To share or forward, as appropriate, with its subcontractors or, as appropriate, with the City, any fire insurance money received by the Contractor under the insurance provisions of the Contract.

.7 That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

.8 To give the subcontractor an opportunity to be present and to submit evidence in any Contractual claim, controversy or dispute.

5.1.7 Nothing in this Article shall create any obligation on the part of the City to pay to, or to see to the payment of, any sums to any subcontractor, except as may otherwise be required by law.

5.1.8 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

.1 Assignment is effective at the sole option of the City and only upon termination of the Contract for cause pursuant to Article 9 of these General Conditions, and only for those subcontract agreements which the City determines to accept by notifying the subcontractor in writing, and

.2 Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 **<u>Separate Contracts</u>**

5.2.1 The City reserves the right to perform construction or operations related to the Work with the City's own forces and to let separate Contracts in connection with other portions of the Work or other construction or operations on the Work site.

5.2.2 The Contractor shall afford other Contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

5.2.3 The City Contract Representative shall coordinate the activities of the City's own forces and of each separate Contractor with the work of the Contractor. The Contractor and all other Contractors on the Work site shall be required to review their construction schedules and cooperate with the City Contract Representative in coordinating the various portions of the Work with the schedules of such separate contractors.

5.2.4 If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the City Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the

reception of the Contractor's Work, except as to defects not then reasonably discoverable.

5.2.5 Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.

5.2.6 If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall defend such proceedings and, if any judgment against the City arises therefrom, the Contractor shall pay or satisfy it.

5.2.7 Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the City shall not be held responsible or liable therefore in any way other than extensions of completion time in accordance with Article 6 of these General Conditions.

ARTICLE 6. TIME FACTORS; LIQUIDATED DAMAGES

6.1 **Time**

6.1.1 Unless otherwise provided in the Contract, the Completion Time is the number of calendar days, including authorized time extensions, specified for completion of the Work.

6.1.2 Completion Time shall commence on the day specified in the Notice to Proceed. The date shall not be postponed on account of the failure of the Contractor, or of any of its subcontractors to take any action required to commence the Work.

6.1.3 The date of Substantial Completion is the date certified by the City Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

6.1.4 The term "day" as used in the Contract shall mean calendar day.

6.1.5 By execution of the Contract documents, or by concurrence with the Notice to Proceed in the case of a job order, the Contractor acknowledges that the time described is a reasonable period for a competent Contractor to complete the Work.

6.1.6 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

6.2 **Liquidated Damages**

6.2.1 The amount of liquidated damages shall be as specified in the Contract documents, or, in the case of a job-order, in the Notice to Proceed.

6.2.2 The Contractor has been put on notice that the City shall enforce the liquidated damages set forth in the Contract documents or Notice to Proceed.

6.2.3 The Contractor agrees that the City will incur damages if the Contractor fails to complete the Work within the Completion time or any approved extensions thereof and that the liquidated damages specified in the Contract or, in the case of a job-order, in the Notice to Proceed, represents a fair and equitable approximation of the City's damages.

Each calendar day that the Contractor shall fail to achieve Substantial Completion after the calendar date agreed to for the completion of the Work provided for in the Contract, the sum set forth in the Contract documents will be deducted from any monies due the Contractor, not as penalty, but as liquidated damages; provided however, that due account will be taken of any adjustments of the Completion time for the completion of the work allowed under the Contract.

Permission allowing the Contractor to continue and finish any part of the Work after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Once substantial completion is granted, the Contractor shall achieve final completion within thirty (30) calendar days, unless otherwise agreed upon. If final completion does not occur within the agreed upon number of days, liquidated damages will commence on the first day after the agreed days, until final completion occurs.

6.3 **Delays and Time Extensions**

6.3.1 It is agreed that the City's only liability for any delay from any cause shall be limited to granting a time extension to the Contractor and that no extended general conditions for any delay will be applicable unless agreed to by the City. There is no other obligation, express or implied, on the part of the City to the Contractor for delay from any cause.

6.3.2 **Force Majeure**

6.3.2.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the parties affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a sub-contractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

6.3.2.2 If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.3.3 The completion time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority or allocation order duly issued by the Federal Government.

6.3.4 Time extensions shall only be granted for delays caused by the City, changes authorized in accordance with Article 8 of this agreement, or delays pursuant to sections 6.3.2 and 6.3.3.

6.3.4 Should a dispute arise between the Contractor and the City regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

ARTICLE 7. PAYMENTS TO THE CONTRACTOR

7.1 Contract Price; Request for Payment; Schedule of Values

7.1.1 The Contract amount or coefficient stated in the Contract documents or, in the case of a job order, in the Notice to Proceed, plus or minus any authorized adjustments, is the amount payable by the City to the Contractor for performance of the Work under the Contract or for a specific job order.

7.1.2 During the course of construction, the Contractor shall request payment for work actually performed during the preceding month or some other time period as mutually agreed to, using "ESTIMATE FOR PAYMENT" forms, which are furnished by the City or a City approved form submitted by the Contractor. Completed forms shall be submitted to the City Contract Representative. A schedule of values and an updated project schedule shall accompany the request for payment.

7.2 Certification and Payment

7.2.1 The City by mutual agreement may make progress payments on Contracts of less than ninety days and shall make monthly progress payments on all other Contracts as provided for in this paragraph. Payment to the Contractor on the basis of a duly certified and approved estimate for payment of the work performed during the preceding calendar month under the Contract may include payment for material and equipment. An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the City or the City's designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the City on submission to any person designated by the City for the submission, review or approval of the estimate of the work.

7.2.2 On completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified in paragraph 7.2.5, payment may be made in full, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the architect, engineer or other person, as specified in the Contract.

7.2.3 The Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no Contract for construction services may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. The payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the Contractor or subcontractor of payments received for work performed on a Contract, or failure to reasonably account for the application or use of those payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The subcontractor or material supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

7.2.4 A subcontractor may notify the City in writing requesting that the subcontractor be notified by the City in writing within five days from payment of each progress payment made to the Contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.

7.2.5. Nothing in this section prevents the Contractor or subcontractor, at the time of application and certification to the City or Contractor, from withholding the application and certification to the City or Contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention.

7.2.6 If any payment to a Contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.7 If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.8 Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services Contract for construction and does not apply to amounts payable in a construction services Contract for design services, preconstruction services, finance services, maintenance services, operations services and other related services.

7.2.9 The City Contract Representative, with reasonable dispatch, will review the contents of the ESTIMATE FOR PAYMENT submitted by the Contractor, determine the sufficiency of the estimate, satisfy himself that the City has received full value, certify the estimate and submit it through normal channels for payment.

7.2.10 Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work.

7.3 **Payment Withheld**

7.3.1 If the City Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the ESTIMATE FOR PAYMENT, the City Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the City Contract Representative shall promptly notify the Contractor. If the City Contract Representative and the Contractor cannot agree on a revised amount, the City Contract Representative will promptly issue a certificate for payment in an amount they determines is justified.

7.3.2 The City Contract Representative or other City official, as a result of subsequently discovered evidence, may also withhold or nullify the whole or a part of any certification to such extent as may be necessary to protect the City from loss on account of:

.1 Defective work not remedied.

.2 Third party claims filed or reasonable evidence indicating probable filing of such claims.

.3 Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment.

.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount, or reasonable evidence that the Work will not be completed within the Completion time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

.5 Damage to another contractor or to the City.

.6 Damage to the real or personal property of another and failure to repair or replace the same.

.7 Persistent failure to carry out the Work in accordance with the Contract.

7.3.3 When the grounds for withholding payment have been corrected to the satisfaction of the City Contract Representative or other City official concerned, the City shall proceed to process any amounts due.

7.4 **Substantial Completion**

7.4.1 When the Contractor considers that the Work, or a portion thereof which the City has agreed to accept separately, is ready for its intended use, it shall notify the City Contract Representative in writing that the Work, or the agreed upon portion thereof, is substantially complete and request the City Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the City Contract Representative will make an inspection of the Work, or the designated portion thereof, to determine the status of completion. If the inspection discloses any item that is not in accordance with the Contract, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for a re-inspection by the City Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the City Contract Representative will prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the City and Contractor, pending final payment by the City, for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list attached to the certificate.

7.4.2 Warranties required by the Contract shall commence on the date of Final Completion for a period of two years, except where a specific provision of the Contract provides otherwise.

7.5 **Final Completion and Final Payment**

7.5.1 Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the City Contract Representative will determine that all items on the punch list have been completed or corrected and the City will make payment for such work or portion thereof as provided for in the Contract.

7.6 **Consent of Surety/ Lien Waivers and As-Built Drawings**

7.6.1 Final payment shall become due when the Contractor provides to the Contract Officer a Consent of Surety Certificate from their bonding company, or lien waivers, at the Contract Officer's discretion and all completed as-built drawings.

7.7 **Partial Utilization**

7.7.1 The City may occupy or use any portion of the Work which the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City without significant interference with the Contractor's performance of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided the City and the Contractor have accepted in writing their mutual responsibilities regarding the used portion, including but not limited to insurance coverage, maintenance and utilities.

7.7.2 Partial use or occupancy of the Work by the City shall not constitute acceptance of Work not complying with the requirements of the Contract.

ARTICLE 8. UNCOVERING AND CORRECTION OF WORK; CHANGES IN THE WORK

8.1 Uncovering of Work

8.1.1 Piping, wiring, ducts, etc., shall not be covered up before proper inspection, approval and certificates, if required, are issued. Should any work that is designated for inspection by the City Contract Representative or the Contract before covering is covered before such inspection, it must be uncovered by the Contractor at their expense when examination is ordered by the City Contract Representative.

8.1.2 If a portion of the Work not designated by the City Contract Representative or the Contract for inspection has been covered and the City Contract Representative or a Public Inspector orders such work uncovered for inspection, the Contractor shall immediately uncover such work. If such uncovered work is found to be in accordance with the Contract, an appropriate Change Order shall be issued to compensate the Contractor for the expense of uncovering and replacing the work. If such work is found to be not in compliance with the Contract, the Contractor shall pay such costs, unless the condition was caused by the City or a separate Contractor.

8.1.3 The City shall not be responsible for or bear the cost of any re-examination and replacement occasioned by defects in the work caused by subcontractors.

8.2 Correction of Work

8.2.1 Correction of Work Before Final Payment: The Contractor shall promptly remove from the site of the Work all materials and/or associated portions of the Work rejected by the City Contract Representative as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract, without expense to the City, and shall bear the expense of making good the work of other contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such rejected Work and/or materials within a reasonable time, fixed by written notice, the City may remove it and may store the materials at the expense of the Contractor.

8.2.2 Should the Contractor fail to repair such defective material and/or workmanship or to make replacements within five (5) calendar days after written notice by the City, it is agreed that the City may, at its sole discretion, make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor or his surety.

8.3 Changes in the Work

8.3.1 The City Contract Representative may order extra work or make changes by altering, adding to or deducting from the Work, the Contract price being adjusted accordingly by Change Order without invalidating the Contract. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

8.3.2 If, instead of requiring corrections or removal of work not conforming to the requirements of the contract, the work is determined to be acceptable with diminished value in the sole judgment of the City Contract Representative, a change order shall be issued incorporating the necessary revisions in the contract, including

an appropriate reduction in the contract price. Such a change order does not require the signature or approval of the Contractor. Such acceptance of non-conforming work shall not constitute a waiver of any other work required under this contract.

8.3.3 The value of any extra work or change ordered under the Contract shall be determined in one or more of the following ways:

.1 By estimate and acceptance in a lump sum.

.2 By unit prices in the Contract or subsequently agreed upon prices.

.3 By a fixed fee.

ARTICLE 9. SUSPENSION OR TERMINATION OF THE WORK

9.1 Suspension of the Work for Cause; City's Right to Perform the Work

9.1.1 If the Contractor fails to correct Work which is not in accordance with the Contract, or persistently fails to carry out the Work in accordance with the Contract, the Contract Officer, after consultation with the City Contract Representative, may order the Contractor in writing to stop the Work, or any portion of the Work, until the cause for such order has been eliminated.

9.1.2 If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the City may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the City may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and its surety shall be liable to the City for such deficiency.

9.2 Termination by the City for Cause

9.2.1 The City, upon certification by the City Contract Representative, without prejudice to any other right or remedy of the City and after giving the Contractor seven (7) days written notice, may terminate this Contract as to all or any part of the Work for any of the following reasons:

.1 If the Contractor abandons the Work, or unnecessarily delays the Work.

.2 If the Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractor.

.3 If the Contractor fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the Contractor and the subcontractor or as expressly set forth herein.

.4 If the Contractor persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract.

.5 If the Contractor should be adjudged bankrupt.

.6 If the Contractor should make a general assignment for the benefit of its creditors,

or if a receiver should be appointed on account of its insolvency.

.7 If the Contractor is otherwise in substantial breach of a provision of the Contract as determined by the City.

9.2.2 Upon termination of the Contract for any of the above reasons, the City, subject to any prior rights of the surety, may:

.1 Take possession of the Work and of all materials, equipment, tools, and construction equipment and machinery at the Work site or adjacent thereto belonging to the Contractor.

.2 Accept assignment of subcontracts pursuant to Subsection 5.1.8 of Article 5 of these
General Conditions.

.3 Finish the Work by whatever reasonable method the City may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the City may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the City's possession and may make all necessary repairs and replacements thereto.

9.2.3 If the City terminates the Contract for one of the reasons stated in Subsection 9.2.1, the Contractor shall not be entitled to receive any further payment.

9.2.4 The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the City to other Contractors, all costs of repairs and replacements of machinery, implements, tools and plant of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including but not limited to the cost of the City Contract Representative's additional services and added expenses made necessary by the termination of the Contract.

9.2.5 If the unpaid balance of the Contract price exceeds costs of finishing the Work, such excess may, at the City's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the City may sell all materials, supplies, machinery, implements, tools and plant of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) days notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay such deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.

9.3 **<u>Suspension by the City for Convenience</u>**

9.3.1 The City may, without cause, order the Contractor in writing to suspend or interrupt the Work in whole or in part for such period of time as the City may determine whenever such suspension or interruption would be in the best interest of the City.

9.3.2 If the City suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:

.1 That performance is, was or would have been so suspended or interrupted by another cause for which the Contractor is responsible, or

.2 That an equitable adjustment is made or denied by the City.

9.4 **Termination by the City for Convenience**

9.4.1 The performance of the Work under this Contract may be terminated by the City, in whole or in part, in accordance with this clause whenever the City reasonably determines that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

9.4.2 If the Contract is terminated by the City as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated profit on unperformed Work.

9.4.3 In the event the City terminates the Work, in whole or in part, for cause pursuant to Section 9.2 of this Article 9 and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 9.4 shall apply.

9.4.3 Termination of the Contract or portion thereof by the City for convenience shall not relieve the Contractor of their contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

9.5 **Contractor's Right to Terminate Contract**

9.5.1 The Contractor may terminate the Contract for any of the following reasons:

.1 If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month through no act or fault of the Contractor or of anyone directly or indirectly employed by him.

.2 If the City has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the City Contract Representative, or

.3 If repeated suspensions or interruptions ordered by the City pursuant to Section 9.3 total in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

9.5.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days, written notice to the City Contract Representative, stop Work and terminate the Contract and recover payment from the City for all Work executed and accepted by the City and any loss sustained upon any plant or materials and reasonable profit and damages.

ARTICLE 10. CLAIMS AND DISPUTES

10.1 **City Contract Representative's Resolution of Claims and Disputes; Review by Contract Officer**

10.1.1 This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.

10.1.2 All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the City Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

10.1.3 Claims by either party must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

10.1.4 Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract.

10.1.5 The City Contract Representative shall, within twenty-one (21) days of receipt of a claim, issue one of the following:

(1) Issue a decision either rejecting or approving the claim.
(2) Suggest an equitable compromise of the claim.
(3) Provide a schedule to the Contractor indicating when they expect to be able to take action, which shall be within a reasonable time.

10.1.6 The City Contract Representative may require the submission of additional documentation from the Contractor to facilitate a decision.

10.1.7 The Contractor shall have ten (10) days from the date of the City Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of the Contractor to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Contract Officer for de novo review.

10.1.8 The Contract Officer shall have sixty (60) days from receipt of a written objection by the Contractor to the City Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the Tucson Procurement Code. During such period, the Contract Officer may require such additional documentation or testimony as deemed necessary to support his/her response.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 **Governing Law**

11.1.1 The Contract shall be governed and construed according to the laws of the Tucson City Code and the State of Arizona.

11.2 **Written Notice**

11.2.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

11.3 **Conflict of Interest**

11.3.1 The City shall also have the right to terminate this Contract pursuant to the conflict-of-interest provisions of A.R.S. Sec. 38-511 and to exercise any and all remedies provided in such statute. The City may cancel this Contract if any person significantly involved in negotiating, drafting, securing or obtaining this Contract for or on behalf of the City of Tucson becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Contract.

11.4 **Independent Contractor**

11.4.1 It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

11.4.2 Contractor shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

11.4.3 The City of Tucson will not provide any insurance coverage to Contractor, including Workers' Compensation coverage. The Contractor is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

11.5 **Gratuities**

11.5.1 The City may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

11.6 **Provisions Required By Law**

11.6.1 Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly

inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

11.7 **Severability**

11.7.1 The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

11.8 **Interpretation – Parol Evidence**

11.8.1 This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

11.9 **Rights and Remedies**

No provision in this document or in the Contractor's response shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

11.10 **Right to Assurance**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.

EXHIBIT C

HUD-5369

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Instructions to Bidders for Contracts Public and Indian Housing Programs

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

(1) Integrity;

(2) Compliance with public policy;

(3) Record of past performance; and

(4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding $25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website **http://www.fms.treas.gov/c570/index.html**, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

HUD-5369A

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding $50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [ ] has, [ ] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding $100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the bidder; or,

(b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

[ ] Black Americans	[ ] Asian Pacific Americans
[ ] Hispanic Americans	[ ] Asian Indian Americans
[ ] Native Americans	[ ] Hasidic Jewish Americans

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding $2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding $10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed $10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding $100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding $50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"

[ ] is, [ ] is not included with the bid.

13. Bidder's Signature

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

_____
(Signature and Date)

_____
(Typed or Printed Name)

_____
(Title)

_____
(Company Name)

(Company Address)

HUD-5370

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. This form is applicable to any construction/development contract greater than $100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).
The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.
Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.
The information requested does not lend itself to confidentiality.
HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

(a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

(b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.

(d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.

(e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.

(f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

(g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.

(j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(l) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.

(b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.

(c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

(f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.

(g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

(h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

(b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

(c) The Architect's duties and responsibilities may include but shall not be limited to:

(1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

(2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;

(3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,

(4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress Schedule

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads;(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

(b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

(h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

(i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

(a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."

(b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

(c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

(a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:
  (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
  (2) Protect the lives, health, and safety of other persons;
  (3) Prevent damage to property, materials, supplies, and equipment; and,
  (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:
  (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
  (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

(f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
(g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
(h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
(i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
(j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
(k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

(a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
(b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contactor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

20. Inspection and Acceptance of Construction

(a) Definitions. As used in this clause -
(1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
(2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
(3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
(c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
(d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The PHA may conduct routine inspections of the construction site on a daily basis.
(g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
(h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
(i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

(a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
(b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of Construction

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
  (1) The Contractor's failure to conform to contract requirements; or
  (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
  (1) Obtain all warranties that would be given in normal commercial practice;
  (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
  (3) Enforce all warranties for the benefit of the PHA.
(g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.
(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
(j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required under this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

(a) The PHA shall pay the Contractor the price as provided in this contract.
(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.
(d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:
I hereby certify, to the best of my knowledge and belief, that:
(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

_____
Name:

_____
Title:

_____
Date:

(f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

(h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.

(i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) PHA-furnished facilities, equipment, materials, services, or site; or,
(4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.

(2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

(3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

(g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

(h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.

(i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

(j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

(a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.

(d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.

(f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

(b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of $_____ Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.

(b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA in completing the work.

(c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

(a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non -owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

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

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

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

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

(a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds $2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved 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 29 CFR 5.5(a)(1)(iv); 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 regular 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 in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employee 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 HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

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

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

(3) 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.

(4) 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.

(b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

(1) 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 in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of 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.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

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

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;

(B) 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 29 CFR Part 3; and

(C) 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.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, 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, HUD or its designee 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. 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.

(d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, 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 OATELS 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 in this paragraph, 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 of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in 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 in 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 in 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 in 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.

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

(e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(i) Certification of eligibility.

(1) 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 contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 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 provisions set forth in subparagraph (j)(2) of this clause.

(k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
   (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

HUD-4010

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) **Minimum Wages.** 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 l(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 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, 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 subparagraph 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 HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. **Apprentices and Trainees.**

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses 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 this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

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

10. (i) Certification of Eligibility. 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

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

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ANTI-KICKBACK ACT

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS

SO CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR.
UNITED STATES DEPARTMENT OF LABOR

TITLE 18. U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1932 (48 Stat. 948, 40 U.S.C., sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whenever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than $5,00 or imprisoned not more than five years, or both.

SECTION 2 OF THE ACT OF JUNE 13, 1932, AS AMENDED (48 Stat. 948, 62 Stat. 862, 63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec, 276c)

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or building or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements.

---XXX---

Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A., Code of Federal Regulations, Part 3. The term "this part," as used in the regulations hereinafter set forth, refer to Part 3 last above mentioned. Said regulations are as follows:

TITLE 29 - LABOR

Subtitle A - Office of Secretary of Labor

PART 3 - CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Section 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

3.3 - Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, ``Statement of Compliance", or on an identical form on the back of WH 347, ``Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982]

SECTION 3 REQUIREMENTS

SECTION 3 RESIDENTS AND BUSINESS CONCERNS

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or

2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;

2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or

3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

INCOME LIMITS

New Income Limits for Tucson and Pima County were issued May 31, 2011. The Area Median Family Income is $59,600. The following Income Limits are effective June 1, 2011.

Income Limits

Family Size	30% of Median Income	50% of Median Income	80% of Median Income
	Extremely Low Income	Very Low Income	Low Income
1 Person	$12,550	$20,900	$33,400
2 Persons	$14,350	$23,850	$38,200
3 Persons	$16,150	$26,850	$42,950
4 Persons	$17,900	$29,800	$47,700
5 Persons	$19,350	$32,200	$51,550
6 Persons	$20,800	$34,600	$55,350
7 Persons	$22,200	$37,000	$59,150
8 Persons	$23,650	$39,350	$63,000

See Notice PDR 2011-02 for families with more than 8 persons.

CITY OF TUCSON

SECTION 3 OPPORTUNITIES PLAN
STATEMENT OF INTENT TO FULFILL OBLIGATION

PROJECT: _____

CONTRACT #: _____

CONTRACTOR NAME: _____

OPPORTUNITIES PLAN

☐ The Contractor has identified _____ employment opportunities during the term of the contract (if no opportunities have been identified, enter 0). The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of work of this Contract.

☐ The Contractor has identified _____ subcontracting opportunities.

☐ The Contractor qualifies as a Section 3 Business Enterprise. ***(See section below)***

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or

   _____YES _____ NO

2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or

   _____YES _____ NO

3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises.

   _____YES _____ NO

Contractor's Signature: _____

Title: _____ Date: _____

CITY OF TUCSON

INDIVIDUAL CERTIFICATION FOR SECTION 3 RESIDENT ELIGIBILITY

This form is to be used by individual persons requesting to be certified by the City of Tucson as a Section 3 Resident for purposes of Section 3 employment opportunities on HUD-funded construction projects.

Project:_____ Contract #:_____

Contractor Name: _____

Job Title: _____ Hire Date:_____

Name: _____ Phone Number: _____

Physical Address: _____
(No P.O. Box Addresses)

City State Zip: _____ Email Address: _____

Please complete Part A (Household Size and Income) OR Part B (Public Housing Resident)

A. Household Size and Income

My household size (total persons in household) is: _____

My total annual household income is: _____

My total current monthly household income is: _____

B. Public Housing Resident

I currently receive the following housing assistance:

Check box: ☐ Public Housing ☐ Section 8 (Housing Choice Voucher)

City Use Only

Income at/below: _____

Verified: _____ Date: _____

Public Housing Resident/
Sec. 8/HCV Participant: _____

Verified: _____ Date: _____

Certification

I hereby certify, under penalty of perjury, that all of the information provided above is true and correct. I agree to provide acceptable documentation, if requested, that confirms the accuracy of my residency, household size, income, and employment.

Employee Name (Print): _____ **Date:** _____

Employee Signature: _____

CITY OF TUCSON

SECTION 3 ELIGIBLE BUSINESS CERTIFICATION

Instructions

To be considered for certification as a Section 3 Business Concern, a business must complete this form and provide all required supporting documentation. An *Individual Certification for Section 3 Resident Eligibility Form* must be completed and signed by each Section 3 Resident owner or employee certifying that each individual meets the HUD definition of a Section 3 Resident.

BUSINESS LEGAL STATUS

Business Name: _____ Phone: _____

Address: _____ Fax: _____

City: _____ State: _____ Zip: _____

Email Address: _____

☐ Sole Proprietor ☐ Corporation ☐ Partnership ☐ Limited Liability

Date Business Established _____ Federal Tax ID or Social Security Number _____

Total Number of Employees: _____ *Number of Section 3 Employees: _____ Percentage of Section 3 Employees: _____%

*Must provide completed Individual Certification forms for each employee

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or _____YES _____ NO
2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or _____YES _____ NO
3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises. _____YES _____ NO

A Section 3 Resident is a public housing resident or an individual who resides in the covered metropolitan area and is a low income person as identified by HUD, *(see certification instructions for HUD definitions and income limits).*

Owner' Name (printed): _____ Title: _____

Signature: _____ Date: _____

EXHIBIT D

SBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Small Business Enterprise Participation goal for this project is as follows:

__X__ % SBE

I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - Is defined as the performance of real and actual services in the discharge of any contractual endeavor. An SBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

Contractor - The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City. For the purposes of SBE plan evaluation, any Offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the contractor SBE program compliance requriements.

Eligible Contract - Any contract undertaken by the City, unless otherwise precluded by law, *provided* the estimate meets or exceeds fifty thousand dollars ($50,000). An Eligible Contract does not include any project in which the estimated contract value is below fifty thousand dollars ($50,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the City Procurement Code.

Joint Venture – An association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the Joint Venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the Joint Venture, may be counted towards relevant SBE participation goals.

Small Business Enterprise (SBE) – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification with the City of Tucson, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).

Subcontractor and Subconsultant – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

B. APPLICABILITY

The SBE program and policies are codified in Chapter 28, Article XIII of the City Procurement Code. It is the responsibility of all contractors, subcontractors, vendors, suppliers and others who are interested in contracting with the City of Tucson to read and become familiar with this section of the City Code.

Only firms that are certified by the City of Tucson under Chapter 28, Article XIII of the City Code, ***at time of SBE Plan submittal***, are eligible to fulfill SBE goals for City of Tucson projects.

In addition to subcontractors, contractors may use their own participation towards fulfillment of the SBE participation goal if they are certified through the City of Tucson SBE program.

The City of Tucson's most recent SBE Directory contains the ***complete*** listing of those firms which are currently certified with the City, and therefore eligible to participate as an SBE on a project. If the name of an SBE firm does not appear in directories, it shall be the contractors responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. The contractor may accomplish this by calling the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593 for assistance.

ALL CONTRACTORS, INCLUDING SBEs, MUST COMPLY. Contractors who are SBEs must also comply with all requirements stated herein. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's SBE goal and comply with all aspects of the SBE Program requirements.

C. SBE PARTICIPATION

An SBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. An SBE shall be responsible for a clearly defined portion of the work to be performed.

D. SBE GOALS

To satisfy SBE goals, a certified SBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Contractors may meet the SBE project goals through the following methods:

Prime Contractor Participation – SBE prime contractors may use their own participation towards fulfillment of the SBE participation goals. Credit will only be given for the dollar value of actual work performed by the prime contractor's work force.

Subcontractor Participation - Contractors may utilize one or more certified SBE subcontractors to satisfy its SBE participation commitment and may claim the value of the commercially useful function to be performed by such subcontractor(s) to obtain credit toward the satisfaction of the applicable goal.

1. Contractors who utilize certified SBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar

value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values and cannot be specified as a range.

2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, contractors are required to identify and report the use of any second tier subcontractors on the project on the Statement of Proposed SBE Plan form.

3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE's subcontractor is itself a SBE.

Supplier Participation - The contractor may contract with one or more certified SBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credit toward SBE goals. The value of the commercially useful function to be performed by such SBE's and credited toward satisfaction of the applicable SBE goals is as follows:

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.

2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer's representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.

3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

Joint Venture - Where a contractor engages in a joint venture to satisfy its SBE commitment, the SBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. The SBE joint venture partner must submit information for determining joint venture eligibility. ***The SBE joint venture must be approved as a SBE joint venture prior to SBE Plan submittal.*** The OEOP shall determine the degree of SBE participation resulting from the joint venture which may be credited toward the applicable SBE goal of the project.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF AN SBE PLAN

The SBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The SBE Plan must include:

1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

B. REVIEW OF SBE PLANS

The OEOP Director may determine that the contractor is nonresponsive where the contractor: (1) failed to provide a completed Statement of Proposed SBE Plan; (2) failed to identify SBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable SBE goal for that project; (3) failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the SBE goal.

III. GOOD FAITH EFFORT

If the SBE plan does not meet the project goals, the contractor may seek a waiver. The application for a waiver shall be in writing and **must be completed and submitted with the project proposal**. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and an SBE plan must also be submitted. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals. Evidence of the good faith efforts shall include, but is not limited to the following:

a. Documentation of communication with the OEOP Director seeking technical/professional assistance identifying available SBE's.
b. Copies of written notification to Certified SBE's regarding subcontracting opportunities on a project.
c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
d. Documentation of efforts to assist and negotiate with SBE's for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE's who were contacted and reason for the rejection.
e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.
f. Written quotes or records of verbal quotes solicited from all SBE's seeking subcontract work at the time of the proposal submittal.
g. Verification that the offeror rejected available SBE's because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City's OEOP Director shall review the waiver and approve the waiver where the contractor has demonstrated good faith efforts or deem the contractor nonresponsive where they failed to meet the good faith efforts and shall recommend that the Project Manager reject the proposal.

Right to Appeal Good Faith Effort Waiver or Plan Decision An aggrieved party has a right to protest a good faith waiver request or plan decision made by the OEOP Director as follows:

1. An aggrieved party may submit a protest in writing to the OEOP Director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.
2. Within five (5) days of receipt of the protest, the OEOP Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
3. The decision of the director is final and not appealable.

General Waiver or Reduction of SBE Goals If, after consultation with appropriate City departments, the OEOP Director determines that SBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that SBE's are not in fact available or that the amount of work, which occurred under the contract, was insufficient to support the established goals.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified SBE's, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-SBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that SBE's are not available to provide the needed labor and materials at competitive prices.

A contractor may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a proposal.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND / OR CLARIFY INFORMATION AS IT RELATES TO THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND / OR THE STATEMENT OF PROPOSED SBE PLAN.

IV. MISCELLANEOUS PROVISIONS

A. CONTRACT PERFORMANCE

The contractor's distinct contract items of work to be awarded to SBE's shall be performed by the designated SBE or SBE substitute approved by the OEOP. SBE contract work items shall not be performed by the contractor in lieu of subcontracting, without the OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for SBE participation. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all SBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY SBE's

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the Office of Equal Opportunity Programs and the Project Manager and provide all facts surrounding the matter. Such failure on the part of an SBE will not relieve the contractor of responsibility for meeting the SBE participation goal on the contract. The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE to perform an equal or greater dollar value of the work. The substitute SBE's name, description of work and dollar value of the work shall be submitted to the OEOP and OEOP's approval must be obtained prior to the substitute SBE beginning the work.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the SBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

CITY OF TUCSON - OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF PROPOSED SBE PLAN

ALL SBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A SBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE SBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a SBE)	Trade/Industry	Dollar Value of Contract (SBE Only)

Project Amount $ _____

Total Claimed SBE Participation $_____ _____%

I hereby certify by signing below that the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project. The information shown above is a true reflection of the proposed subcontracts expressed as a percentage of the base bid.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED SBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Office of Equal Opportunity Programs

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET SBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE CONTRACTOR WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing SBE firms to meet the City of Tucson's SBE goal. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.

_____
_____
_____
_____
_____

2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to SBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for SBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which SBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to SBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person		Dates of Contact		Telephone #

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the SBE goal.) Attach necessary documentation.

Yes ____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide SBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist SBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which SBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of SBE Firm	Explanation for Rejecting Quotes

10. Were any bids from SBE Subcontractors that were no more than 15% or $250,000 greater than the accepted Non-SBE Subcontractor rejected?
If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

DBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Disadvantaged Business Enterprise Participation goal for this project is as follows:

__X____ % DBE

I. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - The performance of real and actual services in the discharge of any contractual endeavor. A DBE is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE firm is not performing a commercially useful function and no DBE credit may be awarded toward the DBE goal.

Contract - A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor - One who participates, through a contract or subcontract (at any tier), in a federally funded program. For the purposes of DBE Plan evaluation, any offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the Contractor DBE program compliance requirements.

Disadvantaged Business Enterprise or DBE - A for-profit small business concern certified under the Arizona Unified Certification Program (AZUCP) --
(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Good Faith Efforts - Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture - An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Primary Industry Classification - The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA 22261). NTIS also makes materials available through its web site (www.ntis.gov/products/naics.aspx).

Program - Any undertaking on the City of Tucson's part to use federal financial assistance, authorized by the laws to which this part applies.

Race and Gender-Conscious - A measure or program that is focused specifically on assisting only DBEs.

Race and Gender-Neutral - A measure or program that is, or can be, used to assist all small businesses.

Recipient - Any entity, public or private, to which federal financial assistance is extended, whether directly or through another recipient, or who has applied for such assistance.

Set-Aside - A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Concern - With respect to firms seeking to participate as a DBE, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and Economically Disadvantaged Individual - Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --
(a) Any individual who the City of Tucson finds to be a socially and economically disadvantaged individual on a case-by-case basis.
(b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Lorea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americans," which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

B. APPLICABILITY

The City of Tucson has received federal financial assistance and has established a DBE Diversity Program for Contracts in accordance with 49 CFR 26, which is incorporated herein by this reference. The DBE Diversity Program applies to all City and subrecipient contracts that are funded, in whole or in part, by federal financial assistance. In the event of any conflicts or inconsistencies between 49 CFR 26 and this DBE Diversity Program, 49 CFR 26 shall prevail.

ALL CONTRACTORS INCLUDING DBEs MUST COMPLY. Contractors who are DBEs must also comply with all requirements stated herein. However, a DBE on a prime contract may meet the contract goal by virtue of the work it performs on the prime contract with its own forces. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's DBE goals and federal regulations.

Firms that are certified ***at time of DBE Plan submittal*** through the Arizona Unified Certification Program (AZUCP) under 49 CFR 26 are eligible to participate as DBEs on City of Tucson contracts that are federally funded wholly or in part.

The Arizona Unified Certification Program (AZUCP) Database contains the ***complete*** listing of those firms which are certified and therefore eligible to participate as a DBE on a project. DBE participation is NOT limited to Pima County firms. Any DBE firm recognized through the AZUCP is eligible to be recognized as a certified DBE. The AZUCP Database can be accessed through the following internet address: (http://www.azdbe.org/). If the name of a firm does not appear in the AZUCP database, it shall be the bidder's responsibility to ascertain the certification status of the firm.

Questions regarding the AZUCP and the City's DBE Program can be addressed to the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593.

The City of Tucson has provided an overall DBE goal for this project. Prime contractors should be aware that **your obligation is to meet the DBE goal or submit an Affidavit of Good Faith Effort** to waive any or all of the portion of the goal not met.

C. DBE PARTICIPATION

A DBE goal may only be met by a certified DBE firm performing a commercially useful function. A DBE may participate as a prime contractor, subcontractor, second-tier

subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE shall be responsible for a specific contract amount and a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control. Open ended contracts or reimbursable contracts may not be used to meet a DBE goal at the time of bid submission. A copy of an executed subcontract must be submitted upon request by the City of Tucson.

D. DBE GOALS

To satisfy the DBE goals, a certified DBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Unless specific subcontractor participation goals are expressed in the specifications, contractors may meet the DBE project goals through the following methods:

Subcontractor Participation - Where a prime contractor utilizes one or more certified DBE subcontractor(s) to satisfy its DBE participation commitment, the prime contractor may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

1. Prime Contractors who utilize certified DBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the DBE firm and may only take credit for the dollar value of that contract towards satisfying its DBE commitment in their proposed DBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.

2. When a DBE participates in a contract, only the work actually performed by the DBE will count toward DBE goals.

a. Credit will be given for the entire amount of that portion of a contract by the DBE performing a commercially useful function, including the cost of supplies and materials obtained by the DBE for the work of the contract (including supplies purchased or equipment leased by the DBE except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

b. Credit will be given for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a federally funded contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The value of work that a non-DBE subcontractor subcontracts (second-tier) to a DBE firm may count toward DBE goals. Therefore, **prime contractors are required to identify and report the use of any second tier subcontractors on the project on the DBE Plan form.**

d. Credit will be given when a DBE subcontracts part of the work of its contract to another firm only if the DBE's subcontractor is itself a DBE.

3. When a DBE is used as the source for materials or supplies:

a. If a DBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable DBE participation goal.

b. If a DBE supplier is a regular dealer (a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock, and regularly sold or leased to the public), 60% of the cost of the materials or supplies will be credited toward DBE goals.

4. Where a contractor engages in a joint venture to satisfy its DBE commitment, the DBE joint venture partner must be responsible for a distinct and clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. DBE joint ventures do not have to be certified as a joint venture by the City prior to bid opening. However, prime contractors must submit information at the time of bid opening that includes a copy of the joint venture agreement and clearly outlines the work to be performed by the DBE joint venture partner, including the dollar amount and percentage of the contact to be performed.

When a DBE performs as a joint venture, the OEOP will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF A DBE PLAN

The DBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The DBE Plan must include:

1. The names of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

If the completed Statement of Proposed DBE Plan or, if necessary, a documented waiver application is not included with the proposal, the proposal will be considered non-responsive.

B. DBE ACKNOWLEDGMENT OF PARTICIPATION

The Contractor will be required to submit to the Office of Equal Opportunity Programs (OEOP), a DBE Acknowledgment of Participation for each DBE listed on the proposed

DBE Plan which provides signed confirmation that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

C. REVIEW OF DBE PLANS

The OEOP Director may determine that the Plan and/or Affidavit of Good Faith Effort is nonresponsive where the contractor, (1) failed to provide a completed Statement of Proposed DBE Plan; (2) failed to identify DBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable DBE goals for this project; (3) failed to achieve the dollar value of credible participation by certified DBEs as necessary to meet the project goals; (4) failed to provide written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal prior to contract execution; or (5) failed to meet the requirements for a waiver of the DBE goals. The OEOP Director's determination shall be in writing and shall state the basis for such decision.

III. GOOD FAITH EFFORT

A contractor must, in order to be responsive, make good faith efforts to meet the goal. The contractor can meet this requirement in either of two ways. First, the contractor can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the goal, the contractor can document adequate good faith efforts. This means that the contractor must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

The application for a waiver shall be in writing and must be submitted with the project proposal. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such wavier must be indicated. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals.

The following is a list of types of actions which the City will consider as part of the good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE

participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. **(1)** Negotiating in good faith with interested DBEs. It is the contractors responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve them of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Tucson or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

I. Communicating with the Office of Equal Opportunity Programs (OEOP) seeking technical or professional assistance in identifying available DBEs and requesting the most current Arizona Unified Certification Program (AZUCP) directory of certified DBE firms.

J. In determining whether a contractor has made good faith efforts, the OEOP may take into account the performance of other bidders in meeting the contract. For example, when the Apparent Low Bidder (ALB) fails to meet the contract goal, but others

meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the ALB could have met the goal. If the ALB fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the City may view this, in conjunction with other factors, as evidence of having made good faith efforts.

The City's OEOP Director shall review the waiver application and approve the waiver where the contractor has demonstrated good faith efforts or deem them nonresponsive where they failed to meet the good faith efforts.

IV. ADMINISTRATIVE RECONSIDERATION

If it is determined by the City's OEOP Director that the contractor has failed to meet the goal and/or document adequate good faith efforts, the contractor shall have the opportunity for administrative reconsideration. Therefore, within five (5) working days of being notified by OEOP that it is not responsive because it has not met the goal or documented adequate good faith efforts, a contractor may request administrative reconsideration. Contractors must make this request in writing to the following individual:

Procurement Director
City of Tucson
255 W. Alameda – PO Box 27210
Tucson, Arizona 85726.

The request for reconsideration must include the reasons and factual grounds for reconsideration with any supporting documents. The Procurement Director shall appoint a Reconsideration Official who will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. The Reconsideration Official shall hold a hearing within ten (10) working days of the request for reconsideration. The contractor will have the opportunity to meet in person with the City's Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Reconsideration Official can also take testimony from City employees.

The City will send the contractor, via certified mail, a written decision on reconsideration, explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts to do so. The decision will be sent within five (5) working days of the Reconsideration Hearing. The result of the reconsideration process is not administratively appealable. Copies of the reconsideration documentation, including supporting documents and the Reconsideration Officials final decision, shall be maintained in the contract file at Procurement and OEOP.

FAILURE TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE CONTRACTOR TO BE DEEMED NONRESPONSIVE.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND/OR CLARIFY INFORMATION AND REQUEST RESUBMITTAL OF INFORMATION BASED ON CLARIFICATION AS IT RELATES TO

THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND/OR THE STATEMENT OF PROPOSED DBE PLAN.

V. GENERAL WAIVER OR REDUCTION OF DBE GOALS

If after consultation with appropriate City departments, the OEOP Director determines that DBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that DBEs are not in fact available.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified DBEs, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-DBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that DBEs are not in fact available to provide the needed labor and materials at competitive prices.

VI. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. This reporting requirement also extends to any certified DBE subcontractor. As part of the contract documents requirement, the contractor will submit company procedures and policy for prompt payment of work and prompt release of retention to subcontractors.

Prime contractors are required to pay **all** subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson. Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release. Required timelines are indicated below:

A. When a subcontractor has completed all the tasks called for in the subcontract, the subcontractor will submit a written request to the prime contractor for an acceptance inspection and release of all retention.
B. Within 10 days of receipt of an inspection request by a subcontractor, the contractor shall schedule an inspection / walk through for acceptance of the work.
C. Within 30 days of the acceptance of a subcontractors work, the prime contractor shall pay all retention owed to a subcontractor.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

Prime contractors are asked to submit the attached Certification of Payments, for each DBE subcontractor utilized on this project, once that portion of the work has been completed and the subcontractor has been paid in full.

Prime contractors will report the actual value of any contract to DBE firms for work committed to them at the time of the contract award. Contractors must submit the attached Supplier & Subcontractor Utilization List Final Payment Record to OEOP with their request for final payment. The Final Payment Record will record total dollar amounts paid to both DBE and non-DBE suppliers and subcontractors.

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the DBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

VII. MISCELLANEOUS PROVISIONS

A. CONTRACT PROVISIONS

The contractor's distinct contract items of work to be awarded to DBEs shall be performed by the designated DBE or DBE substitute approved by the OEOP and the Procurement Department. DBE contract work items shall not be performed by the contractor in lieu of subcontracting, without OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for DBE participation. The DBE must perform a commercially useful function, that is, the DBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all DBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY DBEs

In the event that a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the OEOP and the Project Manager and provide all facts surrounding the matter. The DBE firm can be terminated only for good cause. Good cause includes a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE participation goal on the contract. The contractor shall immediately take adequate good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of the work. The substitute DBEs name, description of work and all written and signed commitments, and dollar value of the work shall be submitted to the OEOP, and the OEOP's approval must be obtained prior to the substitute DBE beginning work. If the contractor fails or refuses to comply, the OEOP will recommend that the City issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City may terminate the contract for cause and/or pursue any other remedy available to the City.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. RECORD-KEEPING

The City of Tucson will require prime contractors to maintain records and documents of payments to DBE for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. The reporting requirement also extends to any certified DBE subcontractors.

E. FALSE, FRAUDULENT OR DISHONEST CONDUCT

The City of Tucson will bring to the attention of the federal government any false, fraudulent or dishonest conduct in connection with the DBE Diversity Program for Contracts so that the federal government can take steps (e.g., referral to the Department of Justice for criminal prosecution, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109. The City will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

F. NON-DISCRIMINATION

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

CITY OF TUCSON
OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF
PROPOSED DBE PLAN

ALL DBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A DBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE DBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a DBE)	Trade/Industry	Proposed Dollar Value of Contract (DBE Only)

Project Amount $ _____

Total Claimed DBE Participation $_____ _____%

I hereby certify by signing below that the foregoing firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED DBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Equal Opportunity Office

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET DBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing DBE firms to meet the City of Tucson's DBE goals. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a DBE plan must also be submitted.

_____
_____
_____
_____
_____

2. Provide a brief summary of why the DBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to DBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for DBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which DBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to DBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact			Telephone #

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the DBE goals.) Attach necessary documentation.

Yes _____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide DBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist DBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which DBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of DBE Firm	Explanation for Rejecting Quotes

10. Were any proposals from DBE subcontractors that were no more than 15% or $250,000 greater than the accepted Non-DBE subcontractor rejected? If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

MUST BE SUBMITTED WITH THE PROPOSAL

City of Tucson
Office of Equal Opportunity Programs (OEOP)

DBE ACKNOWLEDGMENT OF PARTICIPATION

CONTRACT NO._____ PROJECT NAME: _____

TRADE/INDUSTRY/SUPPLY/EQUIPMENT:_____

DOLLAR VALUE OF THE CONTRACT: _____

DBE Firm: _____

DBE Signature: _____

Phone No. _____ Date: _____

Name: _____

Title: _____

I hereby certify that _____ is participating in the contract as provided in the Proposed DBE Plan and that the information shown above is a true reflection of the proposed subcontract.

Prime Contractor's Signature: _____

MUST BE SUBMITTED WITH REQUEST FOR FINAL PAYMENT

City of Tucson
Office of Equal Opportunity Programs (OEOP)

SUPPLIER AND SUBCONTRACTOR UTILIZATION LIST
FINAL PAYMENT RECORD

Pursuant to administrative procedures and policies, the OEOP Director may verify and/or clarify and request resubmittal of information to verify or clarify information as it relates to the contractor's Final Payment Record.

CONTRACT No. _____ Bid Amount: _____ Project Name: _____

FIRM NAME	DBE	TRADE/INDUSTRY	SUPPLIER TOTAL PAYMENT MADE	
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__
_____	Y__N__	_____	Y__N__	__

CERTIFICATION OF PAYMENTS TO DBE FIRMS

Project Name:_____
COT Job No.: _____ Contract No.: _____
Fed Job No.: _____ State TRACS No.: _____

The undersigned prime contractor on the above named City of Tucson project hereby, certifies that full payment was made to the firm indicated for material and/or work performed under this project's contract as follows:

Firm Name _____, was paid $ _____

The subcontract was completed on _____

Full Retention has been released to the Subcontractor by the Prime Contractor Yes / No

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contracts, all documentation supporting the contractors position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Prime Contractor

By: _____

Title: _____

Date: _____

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Subcontractor/Supplier/Manufacturer

By: _____

Title: _____

Date: _____

MUST BE SUBMITTED WITH THE PROPOSAL

SUBCONTRACTOR PROMPT PAYMENT REQUIREMENTS

CONTRACT NO: _____

PROJECT NAME: _____

DBE Contract Provisions – Section V. Monitoring Payments to Subcontractors

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson.

Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

By signing below I acknowledge and agree to the DBE subcontractor prompt payment requirements.

Company Name: _____

Signature: _____

Name & Title: _____

Date: _____

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

X "Bond per Job"; each project bonded individually prior to Notice to Proceed.

___ "Annual" bonds in the amount of $50,000; each project over $50K or concurrent projects totaling more than $50K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

NORTHWEST LANDSCAPING
Company Name

Signature of Person Authorized to Sign

STEVEN CHRISMER
Printed Name

Contract Number

10/3/13
Date

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/28/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Lovitt & Touche' Inc - Tucson
P. O. Box 32702
Tucson AZ 85751-2702

CONTACT NAME: Lio Ebling
PHONE (A/C, No, Ext): 520-722-3000 FAX (A/C, No): 520-722-7245
E-MAIL ADDRESS: lebling@lovitt-touche.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Westfield Insurance Company	24112
INSURER B: Philadelphia Indemnity Insurance Co	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED NWEXT-1
Northwest Landscaping LLC
4954 N. Shamrock Place
Tucson AZ 85705

COVERAGES CERTIFICATE NUMBER: 578567424 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	GENERAL LIABILITY	Y	Y	PHPK1037701	6/30/2013	6/30/2014	EACH OCCURRENCE	$2,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$2,000,000
							GENERAL AGGREGATE	$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$4,000,000
	POLICY X PROJECT LOC							$
A.	AUTOMOBILE LIABILITY			CMM3341398	6/30/2013	6/30/2014	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB X OCCUR			PHUB425055	6/30/2013	6/30/2014	EACH OCCURRENCE	$4,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$4,000,000
	DED X RETENTION $ 10000							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS / OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N	N/A					E.L. EACH ACCIDENT	$
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Regarding the Liability coverage shown, if required by written contract (per forms attached):

1) This insurance is Primary and NonContributory with respect to any other insurance available to the Additional Insured(s), and
2) Certificate Holder(s) and others as required in said contract are Additional Insured(s)(except Work Comp);
3) the company Waives its Right of Subrogation against the Additional Insured(s).

See Attached...

CERTIFICATE HOLDER

City of Tucson
255 W. Alameda
Tucson AZ 85726

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

R. T. Alicy

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AGENCY CUSTOMER ID: NWEXT-1
LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY		NAMED INSURED
Lovitt & Touche' Inc - Tucson		Northwest Landscaping LLC 4954 N. Shamrock Place Tucson AZ 85705
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Coverage is subject to all policy terms, conditions, definitions, exclusions, forms & endorsements.

RE: JOC Number 130762

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ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/28/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Lovitt & Touche' Inc - Tucson
7202 East Rosewood Dr., #200
Tucson AZ 85710

CONTACT NAME: Lin Ebling
PHONE (A/C, No, Ext): 520-722-3000 FAX (A/C, No): 520-722-7245
E-MAIL ADDRESS: lebling@lovitt-touche.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: SCF AMERICAN INS CO	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED NWEXT-1
Northwest Exterminating Co Inc
Northwest Landscaping, LLC
Northwest Construction, LLC
4954 N Shamrock Place
Tucson AZ 85705

COVERAGES CERTIFICATE NUMBER: 1110878847 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		Y	A60160	1/1/2013	1/1/2014	X WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Waiver of Subrogation applies if required in a written contract.
RE: JOC Number 130762

CERTIFICATE HOLDER

City of Tucson
255 W. Alameda
Tucson AZ 85726

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

R.J. Micay

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EXHIBIT B
SCOPE OF WORK, LIST OF MATERIALS, SPECIFICATIONS AND OTHER MODIFICATIONS TO UNDERLYING CONTRACT

SEE EXHIBIT A

EXHIBIT C
PAYMENT & COMPENSATION TERMS

SEE EXHIBIT A

EXHIBIT D
INSURANCE REQUIREMENTS

COVERAGE AFFORDED	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Commercial General Liability Insurance Including:	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

A. Products & Completed Operations
B. Blanket Contractual
C. Premises-Operations-Personal Injury

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which require automobile travel by Contractor.

Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

SPECIAL CONDITIONS:

1. THE TOWN OF SAHUARITA WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the Town.
3. Deductibles will be stated on the certificate of insurance and are subject to the review and approval of the Town.
4. Contractor shall provide Town with proof of compliance with the insurance provisions and requirements within ten (10) days of the date this Contract is executed by all parties by providing a current certificate of insurance and the associated endorsement to the policy. Failure of Contractor to comply with the insurance requirements at any time shall result in a breach of this Agreement, and shall, among other things, allow immediate termination of this Agreement.
5. Contractors performing any portion of a Project that shall acquire funding from the Regional Transportation Authority (RTA) shall name the RTA as additional insured and additional indemnitee. The RTA shall be identified as an additional insured with respect to insurance policies for general liability, automobile liability and defects in design. Contractor is also required to name the RTA as an additional beneficiary in any performance and payment related assurances posted for the Project.

EXHIBIT E
LEGAL NOTICES

TOWN: L. Kelly Udall, Town Manager Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **with a copy to:** Daniel J. Hochuli, Town Attorney Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **and:** Sheila M. Bowen, P.E. Public Works Director / Town Engineer Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629	**CONTRACTOR:** Steven Chrismer, Vice President Northwest Landscaping 4927 N. Jersey Ct. Tucson, AZ 85705 **With a copy to:** NONE

APPROVED
Town of Sahuarita
Department of Law

COOPERATIVE PURCHASING CONTRACT

Town of Sahuarita, Arizona

Department:	Public Works
Contractor:	Santa Rita Landscaping, Inc.
Project Name:	JOC for Landscape Construction Services
Project Number:	N/A
Contract Dates:	Start: 8/24/2016 End: 9/30/2017
Contract Number:	170022
Amount:	Not to Exceed $100,000.00
Funding Source:	Various

TOWN COUNCIL MEMBERS

Mayor Duane Blumberg
Vice Mayor Bill Bracco
Kara Egbert
Gil Lusk
Tom Murphy
Lynne Skelton
Melissa L. Hicks

TOWN MANAGEMENT

L. Kelly Udall, Town Manager
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

COOPERATIVE PURCHASING CONTRACT

THIS CONTRACT is entered into between the Town of Sahuarita, Arizona, an Arizona municipal corporation (hereinafter "Town"), and Santa Rita Landscaping, Inc., an Arizona corporation (hereinafter "Contractor").

W I T N E S S E T H

Whereas, Town requires the services of a vendor and/or contractor qualified and duly licensed in the Town of Sahuarita and the State of Arizona and qualified to provide landscape construction services; and

Whereas, Contractor is qualified and willing to provide such services; and

Whereas, Section 3.15.060 (C) of the Sahuarita Town Code provides that in the event of a purchase made by, through, or with any public agency as defined in Arizona Revised Statutes § 11-951, the Town Council may approve such purchases or award such contracts for services without a formal bidding process, and Contractor meets all such requirements.

A G R E E M E N T

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter provided, it is agreed between the Town and the Contractor as follows:

1 **INCORPORATION OF CONTRACT.** The parties hereby incorporate that certain contract between Contractor and the City of Tucson attached hereto as Exhibit "A" (the "Underlying Contract") as if fully set forth herein, and agree that (i) the Town shall be substituted in place of the other governmental entity, (ii) the Underlying Contract shall bind the parties to the fullest extent possible, and (iii) any clarifications or modifications to the Underlying Contract shall be set forth herein.

2 **TERM.** This Contract shall commence on August 24, 2016, and shall terminate on September 30, 2017, unless sooner terminated or further extended.

3 **SCOPE OF WORK.**

3.1 The work to be performed under this Contract is that work which is requested pursuant to the Scope of Work, list of materials, or other specifications attached hereto as Exhibit "B" and incorporated herein by this reference. Any clarifications, substitutions, corrections, additions, or other modifications to the Underlying Contract shall also be set forth on Exhibit "B."

4 **PAYMENT.**

4.1 In consideration of the services specified in this Contract, the Town agrees to pay the Contractor as set forth in the Underlying Contract, as clarified or modified as set forth in Exhibit "C" to this Agreement.

4.2 Contractor shall not perform work in excess of the contract amount without prior authorization by an amendment executed by all parties to this Contract. Work performed in excess of the contract amount without prior authorization by amendment shall be at Contractor's own risk.

5 **CONFLICT OF INTEREST.** This Contract is subject to the provisions of A.R.S. § 38-511.

6 **NOTICES.** Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as provided on Exhibit "E" to this Contract.

7 **Non-Discrimination.** Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/680 which is hereby

incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

8 **COMPLIANCE WITH FEDERAL AND STATE LAWS.** In the event this contract refers to services, the following shall apply. The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1988. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

8.1 Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the Town that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Town in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

9. **NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Sahuarita Town Council does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, Town shall have no further obligation to Contractor, other than for services rendered prior to termination.

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

TOWN OF SAHUARITA, ARIZONA

_____
Duane Blumberg
Mayor

Date: _____

ATTEST:

_____
Lisa Cole, MMC, Town Clerk

TOWN OF SAHUARITA

_____
L. Kelly Udall, Town Manager/Purchasing Director

DEPARTMENT HEAD:

_____
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

APPROVED AS TO FORM:

_____
Daniel J. Hochuli, Town Attorney

Federal Tax ID Number: 86-0777111

D-U-N-S Number: 963704101

CONTRACTOR:
SANTA RITA LANDSCAPING, INC.

_____
Name: Richard Spross
Title: Treasurer

Date: _____

Federal Tax ID Number: 86-0583190

D-U-N-S Number: 18-185-1387

EXHIBIT A
UNDERLYING CONTRACT (WITH ALL AMENDMENTS TO DATE)

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: (520) 837-4118 / FAX: (520) 791-4735
sandra.alcorn@tucsonaz.gov
ISSUE DATE: May 23, 2016

CONTRACT #130762-01
CONTRACT AMENDMENT NUMBER: THREE (3)

SA/pp
CONTRACT OFFICER: SANDRA ALCORN

JOC for LANDSCAPE CONSTRUCTION SERVICES

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM ONE (1): RENEWAL
In accordance Special Terms and Conditions, Section 4, Contract Term and Renewal, the City of Tucson is hereby exercising its option to renew the contract for an additional one-year period from **October 1, 2016 through September 30, 2017.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING
The estimated dollar value of this contract for renewal period is **one hundred thousand dollars ($100,000.00).** In accordance with Arizona Revised Statute and the City's Construction Services Agreement, the Contractor must provide payment and performance surety bonds for this amount. Pursuant to Arizona Revised Statute, bonds may be provided as follows: annual bonds in the amount designated by the agency **($100,000.00),** or bonding per each individual job. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value.

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR: Santa Rita Landscaping

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

5-23-16
Signature of person authorized to sign Date

RICHARD SPROSS TREASURER
Name and Title (typed or printed legibly)

SANTA RITA LANDSCAPING, INC 85705
Company Name

755 W. GRANT ROAD TUCSON AZ
Address

rich@srlandscaping.com
Email Address

TUCSON AZ 85705
City State Zip

Contact information for Sales/Account Representative for daily business operations:

GINA GARCIA PROJECT MANAGER
Name and Title (typed or printed legibly)

520-838-5432
Phone Number

gina@srlandscaping.com
Email Address

CITY OF TUCSON:

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 16th DAY OF June, 2016, AT TUCSON, ARIZONA.

Marcheta Gillespie, CPPO, C.P.M., CPPB, CPM
as Director of Procurement and not personally

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: (520) 837-4118 / FAX: (520) 791-4735
sandra.alcorn@tucsonaz.gov
ISSUE DATE: May 23, 2016

CONTRACT #130762-01
CONTRACT AMENDMENT NUMBER: THREE (3)

SA/pp
CONTRACT OFFICER: SANDRA ALCORN

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

✓ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

SANTA RITA LANDSCAPING.COM
Company Name

Signature of Person Authorized to Sign

RICHARD SPROSS
Printed Name

PO Date: 10/14/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0014070
Phone: (520) 623-0421
Fax: (520) 623-9026

Santa Rita Landscaping
755 W Grant Rd
Tucson, AZ 85705

Blanket PO Number

37190

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO

Transportation/Engineering
201 N Stone 3rd Fl
Tucson, AZ 85701

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031
AccountsPayable-Finance@tucsonaz.gov

Requisition Number	Contract Number	FOB	Terms	Delivery Date
1334963	130762,	As Specified		0 Days ARO

Catalog: -

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	0 EA	0.00	0.00	0.00	0.00
2	CONTRACT 130762-01:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.	0 EA	0.00	0.00	0.00	0.00
3	CONTRACT 130762 JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016.	0 EA	0.00	0.00	0.00	0.00
4	CONTRACT 130762-01 JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 3 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2016 TO SEPTEMBER 30, 2017.	0 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Sandra Alcorn
Contract Officer

(520) 837 - 4118
Phone

(Rev. 5/25/2016) PO_S.rpt

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Reismont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

ITEM ONE (1): RENEWAL

In accordance with Section III, Contract Term and Renewal, the City of Tucson is renewing **Contract 130762: JOC for Landscaping Construction Services**, for an additional one-year period from **October 1, 2015 through September 30, 2016.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING

The estimated dollar value of this contract for renewal period is **ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00).** In accordance with Arizona Revised Statute and Special Terms and Conditions 4: Bonding, the Contractor must provide payment and performance surety bonds for this amount. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value. Bonds may be provided as follows: annual bonds in the amount designated above, or bonding per each individual job.

ITEM THREE (3): DAVIS BACON WAGE DETERMINATION(S)

Davis-Bacon Wage Determinations, if applicable, will be provided to the contractor on an individual project basis.

ITEM THREE (3): IMODIFICATIONS TO GENERAL CONDITONS FOR CONSTRUCTION

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1: Indemnification with:

To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractors agrees to waive all rights of subrogation against the City of Tucson, it's agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

Contractor is responsible for compliance with the Patient Protection and Affordable Care Act (ACA), for its employees in accordance with 26 CFR §54. 4980H. Additionally, Contractor is responsible for all applicable IRS reporting requirements related to ACA. If Contractor or any of Contractor's employees is certified to the City as having received a premium tax credit or cost sharing reduction which contributes to or triggers an assessed penalty against the City, or Contractor fails to meet reporting requirements pursuant to section 6056 resulting in a penalty to City, Contractor indemnifies City from and shall pay any assessed tax penalty.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Reismont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

ITEM FOUR (4): INSURANCE

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1, Number 3 with:

The Contractor agrees to:

A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least thirty (30) calendar days prior to termination, cancellation, or reduction in coverage in any policy.

B. The Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

C. Provide and maintain minimum insurance limits as applicable.

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability: Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	$1,000,000
General Aggregate Per Project	$2,000,000
Products & Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury	$1,000,000
Blanket Contractual Liability	$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	$1,000,000
III. Workers' Compensation (applicable to the State of Arizona)*1	
Per Occurrence	Statutory
Employer's Liability	$1,000,000
Disease Each Employee	$1,000,000
Disease Policy Limit	$1,000,000

*1 Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Reismont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

D. **ADDITIONAL INSURANCE REQUIREMENTS:** All policies shall include, or be endorsed to include, the following provisions:

1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor.
2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

E. **NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.

F. **ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

G. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Department of Procurement.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

H. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

I. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.

CONTRACT AMENDMENT

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6th FLOOR, TUCSON, AZ 85701
P.O. BOX 27210, TUCSON, AZ 85726
PHONE: 520.837.4126/FAX: 520.791-4735
William.Reismont@tucsonaz.gov
ISSUE DATE: Tuesday, August 11, 2015

CONTRACT NO. 130762
CONTRACT AMENDMENT NO: Two (2)

WBR/car
CONTRACT OFFICER: WILLIAM "BERT" REISMONT

THIS CONTRACT IS AMENDED AS FOLLOWS:

************END OF AMENDMENT************

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

8-12-15
Signature Date

RICHARD SPROSS TREASURER
Print Name and Title

Santa Rita Landscaping
Company Name

755 W. GRANT RD. STE 105
Address

TUCSON, AZ 85705
City State Zip

rich@srlandscaping.com
E-Mail Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 23rd DAY OF October, 2015 AT TUCSON, ARIZONA.

Marcheta Gillespie C.P.M., CPPO, CPPB, CPM
As Director of Procurement and not personally

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

✓ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

_____ "Annual" bonds in the amount designated by the agency

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVICED FOR ON THE BOND FORMS UNDER "ATTEST".

SANT RITA LANDSCAPING INC.
Company Name

Signature of Person Authorized to Sign

RICHARD SPROSS
Printed Name

PO Date: 10/14/2013
Change Order Date: 11/06/2015

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0014070
Phone: (520) 623-0421
Fax: (520) 623-9026

Santa Rita Landscaping
755 W Grant Rd
Tucson, AZ 85705

Change Order Number
2
Blanket PO Number
37190
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO

Transportation/Engineering
201 N Stone 3rd Fl
Tucson, AZ 85701

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,	As Specified		0 Days ARO

Catalog: -

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
3	CONTRACT 130762 JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2016.		0.00	0.00	0.00	0.00

Previous PO Total: $0.00

New PO Total: $0.00

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Bert Resimont — **Contract Officer**

(520) 837 - 4126 — **Phone**

(Rev. 4/27/2009) PO_CHG_S.rpt

PO Date: 10/14/2013
Change Order Date: 10/08/2014

PO Change Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0014070
Phone: (520) 623-0421
Fax: (520) 623-9026

Santa Rita Landscaping
755 W Grant Rd
Tucson, AZ 85705

Change Order Number
1
Blanket PO Number
37190
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

SHIP TO

Transportation/Engineering
201 N Stone 3rd Fl
Tucson, AZ 85701

Contact Janet Jones at (520)837-6595

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	130762,-01	As Specified		0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
2	CONTRACT 130762-01:JOC FOR LANDSCAPING CONSTRUCTION SERVICES . PER AMENDMENT NO 1 CONTRACT IS RENEWED FOR THE PERIOD OF OCTOBER 1, 2014 TO SEPTEMBER 30, 2015.		0.00	0.00	0.00	0.00

Previous PO Total: $0.00 **New PO Total: $0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

DEL **Dan Longanecker** — **Contract Officer**
(520) 837 - 4125 — **Phone**

(Rev. 4/27/2009) PO_CHG_S.rpt

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-01
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

ITEM ONE (1): RENEWAL

In accordance with Section III, Contract Term and Renewal, the City of Tucson is renewing **Contract 130762: JOC for Landscaping Construction Services,** for an additional one-year period from **October 1, 2014 through September 30, 2015.**

ITEM TWO (2): ANNUAL ESTIMATE / BONDING

The estimated dollar value of this contract for renewal period is **ONE HUNDRED THOUSAND DOLLARS ($ 100,000.00).** In accordance with Arizona Revised Statute and Special Terms and Conditions 7: Bonding, the Contractor must provide payment and performance surety bonds for this amount. Should the value of construction during the renewal period exceed the estimated contract amount, it shall be the responsibility of the contractor to insure the payment and performance bonds cover the total contract value. Bonds may be provided as follows: annual bonds in the amount designated above, or bonding per each individual job.

ITEM THREE (3): DAVIS BACON WAGE DETERMINATION(S)

Davis-Bacon Wage Determinations, if applicable, will be provided to the contractor on an individual project basis.

ITEM THREE (3): IMODIFICATIONS TO GENERAL CONDITONS FOR CONSTRUCTION

Pursuant to a change in ARS Title 34, replace language in Exhibit B, General Conditions for Construction, Article 4.12.1: Indemnification with:

"To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and the Regional Transit Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City."

CDT PROCURE 140912 PM03:08

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4125

CONTRACT NO.: 130762-01
CONTRACT AMENDMENT NO. One (1)

CONTRACT OFFICER: Dan Longanecker

THIS CONTRACT IS AMENDED AS FOLLOWS:

JOC for Landscape Construction Services

Amendment No. One (1)

Replace Section 11.4: Independent Contractor with:

"It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees."

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

9-3-2014
Signature Date

RICHARD SPROSS TREASURER
Printed Name and Title

SANTA RITA LANDSCAPING, INC
Company Name

755 W. GRANT RD
Address

TUCSON AZ 85705
City State Zip

richsrlandscaping.com
Email Address

THE ABOVE REFERENCED CONTRACT AMENDMENT IS HEREBY EXECUTED THIS 7th DAY OF October, 20 14, AT TUCSON, ARIZONA.

for Marcheta Gillespie, C.P.M., CPPO, CPPB, CPM
as Director of Procurement and not personally

BONDING OPTIONS

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

✓ "Bond per Job"; each project bonded individually prior to Notice to Proceed.

____ "Annual" bonds in the amount of $100,000; each project over $100K or concurrent projects totaling more than $100K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

SANTA RITA LANDSCAPING, INC
Company Name

Signature of Person Authorized to Sign

RICHARD SPROSS
Printed Name

(520) 623-0421
Contract Number

9-3-2014
Date

Return this completed form along with your signed amendment

PO Date: 10/14/2013

MASTER Blanket Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

VENDOR

Vendor ID: 0014070 Phone: (520) 623-0421
Fax: (520) 623-9026

Santa Rita Landscaping
755 W Grant Rd
Tucson, AZ 85705

Blanket PO Number

37190

ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.

MAIL ORIGINAL INVOICE TO ADDRESS BELOW

SHIP TO

Transportation/Engineering
201 N Stone 3rd Fl
Tucson, AZ 85701

Contact Janet Jones at (520)837-6595

INVOICE

City of Tucson
Finance/Accounts Payable
PO Box 27450
Tucson, AZ 85726-7450
(520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
1334963	130762,	As Specified		0 Days ARO

Catalog: Landscape Services - Landscape Services

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
1	CONTRACT 130762 - JOC FOR LANDSCAPING CONSTRUCTION SERVICES CONTRACT REP - GARY WITTWER (520) 837-6618 TERM - 10/1/13 THROUGH 9/30/14 WITH FOUR (4) POTENTIAL ONE-YEAR RENEWAL OPTIONS	0 EA	0.00	0.00	0.00	0.00
					Subtotal:	**$0.00**
					Tax:	**$0.00**
					TOTAL:	**$0.00**

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

Matt Hausman — Contract Officer

(520) 837 - 4123 — Phone

CITY OF TUCSON

Contract 130762-01

JOC for Landscape
Construction Services

Santa Rita Landscaping

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT NO. 130762
CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

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II. Scope of Work

III. Contract Term and Renewal

IV. Special Terms and Conditions

V. Pricing

VI. Construction Services Agreement

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B. General Conditions for Construction

C. Federal Terms and Conditions, to include the following:

- HUD REQUIREMENTS
  - 5369
  - 5369-A
  - 5370
  - 4010
  - Anti-Kickback Act
  - SECTION 3 Requirements

D. SBE /DBE Program Provisions for Job Order Contracts (JOC)

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701-1303
P.O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT OFFICER: MATT HAUSMAN
PH: (520) 837-4123/FAX: (520) 791-4735
matt.hausman@tucsonaz.gov

I. INTRODUCTION

The City of Tucson (COT) has conducted a competitive one-step process to retain up to FOUR (4) Contractors for a Job Order Contract (JOC) to provide miscellaneous landscape services at various locations for various City Departments. Housing and Urban Development (HUD), Regional Transportation Authority (RTA) and local funding sources will be used. As such, HUD requirements are hereby incorporated into the contract in Exhibit C. For Federal Aid projects, Contractors shall be provided with the most current and appropriate wage determination by the user department with the request for job order pricing. Individual job orders shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement. For federally funded projects, Contractors must comply with all Davis-Bacon Act requirements before any work can commence. The estimated budget for the first year is $850,000 and bonding per job will be an option. The term of this contract will be one year with FOUR (4) one-year renewal options. Services will be requested on an as-needed, if-needed basis and the resultant contract is neither exclusive nor a commitment by the COT that the Contractor's services will be required.

1. JOB ORDER CONTRACTING BACKGROUND

Job Order Contracting is an alternative delivery method for construction of public works projects. JOC's differ from the standard project-specific, low bid contracts in that they are indefinite-quantity contracts, which can be awarded on the basis of qualifications. Best value may be considered in awarding job orders under the resulting contract.

During the term of the JOC, work is performed by way of individual job orders. Each job order, initiated by the City, is defined cooperatively by the City and contractor. Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in an executed Notice to Proceed letter prior to proceeding with the work.

I. SPECIAL CONSIDERATIONS:

A. Project Pricing

Upon identification of a project, contractor(s) will be provided any/all details, construction drawings and specifications. The City intends to solicit proposals from the all contractors for the work indicated by the project documents. Individual job orders will be awarded based on the contractors qualifications, the proposed cost, and consideration of the firm's ability to complete the work expeditiously. When quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

B. Award of individual Job Orders

Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work. Each individual job order shall not exceed $50,000 unless a waiver is requested of and granted by the Director of Procurement prior to services being rendered. For any individual job $50,000 or greater that results in the establishment of DBE/SBE goals, contractor shall submit a DBE/SBE plan for OEOP review, per DBE/SBE program requirements outlined herein. Davis Bacon eligible projects will be identified in the request for price and schedule proposals for individual projects the most recent wage determination will be provided at that time.

C. Miscellaneous

- Use of subcontractors is allowed; however, each subcontractor must be identified and approved by the City Representative prior to commencement of work.
- All correspondence and data submitted by the Contractor under this contract shall reference the contract number, title, and full purchase order number.

D. Permitting:

The contractor is responsible for submitting and securing all necessary City and County permits. The City is responsible for the City required permit fees. The contractor is responsible for any Pima County fees, such as Pima County Wastewater fees.

II. SCOPE OF WORK

The scope of work will vary with each individual job order. It is expected that the specific Scope of Work and any Special Provisions, Plans, Specifications and Details shall be provided by the user Department prior to soliciting bids for individual job orders. Project pricing is anticipated to be by Unit Price or Lump Sum.

SECTION 1: SPECIAL CONDITIONS

A. Work Under This Contract

The work to be done under this Contract shall include the furnishing of all labor, material, and equipment necessary for or incidental to the construction and completion of all work indicated by the individual job orders. This consists of, but is not necessarily limited to:

The planting of trees, shrubs, and cacti; grading, excavation, ripping of soils, installation of hydroseeding; the placement of decorative rock and boulders; the installation of an irrigation systems, and controls and all incidental work required to complete in place; sidewalks and/or walking/bike paths; drainage pipes/scuppers; fencing; non load-bearing walls; signage; erosion control/SWPPP; rip rap; hand seeding, hand watering and mulching. Some projects may require a Certified Arborist.

All work in the public rights-of-way shall be done in accordance with the 2003 City of Tucson / Pima County Standard Specifications and Standard Details for Public Improvements, and TDOT Standard Details unless directed otherwise by the City's Project Manager for that particular Job Order. The work, when performed in the public rights-of-way, for the Department of Transportation, shall not require an Excavation Permit. This shall not preclude the contractor from obtaining permits required from other agencies and organizations that may be required for the performance of a job order. Permits may be required for work on real property belonging to the City or other private property, as required by ordinance, State or Federal Law. The term Engineer, shall represent the Contract Representative on projects constructed in the public rights-of-way.

B. Description of Work

This Contract was prepared to provide an expeditious means to meet landscaping requirements and needs on existing and future City facilities and public rights-of-way. The work to be performed consists

of furnishing all labor, material, equipment, and supplies in a workmanlike manner, in accordance to the 2003 City of Tucson / Pima County Standard Specifications for Public Improvements (hereto referred to as the Standard Specifications).

C. Location of Project

The individual job orders will be located at facilities throughout the City and Pima County. Job orders may also be issued for work in the public rights-of-way.

D. Special Provisions

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107-6 Archaeological Features: of the Standard Specifications is modified to add:

In the event that archaeological or historical features are encountered, cease work that could damage the features and contact Jonathan Mabry at the City of Tucson Historic Preservation Office at 837-6965 or 791-4171 and the engineer.

SECTION 109 – MEASUREMENT AND PAYMENT

109-5(B)(3)(a) Rental Rates (Without Operators): of the Standard Specifications is modified to add:

The Rental Rate Blue Book adjustment factor (F) will be 0.933.

SECTION 701 - MAINTENANCE AND PROTECTION OF TRAFFIC

701-1 Description: of the Standard Specifications is modified to add:

All work shall be performed during daylight hours unless a written program from the Contractor is received and approved by the City Engineer. If night work is approved, all other specifications, such as temperature requirements, must be met. Night work shall consist only of those items specifically approved by the City Engineer. If night work is approved, the City Representative may terminate all, or any portions, of the night work at any time. The remaining portion of this section shall further restrict all work, including night work.

Traffic Control Plan

No less than 5 working days prior to commencement of any work on any site or job order that will impact traffic movement, in the public rights-of-way, the Contractor shall submit for approval a detailed traffic control plan. The traffic control plans shall be on paper reproducible on a copier or blueprint machine (maximum paper size for copier prints is 8-1/2" x 14"). The plans shall be submitted to the Project Administrator/ Manager, Field Engineering Section, located in the County/City Public Works Center, 201 North Stone Avenue, 4th floor.

No separate payment shall be made for the traffic control plans. The costs shall be included in the overall cost of the project. The overall cost shall also include applicable plan review and permit fees.

Traffic Control/Lane Closures must be in accordance with the Manual on Uniform Traffic Control Devices as amended by the State of Arizona and the 2005 edition of Additions by the City of Tucson,

available at the City of Tucson Traffic Engineering Division, located in the County/City Public Works Center, 201 North Stone Avenue, 5th floor, and at http://dot.tucsonaz.gov/traffic/barricading.cfm.

No Arterial or Collector Street restriction between 7-9 a.m. and 4-6 p.m., Monday through Friday.

The Contractor must obtain permission a minimum of three (3) days in advance, except in an emergency, before closing or barricading any street or public right-of-way.

Barricading shall be in accordance with the approved barricading plan.

If the Contractor is allowed to temporarily eliminate parking on any streets, the Contractor shall arrange 24 hours in advance to have the meters hooded by the City of Tucson Parkwise Division. Parkwise may be contacted at (520) 791-5071 and information obtained at http://tucsonaz.gov/parkwise. The Contractor shall absorb any costs.

701-2 Materials: of the Standard Specifications is revised to add:

(A) Conformance:

Except as specified herein, all equipment, procedures used by workers, devices and facilities shall conform to the requirements of the MUTCD and associated Traffic Engineering Supplement.

(B) Safety:

(1) General Requirements:

All traffic control devices listed below as Category I and Category II devices shall meet the evaluation criteria for Test Level III per NCHRP (National Cooperative Highway Research Program) Report 350.

At the pre-construction conference the contractor shall submit a letter certifying that all such traffic control devices to be used on the project will meet the above-referenced criteria. The certification shall contain the following:

(a) A list of all Category I and II traffic control devices to be used on the project.

(b) The project number.

(c) A statement verifying that these devices, and their application, meet the requirements of NCHRP Report 350 Test Level III.

(d) The name, title and signature of a person having legal authority to bind the manufacturer or supplier of the Category I and II devices. The binding authority shall be in accordance with Subsection 106.05(B)(5).

If additional Category I or II devices are required at a later date, the contractor shall provide an amended certification letter to the Engineer specifying that such devices also comply with the requirements of NCHRP Report 350 Test Level III.

For all Category I and Category II devices used on the project, the contractor shall also acquire or have access to reports which verify that such devices meet the above-referenced criteria. The reports shall

contain the name and model of the tested traffic control devices, detailed drawings or product literature of each, and under what conditions the devices passed. The traffic control devices detailed in the report shall be the complete warning devices, including warning lights, flags, ballast and any other auxiliary attachment allowed. Reports for Category II devices are prepared by the Federal Highway Administration (FHWA). For Category I devices, the supplier is responsible for testing the product and providing a report which verifies that the device meets the criteria of NCHRP Report 350, Test Level III. If requested by the Engineer, the contractor shall provide copies of such reports within one working day.

(2) Category I Devices:

Category I devices are low-mass traffic control devices that will not cause an appreciable change in speed of an impacting vehicle, nor is it likely that any part of the device will intrude into the passenger compartment. The following traffic control devices will be considered Category I devices: rubber or plastic traffic cones, rubber or plastic tubular markers, single-piece plastic drums, plastic or fiberglass delineators. No warning lights, signs, flags or other auxiliary devices are allowed on Category I devices. Should any of these attachments be added to a Category I device, the Category I device will be considered a Category II device. Ballast at the base, such as a rubber tire, is an acceptable attachment to Category I devices. The single-piece plastic drum refers to the construction of the body of the drum exclusive of a separate base, if any.

(3) Category II Devices:

Category II devices are low-mass traffic control devices that will not cause a significant change in speed of an impacting vehicle. The following traffic control devices will be considered Category II devices: type I, II, and III barricades with or without warning lights; vertical panels with or without warning lights; signs and sign stand (all types) with or without warning lights and/or flags; drums, other than those listed in Category I, with or without warning lights; and any Category I devices with attached warning lights.

701-2.03 Temporary Concrete Barrier: of the Standard Specifications is revised to read:

Temporary concrete barrier shall conform to the requirements of Subsections 910-2 and 910-3 of the standard specifications for precast sections except that the dimensions of the connecting pin shall be 1 ¼ inch diameter by two feet five inches in length.

701-2.04 Temporary Pavement Markings: is revised to read:

Paint for temporary striping shall be white or yellow in accordance with the Manual on Uniform Traffic Control Devices. Temporary striping shall be 3-1/2 inches in width. The finished line shall have well defined edges and be free from waviness. Lateral deviation of the temporary stripe shall not exceed 1 inch in 100 feet.

Symbols (such as arrows) and legends (such as only) shall not be applied as temporary installations.

701-3.01 General: of the Standard Specifications is modified to add:

Traffic control does not include any devices or services used solely for the convenience of the Contractor, or to protect the Contractor's work. Excluded from Traffic Control (for the convenience of

the Contractor) is the use of devices and services (flagpersons and uniformed officers) which serve only to save the Contractor time and/or expense in his daily operations.

An example would be the use of flagpersons to control traffic at an equipment crossing in the construction zone in order to provide the right-of-way to construction equipment. Another example is the use of barricading devices around excavations in lieu of backfilling the excavation. Similarly, when a permanent below ground structure, which is to be surrounded or protected by a permanent device such as a wall or fence, is completed to the point where the permanent protection could be installed, the continued use of temporary protection [barricades, temporary concrete barriers (new installation), etc.] is for the Contractor's convenience.

701-3.02 Basic Maintenance and Protection of Traffic is modified to add:

The contractor shall provide and maintain, at all times, safe and adequate, emergency access lane for all affected directions at arterial and collector intersections. This lane shall be used for emergency vehicles only and will be adequately signed.

Should it become impossible to maintain an emergency access lane, a point control by a police officer will be provided to wave emergency vehicles through. The contractor shall notify the affected parties (police, fire, ambulance, hospitals, etc.) a minimum of 24 hours in advance of the disruption of the emergency access lane. The emergency access lane shall be restored as soon as possible.

701-3.06 Temporary Concrete Barriers: of the Standard Specifications is modified to add:

The Contractor shall provide temporary concrete barriers any time that traffic is adjacent to an open trench.

701-3.11 Flagging Services: of the Standard Specifications is modified to add:

The Contractor shall furnish verification to the Engineer that all civilian flaggers have completed a recognized training and certification program. Flaggers certified by the American Traffic Safety Services Association (A.T.S.S.A.) or by the National Safety Council shall be acceptable. Certification through other programs offering flagger training must be approved by the Engineer. Flagger certification must be current. Training and certification shall be required at least once every two years.

701-3.14 Traffic and Work Restrictions: of the Standard Specifications is modified to added:

It shall be the Contractor's responsibility to contact the adjacent and/or impacted property owners and tenants one week prior to construction. The City will furnish the written communication to be delivered by the Contractor (to be hand-delivered or left at doorway).

The Contractor shall provide vehicular access to property owners/tenants unless absolutely impossible to do so. Accessibility will be provided at the first opportunity.

There shall be no separate pay item for the cost of the resident notification and shall be included as a part of the overall project.

701-4.02 **Construction Area Elements:** of the Standard Specifications is modified to add:

The Agency will reimburse the contractor for the work under this section on the basis of bid prices or the predetermined reimbursement rates as specified in the Special Provisions.

(A) **Elements of Work (Complete-in-Place):** The elements of work listed under this subsection will be measured for payment upon the satisfactory completion of the initial installation or obliteration. Except as hereinafter specified under Basis of Payment, no subsequent measurements will be made:

Element of Work	Unit	Rate($)
Supply/Install/Remove		
Temporary Concrete Barriers	L.F.	5.00
Temporary Impact Attenuation (Sand Barrel)		
(Installation & Removal)	Each	5.00
Specialty Sign		Invoice + 10%
Preformed Pavement Marking (Type II)	L.F.	1.60
Preformed Pavement Marking (Type III)	L.F.	1.00
Temporary Pavement Marking (Painted Line)	L.F.	0.13
Pavement Marking, Preformed (Type I), Legend	Each	125.00
Pavement Marking, Preformed (Type I), Single Arrow	Each	100.00
Pavement Marking, Preformed (Type I), Merge Arrow	Each	115.00
Obliterate Pavement Marking	L.F.	0.25
Obliterate Pavement Legends	Each	25.00
Obliterate Pavement Arrows (Single, Double or Merge)	Each	22.00
Delineator (ADOT Std. Dwg. 4-M-4.01)(Temporary)	Each	20.00
Reflective Raised Pavement Marker (Temporary)	Each	4.00
Reflective Raised Pavement Marker (Permanent)		
(Used as Temporary)	Each	4.50
Non Reflective Raised Pavement Markers (Temporary)	Each	2.50
Remove Raised Pavement Markers	Each	1.00
Chip-Seal Pavement Marker (Single Capped)	Each	2.00
Chip-Seal Pavement Marker (Double Capped)	Each	3.00
Embedded Sign Post (Installation, Use & Removal)	Each	35.00

(B) **Elements of Work (In-Use) and Flagging:** The elements of work listed under this subsection will be measured for payment from the time at which the element is put into active use on the project and accepted by the Engineer until such time that the Engineer determines that the element is no longer required. Individual flags and sandbags used in conjunction with the traffic elements of work shall be considered incidental items. No separate payment shall be made for flags or sandbags and their cost shall be included in their respective elements of work. The work shall also include all maintenance, cleaning, and repair of all elements. The Engineer must also approve the use of Flagging Services. Flagging Services will be paid as indicated in this subsection.

Element of Work	Unit	Rate($)
Temporary Concrete Barrier (In Use)	L.F./Day	0.04
Temporary Impact Attenuation (Sand Barrel)(In-Use)	Each/Day	0.20
Flashing Arrow Panel	Each/Day	96.00
	Hour	5.00
Pilot Truck and Driver	Hour	30.00
Attenuator Truck and Driver	Hour	42.24
Vertical Panels	Each/Day	0.50
Traffic Cones (18 inch) (450mm)	Each/Day	0.10
Traffic Cones (28 inch) (710mm)	Each/Day	0.15
Barricade (Type II)	Each/Day	0.50
Barricade (Type III)	Each/Day	0.75
Flashing Warning Light (Type A)	Each/Day	0.25
Flashing Warning Light (Type B)	Each/Day	2.50
Steady-Burning Warning Light (Type C)	Each/Day	0.80
Standard Intensity Reflective Sheeting:		
Small Sign (Less Than 10 S.F.) (0.9m2)	Each/Day	0.50
Large Sign (10 S.F. or more) (0.9m2)	Each/Day	0.80
Portable Sign Stand (Spring Type)	Each/Day	2.10
Portable Sign Stand (Large Sign, 10 S.F. or more) (0.9m2)	Each/Day	1.00
Portable Sign Stand (Small Sign, Less Than 10 S.F.) (0.9m2)	Each/Day	0.70
High Level Flag Tree Sign Stand	Each/Day	0.40
Drum (18" x 36") (450mm x 900mm)	Each/Day	1.20
Orange Safety Fence (4ft. min. by 50 ft.) (1.2m min. x 15m)	Each/Day	1.50
Changeable Message Board (Pre-approved)	Each/Day	100.00
Chain Link Fence	L.F./Day	0.04
Flagging Services (Civilian)	Hour	15.18
Flagging Services (Civilian)(Federal Aid Proj.)	Hour	Prev. Wage
Flagging Services (Uniformed Officer)(Off Duty)	Hour	Invoice + 10%
Official Police Vehicle (Off Duty)	Hour	Invoice + 10%

701-4.04 Flagging Services: of the Standard Specifications is modified to add:

Overtime hours will be converted to straight times for measurement.

701-5 Basis of Payment: of the Standard Specifications is modified to add:

The traffic control bid item (Construction Area Traffic Control Elements) in the proposal is for bidding purposes only. Traffic Control will be paid according to the predetermined reimbursement rates listed herein.

The Contractor is responsible for the proper placement/maintenance of all traffic control elements in accordance with MUTCD requirements. The Basic Maintenance and Protection of Traffic Control Elements item shall be paid for at a lump sum as bid (Item 7010001).

701-5.02(A) General: of the Standard Specifications is modified to add:

The Agency will reimburse the Contractor for the work of providing and maintaining traffic control elements on the basis of the predetermined reimbursement rates for the Elements of Work listed in

Section 701-4.02 (A) and (B) as listed herein. (The pre-determined amount shown on Item 7010006 is for proposal submittal purposes only.)
Until determined otherwise, the City of Tucson, Contract Representative will pay for Traffic Control elements of work according to the schedules listed herein.

III. CONTRACT TERM AND RENEWAL

The term of this contract shall be OCTOBER 1, 2013, through SEPTEMBER 30, 2014, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, as its sole option, to renew the Contract for four (4) additional one-year periods, or portions thereof. If the City chooses to exercise this option, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of fee basis and minor scope additions and/or deletions.

1. PRICE ADJUSTMENT: The City will review fully documented requests for fee basis adjustments after any contract has been in effect for one (1) year. Adjustments will only be made at the time of contract renewal or extension, except for financial emergencies, and will be a factor in the renewal/extension review process. The City will determine whether the requested adjustment or an alternate option is in the best interest of the City. Any adjustment will be effective on the first day of the contract renewal or extension.

IV. SPECIAL TERMS AND CONDITIONS

1. **ANNUAL ESTIMATE:** The estimated dollar value of this contract for the initial one-year term is TWO HUNDRED THOUSAND DOLLARS ($200,000).

2. **BASIS FOR AWARDING INDIVIDUAL JOB ORDERS:** In the event the City awards more than one contract for these services, individual job orders will be awarded based upon consideration of the firm's ability to complete the work expeditiously and the proposed cost. The City intends to request price and schedule proposals from all contracted firms for each individual job order. However, when quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

   Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work.

   The Contractor shall be available on a five-day work basis throughout the term of the contract unless notified in writing by the City that this requirement may be temporarily waived due to the Contractor's approved written request or a reduced need by the City. The Contractor must be available to commence work on assignments within one week from award of an individual job order.

3. **COMPENSATION AND METHOD OF PAYMENT**: In consideration of the performance of the services described in the Scope of Services of each individual job order and pursuant to the master Scope of Work herein, the City shall pay the Contractor in accordance with the negotiated contract rates, and the Contractor shall charge the City only in accordance with those same rates.

   Compensation under this contract should not exceed $50,000 per individual job order unless a waiver is requested of and granted by the Director of Procurement.

The City will pay the Contractor following the submission of itemized invoice(s) for the service rendered. No payment shall be issued prior to receipt of material or service and correct invoice.

All requests for payment shall follow a format to be approved by the City Representative. Invoices shall be submitted monthly on a job-by-job basis.

4. **BONDING REQUIREMENTS:** Contractor shall file with the City, prior to the time of execution of the contract and annually, if the term of this contract is extended by the City, payment and performance bonds in the forms prescribed by the City unless bonding per project. The bonds must cover all construction performed under job orders. The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement, as provided under A.R.S. 34-610. Bonds may be provided as follows: annual bonds in the amount designated by the agency, or bonding per each individual job. Successful contractor(s) will designate bonding methodology prior to contract award.

5. **DBE PROGRAM REQUIREMENTS:**

The Job Order Contractor shall be required to comply with DBE Program requirements, if goals are applicable, on federally funded projects that exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed bidder's statement of proposed DBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The DBE Plan must include:
1. The names and addresses of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction as well as a DBE Acknowledgment of Participation which provides signed confirmation from the DBE(s) that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

A signed offer in response to this RFQ represents the offerors's intent to comply with the DBE program.

Also See EXHIBIT D - DBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

6. **SBE PROGRAM REQUIREMENTS:**

The Job Order Contractor shall be required to comply with SBE Program requirements, if goals are applicable, on projects that meet or exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars ($50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit ***to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase,*** either a completed offeror's statement of proposed SBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The SBE Plan must include:
1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction.

A signed offer in response to this RFQ represents the offerors's intent to comply with the SBE program.

Also see: EXHIBIT D - SBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

7. **PERFORMANCE RATING:** At the completion of each term or termination of this contract, the City will evaluate the Contractor based on performance under this Contract. This rating will be used in the overall evaluation of the Contractor when applying for future work with the City.

8. **AUDIT AND INSPECTION OF RECORDS:** The Contractor shall permit the authorized representatives of the City Of Tucson to inspect and audit any books, documents, papers, data and records relating to its performance under the contract until the expiration of three years after final payment under this contract. The City shall have the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by the City to be incomplete or erroneous.

The following access to records requirements apply to this Contract:
The Contractor agrees to provide the City of Tucson or any of its authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City of Tucson or any of its duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

9. **CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:

A) Amend the contract or enter into supplemental verbal or written agreements;
B) Grant time extensions or contract renewals;
C) Otherwise modify the scope or terms and provisions of the contract.

The contract shall only be modified with the approval of the Department of Procurement. Except in the case of documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Department of Procurement through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

10. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

11. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to

A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

12. **CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-397**: By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-397. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.

13. **CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at http://www.tucsonaz.gov/etax. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.

14. **FEDERALLY FUNDED PROJECTS:** For projects that are identified as being federally funded, Federal Labor Standards will be applicable to that project. All Federal forms are attached and will be incorporated into any resulting contract(s)*. It shall be mandatory upon the Contractor(s) to whom the contract is awarded, and upon subcontractors working on this project to comply with the following:

    A. Davis Bacon Act: (AZ Wage Decision) Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions.
    B. Work Hour and Safety Standards Act: overtime pay and safety.
    C. Mandatory Preconstruction meeting for Prime Contractor and all listed subcontractors

15. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See **www.tucsonaz.gov/procure** and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf for a listing of participating agencies. The parties agree that these lists are subject to change.

    Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

    The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

V. PRICING

A. On the ensuing page are labor and/or equipment rates to be used in pricing the work under this contract. This pricing list is not all inclusive of the work that may be required. Those items of work which are not included may be negotiated on a job order by job order basis.

B. The rates established under this contract are not to exceed prices for those items of work identified. Proposals on individual job orders may not exceed those unit prices but may be less than that at the contractors discretion as they compete for each individual job order.

SANTA RITA
LANDSCAPING
INC.

SRL Current Rate Sheet

Project: City of Tucson Job Order Contract (JOC)
For Landscape Construction Services
RFQ. No. 130762

Item Name	Unit Price	Daily Rate	Weekly Rate
Superintendent with Pick-up	$55.00 hr.		
Foreman with Pick-up	$42.07 hr.		
Irrigation Technician with Pick-up	$38.89 hr.		
Laborer Class 1	$14.30 hr.		
Laborer Class 2	$18.74 hr.		
Equipment Operator	$27.15 hr.		
Backhoe		$490.00 day	$1,150.00 week
Skiploader		$464.00 day	$1,065.00 week
Small Trencher		$320.00 day	$835.00 week
Large Trencher		$590.00 day	$1,385.00 week
500 Gallon Water Trailer		$110.00 day	$350.00 week

* All rates include Labor/ Labor Burden, Profit, and Overhead.

* Superintendent rate is not required full time to any project. Only direct time allocated.

* Class 2 labor rate is for crew leader/ key person related to specific project with a ratio of 4 to 1 (Class1 to Class 2)

755 W. Grant Rd. Suite 105 • Tucson, Arizona 85705
Phone 520-623-0421 • Fax 520-623-9026
License ROC #C21-067801 • A21-071777 • Bonded and Insured

VI. CONSTRUCTION SERVICES AGREEMENT

CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of Oct, 20 13, by and between the City of Tucson, a municipal corporation organized and existing under the laws of the State of Arizona, hereinafter called the "City", and Santa Rita Landscape of the City of Tucson, County of Pima, and State of AZ hereinafter called the "Contractor".

WITNESSETH: That the Contractor and the City, in consideration of the mutual covenants herein contained, agree as follows:

Contract Number: 130762
Contract Name: Job Order Contract (JOC) for Landscape Construction Services

1. Pricing - See Section V. of the Contract

2. Notice to Proceed, Completion Time, and Liquidated Damages

2.1 It is agreed that the City Representative will issue the Notice To Proceed with the Work to be performed under this Contract within twenty (20) consecutive calendar days after the date of execution of this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

2.2 The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

2.3 Liquidated Damages. Completion times will be specified in the Notice to Proceed. Applicable liquidated damages shall be assessed for each day the Work remains incomplete after the scheduled completion date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the City will sustain on account of late completion.

3. Miscellaneous

3.1 Guarantee. The Contractor shall guarantee all work under this Agreement against defects of material and workmanship for a minimum of two years from the date of Final Completion unless otherwise specified.

3.2 Contract Documents. The following listed documents constitute the Contract Documents and they are all as fully a part of this Agreement as if repeated herein:

1. Any and all Amendments
2. Any and all Supplementary General Conditions, Special Requirements and/or Special Provisions included herein.
3. This Agreement.
4. Standard Terms & Conditions or General Conditions for Construction
5. Construction Specifications, including any and all Standard, Special, Technical, and Supplementary Specifications included herein.

6. Project Plans, if applicable
7. SBE/DBE Plan, if applicable
8. Performance and Payment Bonds
9. Insurance Requirements

3.3 Precedence. In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved by giving precedent to the terms of the above documents in the order listed. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Agreement shall be a part of the Agreement between the parties and shall take precedence over all of the other Contract Documents.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date and year first written above.

CITY OF TUCSON, a municipal corporation

By _____
As Procurement Director and Not Personally

SANTA RITA LANDSCAPING, INC
Contractor

By: _____

Title: TREASURER

APPROVED AS TO FORM this 10th
day of October, 2013

_____
As City Attorney and not personally

NOTE: The City's Contract Representative is:

GARY WITTWER (520) 837-6618

SAMPLE FORMS

STATUTORY PERFORMANCE BOND
(Penalty of this bond must be 100% of the specified Contract amount.)

KNOW ALL MEN BY THESE PRESENTS: That the City of Tucson, Arizona, a municipal

corporation, by action of the Purchasing Agent on _____, 20___

has awarded to _____

hereinafter designated as the "Principal", a Contract for the construction of _____

_____

which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein; and

WHEREAS, said Principal is required under the terms of said Contract, and the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we the Principal and _____

_____

a corporation organized and existing under the laws of the State of _____
_____

with its principal office in the City of _____, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Tucson, a municipal corporation, (hereinafter called the Obligee), in the penal amount of _____

_____ Dollars ($_____),
for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

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

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court of a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named, on the _____day of _____
20 _____.

_____
Principal

By _____

ATTEST:

_____
Title

_____
Surety

By _____
Attorney in Fact

_____
Agency of Record

_____
Agency Address

_____
City and State

ATTEST:

_____
Title

APPROVED AS TO FORM THIS _____

DAY OF_____, 20 _____.

_____
City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

STATUTORY PAYMENT BOND

(Penalty of bond must be 100% of the specified Contract Amount.)

KNOW ALL MEN BY THESE PRESENTS:

That _____,

as Principal, and _____

as Surety, are held and firmly bound unto the City of Tucson, Arizona, a municipal

corporation (hereinafter called the Obligee). in the penal sum of _____

_____Dollars ($_____), for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract with said Obligee

dated _____, 20 _____, hereinafter called the Contract, for _____

_____

which Contract shall be deemed a part hereof as fully as if set forth herein, and under the terms thereof the Principal has agreed to furnish a bond such as herein set forth;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, or in any amendment or extension of or addition to said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all rights and remedies on this bond shall insure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Title, Chapter and Article, to the same extent as if they were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed

by the Principal and Surety named, on the _____day of_____, 20 _____.

_____

Principal

By _____

ATTEST:

_____

Title

_____

Surety

By _____

Attorney in Fact

_____

Agency of Record

_____

Agency Address

_____

City and State

ATTEST:

_____

Title

APPROVED AS TO FORM THIS _____DAY OF_____, 20

_____

City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the city Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

CONSENT OF SURETY TO FINAL PAYMENT

The undersigned Surety (hereinafter "Surety"), having provided the City of Tucson (hereinafter "City") with a payment bond for the payment of labor and material provided to the

Contractor _____

(hereinafter "Contractor") in connection with City of Tucson Contract No. _____ (hereinafter the "Project") hereby consents to final payment.

Surety further releases City from all claims, past, present, future, known or unknown which it may assert or could have asserted against City as a result of City's final payment.

This release is only intended to relieve City of any liability or responsibility in connection with final payment to the Contractor in connection with the Project and shall in no way be construed to relieve Surety of any obligation under the payment bond issued for the Project.

IN WITNESS WHEREOF, the Surety has executed this instrument this _____ day of _____, 20 _____.

SURETY

_____ _____

Authorized Representative

Title: _____

STATE OF ARIZONA)
) §.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____,

20 _____, by _____,

on behalf of _____.

_____

NOTARY PUBLIC

MY COMMISSION EXPIRES:

EXHIBIT A

EXHIBIT B

GENERAL CONDITIONS FOR CONSTRUCTION

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2.2 Intent of the Contract Documents
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11.6 Provisions Required by Law
11.7 Severability
11.8 Interpretation – Parole Evidence
11.9 Rights and Remedies
11.10 Right to Assurance

ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Amendment - written or graphic instrument issued prior to the due date which clarifies, corrects or changes the Solicitation.

Architect/Engineer - the person licensed to practice architecture/engineering by the State of Arizona and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract plans, drawings, specifications and related documents. May be utilized to provide construction administration services.

Bonds - bid, performance and payment bonds and other instruments of security.

Change Order - a document approved by the City Contract Representative and which is signed by the Contractor and the City's Director of Procurement or duly authorized designee and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Completion time, issued on or after the effective date of the Contract.

City - means the City of Tucson, Arizona, a municipal corporation.

City Contract Representative - the City official administering the Contract for the City of Tucson.

Completion Time - the number of consecutive calendar days agreed to by the City and Contractor for completion of the Work, which may be revised by written Change Order.

Construction – the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real public property.

Construction-Manager-At-Risk – a project delivery method in which there is a separate contract for design services and a separate contract for construction services, with design and construction taking place in sequential or concurrent phases, and in which finance services, maintenance services, operations services and preconstruction services may be included.

Construction Services – either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

a) construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods;
b) a combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

Contract - the written agreement and all associated attachments, drawings, amendments and change orders executed between the City and the Contractor covering the Work to be performed.

Contract Price - the amount payable by the City to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order, or, in the case of a job-order contract, in the Notice to Proceed.

Contract Officer - the City official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the City's Director of Procurement and in accordance with the Tucson Procurement Code.

Contractor - the person, firm or corporation with whom the City has entered into the Contract.

Design-Build – the process of entering into and managing a contract between the City and a contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services and preconstruction services.

Design Services – architect services, engineer services or landscape architect services.

Director of Procurement – the person acting as Director of the City's Department of Procurement and who has authority to award and revise City solicitations and contracts for construction, construction services, and construction-related services as necessary.

Drawings - the graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Estimate for Payment - a form furnished by the City or an approved form submitted by the Contractor in lieu of city furnished form, and is required to be used when submitting requests for payments for work actually performed and materials supplied during a an agreed-to preceding period of time.

Field Order - a written order or directive issued by the City Contract Representative that orders minor changes in the Work.

Final Completion Date - the calendar date when the Work is one hundred percent (100%) complete as determined by the City.

Finance Services – financing services for the Work.

Guaranteed Maximum Price or GMP - the sum of the maximum cost of the Work; the Construction Manager @ Risk's or Design Builder's construction fee; general conditions fee; taxes, bonds, insurance costs; and bid contingency as proposed and approved pursuant to this Agreement. The approved GMP will be made part of this Agreement by executing an amendment or additional amendments for phased construction.

Job-Order-Contracting – a project delivery method in which the contract is a requirements contract for indefinite quantities of construction and in which specified job orders are issued during the contract and may include finance services, maintenance services, operations services, preconstruction services and design services.

Liquidated Damages – a sum set forth in the Contract documents that will be deducted from any monies due to the Contractor, not as a penalty, but in lieu of actual damages for late completion of the work.

Maintenance Services – routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Notice to Proceed - a written notice given by the City to the Contractor fixing the date on which the Completion time will commence and upon which the Contractor shall start to perform the

Contractor's obligations under the Contract. In the case of a job order, it may also contain the specifications exclusive to the job order as well as consideration for the Contractor.

Operations Services – routine operation of existing facilities, structures, buildings or real property.

Preconstruction Services – services during the design stage of the Work.
Contract

Public Inspector(s) - that person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes.

Schedule of Values - a schedule submitted by the Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

Shop Drawings - drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

Specifications - those portions of the Contract, or Notice to Proceed if a Job Order, consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Substantial Completion – a written declaration of the date upon which the City, in its sole discretion, determines the Work is substantially complete such that the City has beneficial use and/or occupancy. Upon substantial completion, the right of the City to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within thirty days of substantial completion.

Tucson Procurement Code – in addition to applicable State statutes and applicable Federal regulations and requirements, the municipal ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

The Work - the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract, or, in the case of a job-order contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract and/or Notice to Proceed, as appropriate.

ARTICLE 2. THE CONTRACT ITS EXECUTION AND INTENT

2.1 <u>The Contract</u>

2.1.1 The documents in the Contract include any amendments, drawings, change orders and approved Contractor submittals.

2.1.2 The Contract comprises the entire agreement between the City and the Contractor concerning the Work and supersedes any prior negotiations, representations or

agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

2.2 Intent of the Contract

2.2.1 The intent of the Contract is to include all labor, materials, equipment, transportation and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

2.2.2 The Contractor shall take no advantage of any apparent error or omission in the plans, estimated quantities or specifications. In the event the Contractor discovers such an error or omission after contract award, the Contractor shall immediately notify the City Contract Representative. The City Contract Representative shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the contract.

2.2.3 The Contract shall be construed in accordance with the laws of the State of Arizona, and all such laws regulating the construction of public works by the City are hereby incorporated herein by reference and made a part hereof.

2.2.4 Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

2.2.5 The organization of the Contract into divisions, sections or articles is merely for the purpose of convenient reference, and neither the headings nor divisions shall have any legal or Contractual significance and shall not control the division of the Work by the Contractor among the various subcontractor or trades.

2.2.6 The Contractor shall include all utility fees, permits, licenses, etc. including sewer connection fees in each estimate or proposal submitted.

2.3 Execution

2.3.1 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract.

2.4 Ownership of the Contract

2.4.1 The Contract, including, but not limited to, the drawings and specifications, is the property of the City and is not to be used by the Contractor or any subcontractor on other projects outside the scope of the Work without the express written consent of the City.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.1 Lines of Authority and Communications

3.1.1 The City's Director of Procurement is the City official with overall authority and responsibility for the award and administration of City Contracts. The Director of Procurement or his designated Procurement Department representative after consultation with the City Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Work.

3.1.2 The City Contract Representative is the designated representative of the particular City department for which the Work is being constructed (the "user department") or the City department which is responsible for the oversight of the work.

3.1.3 Day-to-day administration of the Contract is the responsibility of the City Contract Representative. The City Contract Representative is the City's representative during the prosecution of the Work and shall act as surveillance and technical advisor for the City. The City Contract Representative duties are more fully described in Section 3.2 of this Article.

3.1.4 The Contractor shall supervise and direct the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract gives other specific instructions concerning these matters. The Contractor's duties and responsibilities are more fully described in Article 4 of these Contract conditions.

3.1.6 Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall initially communicate with the City Contract Representative.

3.2 **<u>City Contract Representative's General Authority and Responsibilities</u>**

3.2.1 Unless the Contractor is responsible for the design of the Work, the City Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, up to three copies of drawings, specifications and instructions available for the execution of the Work. The City Contract Representative **may** furnish additional clarifications or interpretations in writing or by drawings as may be necessary for the proper progress and execution of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications where needed. All drawings, specifications and copies thereof furnished by the City Contract Representative are City property. They are not to be used on other work and, with the exception of the signed Contract, and are to be returned to the City Contract Representative at the completion of the Work.

3.2.2 The City Contract Representative shall make general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the City Contract Representative will become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.

3.2.3 The City Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished and Work performed and as to the rate of progress of the Work, and all questions which may arise as to the interpretation of the drawings and specifications.

3.2.4 The City Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work. The City Contract Representative's failure during the progress of work to discover or reject materials or work not in accordance with the plans, specifications or contract documents shall not be considered an acceptance of the work or materials or a waiver of defects. Neither the failure of the City Contract Representative to properly perform inspections, tests or approvals required by the contract documents nor the activities or duties of the City Contract Representative

in the administration of this contract shall relieve the Contractor from the contractor's responsibility for the means, methods, techniques, sequences or scheduling of the construction or the obligation to perform the work in strict accordance with the contract documents.

3.2.5 The City Contract Representative shall conduct an initial review of, and approve or deny, written Change Orders submitted by the Contractor, and may prepare Change Orders and provide field clarifications and corrections. All Change Orders shall be approved by the Director of Procurement or his designee prior to any work being done. However, in emergencies endangering life or property, the City Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.

3.2.6 The City Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Contract Officer as to all claims of the Contractor.

3.2.7 The City Contract Representative will review and process the Contractor's monthly Estimates for Payment, as more fully set forth in Article 7 of these General Conditions.

3.2.8 The City Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the Contract Officer.

3.2.9 The City Contract Representative will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility.

3.3 **Public Inspections**

3.3.1 Unless otherwise specifically provided in the Contract, Public Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications and applicable codes, and may provide clarification of any unspecified or unclear item or situation.

3.3.2 If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the City Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the City Contract Representative or the Public Inspectors, the Contractor shall advise the City Contract Representative of the date fixed for such inspection.

3.3.3 All tests, inspections or approvals required to be performed by the City Contract Representative, Public Inspectors, or other authorities or entities shall not relieve the Contractor of their obligation to perform the Work in accordance with the Contract.

3.4 **Special Inspections and Testing of Materials**

3.4.1 All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, will be subject to adequate inspection and testing in accordance with accepted standards, to

establish conformance with specifications and suitability for the use intended, as determined by the City Contract Representative.

3.4.2 The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the City Contract Representative. Except as provided in subsection 3.4.3, the City will pay for approved tests and services rendered by the approved laboratory or agency in addition to the Contract price for construction.

3.4.3 When initial tests indicate that any portion of the Work is not in conformance with the Contract because of faulty workmanship, the Contractor shall be required to pay for necessary re-tests. When initial tests indicate that the work is in conformance with the Contract, any re-testing that's ordered by the City shall be paid for by the City.

ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES

4.1 Contractor's Review of Contract and Site Conditions

4.1.1 It shall be the duty of the Contractor to carefully study and compare all drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the City Contract Representative.

4.1.2 The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale; but in the absence of figured dimensions, scale dimensions may be used with the prior written concurrence of the City Contract Representative. The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, level or grades, walks, driveways or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the City Contract Representative immediately. **It is the responsibility of the Contractor to provide BLUESTAKE verification of underground utilities on and off the construction site.**

4.1.3 Change orders will not be issued to cover any cost, loss or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the City Contract Representative.

4.1.4 The Contractor shall perform the Work in accordance with the Contract and with shop drawings, product data and samples that have been approved by the City Contract Representative.

4.1.5 Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the

City Contract Representative and shall be responsible for any required corrective action.

4.2 **Contractor's Supervision**

4.2.1 The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques and procedures and shall coordinate the sequences of all portions of the Work.

4.2.2 The Contractor shall ensure that the key personnel submitted in response to the Request for Qualifications and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of key personnel, the Contractor shall obtain prior approval from the City for key personnel substitution. The Contractor shall ensure that substituted personnel are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

4.2.3 The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its subcontractors and of persons, either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor.

4.3 **Materials and Labor; Warranty**

4.3.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, equipment, tools, construction equipment and machinery, water, gas, heat, utilities, transportation, and other facilities and services necessary for the execution, completion and delivery of the Work within the specified Completion Time.

4.3.2 **The Contractor shall pay all applicable taxes associated with the Work**

4.3.3 The Contractor warrants to the City that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

4.3.4 The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Agency. The Contractor shall receive, inventory, store, inspect, protect, distribute, and install Agency furnished material unless otherwise specified. The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used. The Contractor shall be held responsible for all material delivered to the contractor. Deductions shall be made from any monies due the Contractor to make good any shortages or deficiencies, from any cause whatsoever and for any damage which may occur after such delivery, and for any late delivery charges.

4.3.5 The Contractor will be held to furnish all work as specified in the Contract. After a price proposal for the Work has been accepted by the City, changes of brand named, trade named, trade marked, patented articles, or any other substitutions will be allowed only by written order signed by the City Contract Representative.

Unless otherwise agreed to via Change Order, the City shall receive all benefits of the difference in costs.

4.3.6 Materials not conforming to the requirements of the specifications, whether in place or not, shall be rejected and shall be promptly removed from the site of the work, unless otherwise directed by the City Contract Representative. No rejected material, the defects of which have been corrected, shall be returned to the work site until such time as approval for its use has been given by the City Contract Representative.

4.4 **Construction Schedules and Submittals**

4.4.1 Before commencing the Work, the Contractor shall provide the City Contract Representative with a construction schedule for the Work, fixing the dates at which various pre-determined events shall occur in order to promote a timely completion of the various parts of the Work in accordance with the Contract. The schedule may be revised from time to time as may be required by conditions of the Work, but shall not exceed time limits, or any extensions thereof, set forth in the Contract or in the individual job order, as appropriate.

4.4.2 The Contractor shall prepare and keep current for the City Contract Representative's approval, a schedule of submittals which shall be coordinated with the Contractor's construction schedule and allow the City Contract Representative reasonable time to review such submittals.

4.4.3 After review, the City Contract Representative, with reasonable promptness, shall approve these shop or setting drawings, product data, samples and sequences for conformance with the design concept of the project, the approved construction schedule, and other requirements of the Contract.

4.4.4 The Contractor shall make any corrections required by the City Contract Representative and re-submit such corrected materials to the City Contract Representative for approval. Any correction or change that will result in a design or function change or in an increase or decrease in the Contract price must also receive the prior approval of the City's Director of Procurement or his designee.

4.4.5 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or schedules until the respective submittals have been approved by the City Contract Representative, and shall not deviate from such submittals after final approval by the City Contract Representative.

4.4.6 As-builts documents must be provided to the City by the Contractor within thirty days of substantial completion. The City reserves the right to withhold final payment until complete as-builts have been received in good order by the City Contract Representative.

4.5 **Documents and Samples at the Work Site**

4.5.1 Unless otherwise directed by the City's Contract Representative, the Contractor shall maintain at the Work site a complete file of the drawings, specifications, amendments, change orders and other approved modifications, in good order and marked to reflect changes and selections made during construction, together with all approved shop drawings, product data, samples and similar required submittals. Such files shall be made available to the City Contract Representative and Public Inspectors upon request.

4.6 **Protection and Use of Site - (Signs, Utilities, Water, Sanitation, Traffic, etc.)**

4.6.1 The City will provide land, rights-of-way and easements for all work specified in the Contract. The Contractor shall confine their apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the City Contract Representative, and shall not unreasonably encumber the premises with their material and equipment.

4.6.2 Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the City harmless from damages for any injury done to such pipes, structures or property during the course of the Work.

4.6.3 Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public.

4.6.4 The Contractor shall supply safe drinking water for all Contractor employees at the Work site. Water from existing fire hydrants may be made available to the Contractor upon his request to the City's Water Department through the City's Contract Representative. In such cases where the City elects to provide hydrant water, the Contractor will be provided a meter for the fire hydrant and will be charged the City's current rate for all water used. A deposit for the meter will be required by the City's Water Department.

4.6.5 If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The City Contract Representative will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the City Contract Representative. Extensions in the Completion time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 10 of these General Conditions.

4.7 **Cleaning Up**

4.7.1 The Contractor shall at all times keep the construction site and surrounding area free from accumulations of waste material or rubbish caused by operations under the Contract. Upon completion of the Work, the Contractor shall remove all rubbish, tools, equipment, scaffolding and surplus materials from the site and surrounding areas and leave the area "broom clean" or its equivalent, unless otherwise instructed by the City Contract Representative.

4.7.2 If the Contractor fails to clean up as provided in the Contract, the City may do so and the cost thereof shall be charged against the Contractor.

4.8 **Emergencies**

4.8.1 In an emergency affecting the safety of life or property, the Contractor, without special instruction or authorization from the City Contract Representative, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury.

4.8.4 Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Contract Representative.

4.8.5 The Contractor shall file with the City Contract Representative the names, addresses and telephone numbers of their employees who can be contacted at any time in case of emergency. These Contractor representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by the City or the Public Inspectors.

4.9 Permits, Fees and Notices

4.9.1 The Contractor shall, at their expense, obtain all necessary permits and licenses for work performed under the Contract, and shall give all necessary notices required by laws, ordinances, rules, regulations and lawful orders of public authorities pertaining to performance of the Work, public health and safety.

4.9.2 If the Contractor knowingly performs work which is not in compliance with such laws, ordinances, rules, regulations or orders, without such notice to the City Contract Representative, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

4.10 Royalties and Patents

4.10.1 The Contractor shall pay all royalties and license fees.

4.10.2 The Contractor and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark, or copyright, and the Contractor shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or, subject to Engineer's approval, replace same with noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

4.10.3 If appropriate, the Contractor shall furnish the City Contract Representative satisfactory evidence of patent licenses or patent releases covering City-specified proprietary materials, equipment, devices or processes, as the case may be.

4.11 Protection of Persons and Property

4.11.1 The Contractor shall be responsible for initiating, maintaining, supervising and directing all safety precautions and programs in connection with the performance of the Contract.

4.11.2 The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated whether in storage on or off the Work site.

4.11.3 The Contractor shall, at their own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the work site or adjacent thereto, and the Contractor and their sureties shall be liable therefore.

4.11.4 The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Article 6 of these General Conditions.

4.11.5 In the event the Contractor encounters on the work site material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop work in the area affected and report the condition to the City Contract Representative.

4.11.6 The Contractor shall take all necessary precautions for the safety of employees on the work site and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

4.11.7 The Contractor warrants it is fully familiar and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or recodified from time to time). Also the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or recodified from time to time), as promulgated by the Federal Government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Section 4.12.

4.12 **Indemnification and Insurance**

4.12.1 To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees, provided, however, that this duty to indemnify, hold

harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City.

4.12.2 The Contractor Agrees to:

.1 Obtain insurance coverage of the types and amounts required in this subsection and keep such insurance coverage in force throughout the life of the Contract. The Contractor will provide satisfactory certificates of the required coverage to the Contracting Officer before beginning the Work. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy.

.2 Include the City and Regional Transportation Authority as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies with respect to liability arising out of the performance of the Work. The Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

.3 Provide and maintain minimum insurance coverage as follows:

Coverage Afforded	Limits of Liability
Workers' Compensation	Statute
Commercial General Liability Insurance including: (a) Products & Completed Operations (b) Blanket Contractual (c) Explosion, Collapse & Underground Hazard	$1,000,000 Bodily Injury and property damage Combined Single Limit
Automobile Liability Insurance including: (a) Non-owned (b) Leased (c) Hired Vehicles	$1,000,000 Bodily Injury and property damage Combined Single Limit
[ ] Checked If applicable: Builder's Risk Insurance including: Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft.	Contract Value (Less site preparation)

Builder's Risk insurance shall be required on all vertical construction.

The City reserves the right, at its sole option, to furnish the Builder's Risk Insurance at the City's expense in the event that the City exercises such right, Contractor shall reduce General Conditions and overhead accordingly.

.4 In the event any of the Work is subcontracted, the Contractor shall require the subcontractor to provide Workers' Compensation insurance for all of the subcontractor's employees engaged in the Work, unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation insurance. In case any class of employees engaged in hazardous work under the Contract is not protected under the Workers' Compensation statute, the Contractor

shall provide, and shall cause each subcontractor to provide, adequate employer's general liability insurance for the protection of such of their employees as are not otherwise protected.

ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS

5.1 Subcontracts

5.1.1 The Contractor shall ensure that the assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of subcontractors, the Contractor shall obtain prior approval from the City for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

5.1.3 In job-order-contracting, by appropriate written agreement, the Contractor agrees that each subcontractor has been notified in writing of the negotiated amount or coefficient agreed to for billing purposes. Furthermore, by appropriate written agreement, the Contractor agrees that each subcontractor shall be bound to the Contractor by the terms of this Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.

5.1.4 Contractor shall ensure that each subcontract shall preserve and protect the rights of the City under the Contract with respect to the work to be performed by the subcontractor. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor will be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.

5.1.5 Each subcontract will require the subcontractor to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment to the City in a timely manner, including any claims for extras, extensions of time, and damages for delays or otherwise to the Contractor in the manner provided in the Contract for like claims by the Contractor upon the City.

5.1.6 The Contractor further agrees:

.1 To be bound to the subcontractor by all the obligations that the City assumes to the Contractor under this Contract, and by all provisions thereof affording remedies and redress to the Contractor from the City.

.2 To promptly pay the subcontractor in accordance with applicable State statute.

.3 That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them. Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.

.4 To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.

.5 To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the City in making payments to the Contractor for any cause not the fault of the subcontractor.

.6 To share or forward, as appropriate, with its subcontractors or, as appropriate, with the City, any fire insurance money received by the Contractor under the insurance provisions of the Contract.

.7 That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

.8 To give the subcontractor an opportunity to be present and to submit evidence in any Contractual claim, controversy or dispute.

5.1.7 Nothing in this Article shall create any obligation on the part of the City to pay to, or to see to the payment of, any sums to any subcontractor, except as may otherwise be required by law.

5.1.8 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

.1 Assignment is effective at the sole option of the City and only upon termination of the Contract for cause pursuant to Article 9 of these General Conditions, and only for those subcontract agreements which the City determines to accept by notifying the subcontractor in writing, and

.2 Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 **<u>Separate Contracts</u>**

5.2.1 The City reserves the right to perform construction or operations related to the Work with the City's own forces and to let separate Contracts in connection with other portions of the Work or other construction or operations on the Work site.

5.2.2 The Contractor shall afford other Contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

5.2.3 The City Contract Representative shall coordinate the activities of the City's own forces and of each separate Contractor with the work of the Contractor. The Contractor and all other Contractors on the Work site shall be required to review their construction schedules and cooperate with the City Contract Representative in coordinating the various portions of the Work with the schedules of such separate contractors.

5.2.4 If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the City Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the

reception of the Contractor's Work, except as to defects not then reasonably discoverable.

5.2.5 Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.

5.2.6 If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall defend such proceedings and, if any judgment against the City arises therefrom, the Contractor shall pay or satisfy it.

5.2.7 Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the City shall not be held responsible or liable therefore in any way other than extensions of completion time in accordance with Article 6 of these General Conditions.

ARTICLE 6. TIME FACTORS; LIQUIDATED DAMAGES

6.1 Time

6.1.1 Unless otherwise provided in the Contract, the Completion Time is the number of calendar days, including authorized time extensions, specified for completion of the Work.

6.1.2 Completion Time shall commence on the day specified in the Notice to Proceed. The date shall not be postponed on account of the failure of the Contractor, or of any of its subcontractors to take any action required to commence the Work.

6.1.3 The date of Substantial Completion is the date certified by the City Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

6.1.4 The term "day" as used in the Contract shall mean calendar day.

6.1.5 By execution of the Contract documents, or by concurrence with the Notice to Proceed in the case of a job order, the Contractor acknowledges that the time described is a reasonable period for a competent Contractor to complete the Work.

6.1.6 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

6.2 Liquidated Damages

6.2.1 The amount of liquidated damages shall be as specified in the Contract documents, or, in the case of a job-order, in the Notice to Proceed.

6.2.2 The Contractor has been put on notice that the City shall enforce the liquidated damages set forth in the Contract documents or Notice to Proceed.

6.2.3 The Contractor agrees that the City will incur damages if the Contractor fails to complete the Work within the Completion time or any approved extensions thereof and that the liquidated damages specified in the Contract or, in the case of a job-order, in the Notice to Proceed, represents a fair and equitable approximation of the City's damages.

Each calendar day that the Contractor shall fail to achieve Substantial Completion after the calendar date agreed to for the completion of the Work provided for in the Contract, the sum set forth in the Contract documents will be deducted from any monies due the Contractor, not as penalty, but as liquidated damages; provided however, that due account will be taken of any adjustments of the Completion time for the completion of the work allowed under the Contract.

Permission allowing the Contractor to continue and finish any part of the Work after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Once substantial completion is granted, the Contractor shall achieve final completion within thirty (30) calendar days, unless otherwise agreed upon. If final completion does not occur within the agreed upon number of days, liquidated damages will commence on the first day after the agreed days, until final completion occurs.

6.3 **Delays and Time Extensions**

6.3.1 It is agreed that the City's only liability for any delay from any cause shall be limited to granting a time extension to the Contractor and that no extended general conditions for any delay will be applicable unless agreed to by the City. There is no other obligation, express or implied, on the part of the City to the Contractor for delay from any cause.

6.3.2 **Force Majeure**

6.3.2.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the parties affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a sub-contractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

6.3.2.2 If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.3.3 The completion time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority or allocation order duly issued by the Federal Government.

6.3.4 Time extensions shall only be granted for delays caused by the City, changes authorized in accordance with Article 8 of this agreement, or delays pursuant to sections 6.3.2 and 6.3.3.

6.3.4 Should a dispute arise between the Contractor and the City regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

ARTICLE 7. PAYMENTS TO THE CONTRACTOR

7.1 Contract Price; Request for Payment; Schedule of Values

7.1.1 The Contract amount or coefficient stated in the Contract documents or, in the case of a job order, in the Notice to Proceed, plus or minus any authorized adjustments, is the amount payable by the City to the Contractor for performance of the Work under the Contract or for a specific job order.

7.1.2 During the course of construction, the Contractor shall request payment for work actually performed during the preceding month or some other time period as mutually agreed to, using "ESTIMATE FOR PAYMENT" forms, which are furnished by the City or a City approved form submitted by the Contractor. Completed forms shall be submitted to the City Contract Representative. A schedule of values and an updated project schedule shall accompany the request for payment.

7.2 Certification and Payment

7.2.1 The City by mutual agreement may make progress payments on Contracts of less than ninety days and shall make monthly progress payments on all other Contracts as provided for in this paragraph. Payment to the Contractor on the basis of a duly certified and approved estimate for payment of the work performed during the preceding calendar month under the Contract may include payment for material and equipment. An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the City or the City's designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the City on submission to any person designated by the City for the submission, review or approval of the estimate of the work.

7.2.2 On completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified in paragraph 7.2.5, payment may be made in full, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the architect, engineer or other person, as specified in the Contract.

7.2.3 The Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no Contract for construction services may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. The payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the Contractor or subcontractor of payments received for work performed on a Contract, or failure to reasonably account for the application or use of those payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The subcontractor or material supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

7.2.4 A subcontractor may notify the City in writing requesting that the subcontractor be notified by the City in writing within five days from payment of each progress payment made to the Contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.

7.2.5. Nothing in this section prevents the Contractor or subcontractor, at the time of application and certification to the City or Contractor, from withholding the application and certification to the City or Contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention.

7.2.6 If any payment to a Contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.7 If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.

7.2.8 Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services Contract for construction and does not apply to amounts payable in a construction services Contract for design services, preconstruction services, finance services, maintenance services, operations services and other related services.

7.2.9 The City Contract Representative, with reasonable dispatch, will review the contents of the ESTIMATE FOR PAYMENT submitted by the Contractor, determine the sufficiency of the estimate, satisfy himself that the City has received full value, certify the estimate and submit it through normal channels for payment.

7.2.10 Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work.

7.3 **Payment Withheld**

7.3.1 If the City Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the ESTIMATE FOR PAYMENT, the City Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the City Contract Representative shall promptly notify the Contractor. If the City Contract Representative and the Contractor cannot agree on a revised amount, the City Contract Representative will promptly issue a certificate for payment in an amount they determines is justified.

7.3.2 The City Contract Representative or other City official, as a result of subsequently discovered evidence, may also withhold or nullify the whole or a part of any certification to such extent as may be necessary to protect the City from loss on account of:

.1 Defective work not remedied.

.2 Third party claims filed or reasonable evidence indicating probable filing of such claims.

.3 Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment.

.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount, or reasonable evidence that the Work will not be completed within the Completion time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

.5 Damage to another contractor or to the City.

.6 Damage to the real or personal property of another and failure to repair or replace the same.

.7 Persistent failure to carry out the Work in accordance with the Contract.

7.3.3 When the grounds for withholding payment have been corrected to the satisfaction of the City Contract Representative or other City official concerned, the City shall proceed to process any amounts due.

7.4 **Substantial Completion**

7.4.1 When the Contractor considers that the Work, or a portion thereof which the City has agreed to accept separately, is ready for its intended use, it shall notify the City Contract Representative in writing that the Work, or the agreed upon portion thereof, is substantially complete and request the City Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the City Contract Representative will make an inspection of the Work, or the designated portion thereof, to determine the status of completion. If the inspection discloses any item that is not in accordance with the Contract, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for a re-inspection by the City Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the City Contract Representative will prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the City and Contractor, pending final payment by the City, for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list attached to the certificate.

7.4.2 Warranties required by the Contract shall commence on the date of Final Completion for a period of two years, except where a specific provision of the Contract provides otherwise.

7.5 **Final Completion and Final Payment**

7.5.1 Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the City Contract Representative will determine that all items on the punch list have been completed or corrected and the City will make payment for such work or portion thereof as provided for in the Contract.

7.6 **Consent of Surety/ Lien Waivers and As-Built Drawings**

7.6.1 Final payment shall become due when the Contractor provides to the Contract Officer a Consent of Surety Certificate from their bonding company, or lien waivers, at the Contract Officer's discretion and all completed as-built drawings.

7.7 **Partial Utilization**

7.7.1 The City may occupy or use any portion of the Work which the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City without significant interference with the Contractor's performance of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided the City and the Contractor have accepted in writing their mutual responsibilities regarding the used portion, including but not limited to insurance coverage, maintenance and utilities.

7.7.2 Partial use or occupancy of the Work by the City shall not constitute acceptance of Work not complying with the requirements of the Contract.

ARTICLE 8. UNCOVERING AND CORRECTION OF WORK; CHANGES IN THE WORK

8.1 Uncovering of Work

8.1.1 Piping, wiring, ducts, etc., shall not be covered up before proper inspection, approval and certificates, if required, are issued. Should any work that is designated for inspection by the City Contract Representative or the Contract before covering is covered before such inspection, it must be uncovered by the Contractor at their expense when examination is ordered by the City Contract Representative.

8.1.2 If a portion of the Work not designated by the City Contract Representative or the Contract for inspection has been covered and the City Contract Representative or a Public Inspector orders such work uncovered for inspection, the Contractor shall immediately uncover such work. If such uncovered work is found to be in accordance with the Contract, an appropriate Change Order shall be issued to compensate the Contractor for the expense of uncovering and replacing the work. If such work is found to be not in compliance with the Contract, the Contractor shall pay such costs, unless the condition was caused by the City or a separate Contractor.

8.1.3 The City shall not be responsible for or bear the cost of any re-examination and replacement occasioned by defects in the work caused by subcontractors.

8.2 Correction of Work

8.2.1 Correction of Work Before Final Payment: The Contractor shall promptly remove from the site of the Work all materials and/or associated portions of the Work rejected by the City Contract Representative as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract, without expense to the City, and shall bear the expense of making good the work of other contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such rejected Work and/or materials within a reasonable time, fixed by written notice, the City may remove it and may store the materials at the expense of the Contractor.

8.2.2 Should the Contractor fail to repair such defective material and/or workmanship or to make replacements within five (5) calendar days after written notice by the City, it is agreed that the City may, at its sole discretion, make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor or his surety.

8.3 Changes in the Work

8.3.1 The City Contract Representative may order extra work or make changes by altering, adding to or deducting from the Work, the Contract price being adjusted accordingly by Change Order without invalidating the Contract. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

8.3.2 If, instead of requiring corrections or removal of work not conforming to the requirements of the contract, the work is determined to be acceptable with diminished value in the sole judgment of the City Contract Representative, a change order shall be issued incorporating the necessary revisions in the contract, including

an appropriate reduction in the contract price. Such a change order does not require the signature or approval of the Contractor. Such acceptance of non-conforming work shall not constitute a waiver of any other work required under this contract.

8.3.3 The value of any extra work or change ordered under the Contract shall be determined in one or more of the following ways:

.1 By estimate and acceptance in a lump sum.

.2 By unit prices in the Contract or subsequently agreed upon prices.

.3 By a fixed fee.

ARTICLE 9. SUSPENSION OR TERMINATION OF THE WORK

9.1 Suspension of the Work for Cause; City's Right to Perform the Work

9.1.1 If the Contractor fails to correct Work which is not in accordance with the Contract, or persistently fails to carry out the Work in accordance with the Contract, the Contract Officer, after consultation with the City Contract Representative, may order the Contractor in writing to stop the Work, or any portion of the Work, until the cause for such order has been eliminated.

9.1.2 If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the City may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the City may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and its surety shall be liable to the City for such deficiency.

9.2 Termination by the City for Cause

9.2.1 The City, upon certification by the City Contract Representative, without prejudice to any other right or remedy of the City and after giving the Contractor seven (7) days written notice, may terminate this Contract as to all or any part of the Work for any of the following reasons:

.1 If the Contractor abandons the Work, or unnecessarily delays the Work.

.2 If the Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractor.

.3 If the Contractor fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the Contractor and the subcontractor or as expressly set forth herein.

.4 If the Contractor persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract.

.5 If the Contractor should be adjudged bankrupt.

.6 If the Contractor should make a general assignment for the benefit of its creditors,

or if a receiver should be appointed on account of its insolvency.

.7 If the Contractor is otherwise in substantial breach of a provision of the Contract as determined by the City.

9.2.2 Upon termination of the Contract for any of the above reasons, the City, subject to any prior rights of the surety, may:

.1 Take possession of the Work and of all materials, equipment, tools, and construction equipment and machinery at the Work site or adjacent thereto belonging to the Contractor.

.2 Accept assignment of subcontracts pursuant to Subsection 5.1.8 of Article 5 of these
General Conditions.

.3 Finish the Work by whatever reasonable method the City may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the City may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the City's possession and may make all necessary repairs and replacements thereto.

9.2.3 If the City terminates the Contract for one of the reasons stated in Subsection 9.2.1, the Contractor shall not be entitled to receive any further payment.

9.2.4 The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the City to other Contractors, all costs of repairs and replacements of machinery, implements, tools and plant of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including but not limited to the cost of the City Contract Representative's additional services and added expenses made necessary by the termination of the Contract.

9.2.5 If the unpaid balance of the Contract price exceeds costs of finishing the Work, such excess may, at the City's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the City may sell all materials, supplies, machinery, implements, tools and plant of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) days notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay such deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.

9.3 **<u>Suspension by the City for Convenience</u>**

9.3.1 The City may, without cause, order the Contractor in writing to suspend or interrupt the Work in whole or in part for such period of time as the City may determine whenever such suspension or interruption would be in the best interest of the City.

9.3.2 If the City suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:

.1 That performance is, was or would have been so suspended or interrupted by another cause for which the Contractor is responsible, or

.2 That an equitable adjustment is made or denied by the City.

9.4 **Termination by the City for Convenience**

9.4.1 The performance of the Work under this Contract may be terminated by the City, in whole or in part, in accordance with this clause whenever the City reasonably determines that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

9.4.2 If the Contract is terminated by the City as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated profit on unperformed Work.

9.4.3 In the event the City terminates the Work, in whole or in part, for cause pursuant to Section 9.2 of this Article 9 and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 9.4 shall apply.

9.4.3 Termination of the Contract or portion thereof by the City for convenience shall not relieve the Contractor of their contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

9.5 **Contractor's Right to Terminate Contract**

9.5.1 The Contractor may terminate the Contract for any of the following reasons:

.1 If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month through no act or fault of the Contractor or of anyone directly or indirectly employed by him.

.2 If the City has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the City Contract Representative, or

.3 If repeated suspensions or interruptions ordered by the City pursuant to Section 9.3 total in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

9.5.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days, written notice to the City Contract Representative, stop Work and terminate the Contract and recover payment from the City for all Work executed and accepted by the City and any loss sustained upon any plant or materials and reasonable profit and damages.

ARTICLE 10. CLAIMS AND DISPUTES

10.1 **<u>City Contract Representative's Resolution of Claims and Disputes; Review by Contract Officer</u>**

10.1.1 This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.

10.1.2 All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the City Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

10.1.3 Claims by either party must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

10.1.4 Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract.

10.1.5 The City Contract Representative shall, within twenty-one (21) days of receipt of a claim, issue one of the following:

(1) Issue a decision either rejecting or approving the claim.
(2) Suggest an equitable compromise of the claim.
(3) Provide a schedule to the Contractor indicating when they expect to be able to take action, which shall be within a reasonable time.

10.1.6 The City Contract Representative may require the submission of additional documentation from the Contractor to facilitate a decision.

10.1.7 The Contractor shall have ten (10) days from the date of the City Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of the Contractor to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Contract Officer for <u>de novo</u> review.

10.1.8 The Contract Officer shall have sixty (60) days from receipt of a written objection by the Contractor to the City Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the Tucson Procurement Code. During such period, the Contract Officer may require such additional documentation or testimony as deemed necessary to support his/her response.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Governing Law

11.1.1 The Contract shall be governed and construed according to the laws of the Tucson City Code and the State of Arizona.

11.2 Written Notice

11.2.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

11.3 Conflict of Interest

11.3.1 The City shall also have the right to terminate this Contract pursuant to the conflict-of-interest provisions of A.R.S. Sec. 38-511 and to exercise any and all remedies provided in such statute. The City may cancel this Contract if any person significantly involved in negotiating, drafting, securing or obtaining this Contract for or on behalf of the City of Tucson becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Contract.

11.4 Independent Contractor

11.4.1 It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

11.4.2 Contractor shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

11.4.3 The City of Tucson will not provide any insurance coverage to Contractor, including Workers' Compensation coverage. The Contractor is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

11.5 Gratuities

11.5.1 The City may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

11.6 Provisions Required By Law

11.6.1 Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly

inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

11.7 **Severability**

11.7.1 The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

11.8 **Interpretation – Parol Evidence**

11.8.1 This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

11.9 **Rights and Remedies**

No provision in this document or in the Contractor's response shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

11.10 **Right to Assurance**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.

EXHIBIT C

HUD-5369

U.S. Department of Housing and
Urban Development
Office of Public and Indian Housing

Instructions to Bidders for Contracts Public and Indian Housing Programs

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

(1) Integrity;

(2) Compliance with public policy;

(3) Record of past performance; and

(4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding $25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[ ] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[ ] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[ ] (3) a 20 percent cash escrow;

[ ] (4) a 25 percent irrevocable letter of credit; or,

[ ] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website **http://www.fms.treas.gov/c570/index.html**, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [ ] does [ ] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

HUD-5369A

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(l) through (a)(3) above.

_____ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding $50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [ ] has, [ ] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [ ] has, [ ] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding $100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the bidder; or,

(b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [ ] is, [ ] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [ ] is, [ ] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [ ] is, [ ] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

[ ] Black Americans	[ ] Asian Pacific Americans
[ ] Hispanic Americans	[ ] Asian Indian Americans
[ ] Native Americans	[ ] Hasidic Jewish Americans

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding $2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding $10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed $10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding $100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding $50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"

[ ] is, [ ] is not included with the bid.

13. Bidder's Signature

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

_____
(Signature and Date)

_____
(Typed or Printed Name)

_____
(Title)

_____
(Company Name)

(Company Address)

HUD-5370

General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. This form is applicable to any construction/development contract greater than $100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).
The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.
Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.
The information requested does not lend itself to confidentiality.
HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

(a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

(b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.

(d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.

(e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.

(f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

(g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.

(j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(l) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.

(b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.

(c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

(f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.

(g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

(h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

(b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

(c) The Architect's duties and responsibilities may include but shall not be limited to:

(1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

(2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;

(3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,

(4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress Schedule

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads;(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

(b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

(h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

(i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

(a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."

(b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

(c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

(a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:
  (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
  (2) Protect the lives, health, and safety of other persons;
  (3) Prevent damage to property, materials, supplies, and equipment; and,
  (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:
  (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
  (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

(f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
(g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
(h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
(i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
(j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
(k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

(a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
(b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contactor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

20. Inspection and Acceptance of Construction

(a) Definitions. As used in this clause -
(1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
(2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
(3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
(c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
(d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The PHA may conduct routine inspections of the construction site on a daily basis.

(g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.

(i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

21. Use and Possession Prior to Completion

(a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of Construction

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.

(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
   (1) The Contractor's failure to conform to contract requirements; or
   (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
   (1) Obtain all warranties that would be given in normal commercial practice;
   (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
   (3) Enforce all warranties for the benefit of the PHA.

(g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

The Contractor shall complete all work required under this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

26. Order of Provisions

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

(a) The PHA shall pay the Contractor the price as provided in this contract.

(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

(d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than _____ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:
I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

_____
Name:

_____
Title:

_____
Date:

(f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

(h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.

(i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
   (1) In the specifications (including drawings and designs);
   (2) In the method or manner of performance of the work;
   (3) PHA-furnished facilities, equipment, materials, services, or site; or,
   (4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.

(2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

(3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

(g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

(h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.

(i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

(j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

30. Suspension of Work

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

(a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.

(d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.

(f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

(b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of $_____ Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.

(b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA in completing the work.

(c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

(a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non -owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than $_____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

37. Subcontracts

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

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

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

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

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: 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; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

45. Examination and Retention of Contractor's Records

(a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds $2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved 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 29 CFR 5.5(a)(1)(iv); 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 regular 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 in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employee 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 HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

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

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

(3) 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.

(4) 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.

(b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee 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. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

(1) 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 in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of 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.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

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

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;

(B) 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 29 CFR Part 3; and

(C) 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.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, 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, HUD or its designee 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. 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.

(d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, 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 OATELS 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 in this paragraph, 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 of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in 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 in 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 in 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 in 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.

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

(e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(i) Certification of eligibility.

(1) 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 contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 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 provisions set forth in subparagraph (j)(2) of this clause.

(k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:
   (1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

HUD-4010

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) **Minimum Wages.** 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 l(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 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

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

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

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

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at *http://www.dol.gov/esa/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, 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 subparagraph 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 HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

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

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

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. **Apprentices and Trainees.**

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

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

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

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses 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 this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

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

10. (i) Certification of Eligibility. 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

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

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ANTI-KICKBACK ACT

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS

SO CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR.
UNITED STATES DEPARTMENT OF LABOR

TITLE 18. U.S.C., section 874

(Replaces section 1 of the Act of June 13, 1932 (48 Stat. 948, 40 U.S.C., sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whenever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than $5,00 or imprisoned not more than five years, or both.

SECTION 2 OF THE ACT OF JUNE 13, 1932, AS AMENDED (48 Stat. 948, 62 Stat. 862, 63 Stat. 108, 72 Stat. 967, 40 U.S.C., sec, 276c)

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or building or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements.

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Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A., Code of Federal Regulations, Part 3. The term "this part," as used in the regulations hereinafter set forth, refer to Part 3 last above mentioned. Said regulations are as follows:

TITLE 29 - LABOR

Subtitle A - Office of Secretary of Labor

PART 3 - CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Section 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 Definitions.

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

3.3 - Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, ''Statement of Compliance", or on an identical form on the back of WH 347, ''Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982]

SECTION 3 REQUIREMENTS

SECTION 3 RESIDENTS AND BUSINESS CONCERNS

Section 3 Residents Are:

1. Residents of Public and Indian Housing; or

2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:

1. Businesses that are 51 percent or more owned by Section 3 residents;

2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or

3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

INCOME LIMITS

New Income Limits for Tucson and Pima County were issued May 31, 2011. The Area Median Family Income is $59,600. The following Income Limits are effective June 1, 2011.

Income Limits

Family Size	30% of Median Income	50% of Median Income	80% of Median Income
	Extremely Low Income	Very Low Income	Low Income
1 Person	$12,550	$20,900	$33,400
2 Persons	$14,350	$23,850	$38,200
3 Persons	$16,150	$26,850	$42,950
4 Persons	$17,900	$29,800	$47,700
5 Persons	$19,350	$32,200	$51,550
6 Persons	$20,800	$34,600	$55,350
7 Persons	$22,200	$37,000	$59,150
8 Persons	$23,650	$39,350	$63,000

See Notice PDR 2011-02 for families with more than 8 persons.

CITY OF TUCSON

SECTION 3 OPPORTUNITIES PLAN
STATEMENT OF INTENT TO FULFILL OBLIGATION

PROJECT: _____

CONTRACT #: _____

CONTRACTOR NAME: _____

OPPORTUNITIES PLAN

☐ The Contractor has identified _____ employment opportunities during the term of the contract (if no opportunities have been identified, enter 0). The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of work of this Contract.

☐ The Contractor has identified _____ subcontracting opportunities.

☐ The Contractor qualifies as a Section 3 Business Enterprise. ***(See section below)***

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or

   _____YES _____ NO

2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or

   _____YES _____ NO

3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises.

   _____YES _____ NO

Contractor's Signature: _____

Title: _____ Date: _____

CITY OF TUCSON

INDIVIDUAL CERTIFICATION FOR SECTION 3 RESIDENT ELIGIBILITY

This form is to be used by individual persons requesting to be certified by the City of Tucson as a Section 3 Resident for purposes of Section 3 employment opportunities on HUD-funded construction projects.

Project: _____ Contract #: _____

Contractor Name: _____

Job Title: _____ Hire Date: _____

Name: _____ Phone Number: _____

Physical Address: _____
(No P.O. Box Addresses)

City State Zip: _____ Email Address: _____

Please complete Part A (Household Size and Income) OR Part B (Public Housing Resident)

A. Household Size and Income

My household size (total persons in household) is: _____

My total annual household income is: _____

My total current monthly household income is: _____

B. Public Housing Resident

I currently receive the following housing assistance:

Check box: ☐ Public Housing ☐ Section 8 (Housing Choice Voucher)

City Use Only

Income at/below: _____

Verified: _____ Date: _____

Public Housing Resident/
Sec. 8/HCV Participant: _____

Verified: _____ Date: _____

Certification

I hereby certify, under penalty of perjury, that all of the information provided above is true and correct. I agree to provide acceptable documentation, if requested, that confirms the accuracy of my residency, household size, income, and employment.

Employee Name (Print): _____ **Date:** _____

Employee Signature: _____

CITY OF TUCSON

SECTION 3 ELIGIBLE BUSINESS CERTIFICATION

Instructions

To be considered for certification as a Section 3 Business Concern, a business must complete this form and provide all required supporting documentation. An *Individual Certification for Section 3 Resident Eligibility Form* must be completed and signed by each Section 3 Resident owner or employee certifying that each individual meets the HUD definition of a Section 3 Resident.

BUSINESS LEGAL STATUS

Business Name: _____ Phone: _____

Address: _____ Fax: _____

City: _____ State: _____ Zip: _____

Email Address: _____

☐ Sole Proprietor ☐ Corporation ☐ Partnership ☐ Limited Liability

Date Business Established _____ Federal Tax ID or Social Security Number _____

Total Number of Employees: _____ *Number of Section 3 Employees: _____ Percentage of Section 3 Employees: _____%

*Must provide completed Individual Certification forms for each employee

Please select "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or _____YES _____ NO
2. 30% or more of the company's full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or _____YES _____ NO
3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises. _____YES _____ NO

A Section 3 Resident is a public housing resident or an individual who resides in the covered metropolitan area and is a low income person as identified by HUD, *(see certification instructions for HUD definitions and income limits).*

Owner' Name (printed): _____ Title: _____

Signature: _____ Date: _____

EXHIBIT D

SBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Small Business Enterprise Participation goal for this project is as follows:

__X____ % SBE

I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - Is defined as the performance of real and actual services in the discharge of any contractual endeavor. An SBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

Contractor - The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City. For the purposes of SBE plan evaluation, any Offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the contractor SBE program compliance requriements.

Eligible Contract - Any contract undertaken by the City, unless otherwise precluded by law, *provided* the estimate meets or exceeds fifty thousand dollars ($50,000). An Eligible Contract does not include any project in which the estimated contract value is below fifty thousand dollars ($50,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the City Procurement Code.

Joint Venture – An association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the Joint Venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the Joint Venture, may be counted towards relevant SBE participation goals.

Small Business Enterprise (SBE) – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification with the City of Tucson, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).

Subcontractor and Subconsultant – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

B. APPLICABILITY

The SBE program and policies are codified in Chapter 28, Article XIII of the City Procurement Code. It is the responsibility of all contractors, subcontractors, vendors, suppliers and others who are interested in contracting with the City of Tucson to read and become familiar with this section of the City Code.

Only firms that are certified by the City of Tucson under Chapter 28, Article XIII of the City Code, ***at time of SBE Plan submittal***, are eligible to fulfill SBE goals for City of Tucson projects.

In addition to subcontractors, contractors may use their own participation towards fulfillment of the SBE participation goal if they are certified through the City of Tucson SBE program.

The City of Tucson's most recent SBE Directory contains the ***complete*** listing of those firms which are currently certified with the City, and therefore eligible to participate as an SBE on a project. If the name of an SBE firm does not appear in directories, it shall be the contractors responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. The contractor may accomplish this by calling the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593 for assistance.

ALL CONTRACTORS, INCLUDING SBEs, MUST COMPLY. Contractors who are SBEs must also comply with all requirements stated herein. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's SBE goal and comply with all aspects of the SBE Program requirements.

C. SBE PARTICIPATION

An SBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. An SBE shall be responsible for a clearly defined portion of the work to be performed.

D. SBE GOALS

To satisfy SBE goals, a certified SBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Contractors may meet the SBE project goals through the following methods:

Prime Contractor Participation – SBE prime contractors may use their own participation towards fulfillment of the SBE participation goals. Credit will only be given for the dollar value of actual work performed by the prime contractor's work force.

Subcontractor Participation - Contractors may utilize one or more certified SBE subcontractors to satisfy its SBE participation commitment and may claim the value of the commercially useful function to be performed by such subcontractor(s) to obtain credit toward the satisfaction of the applicable goal.

1. Contractors who utilize certified SBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar

value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values and cannot be specified as a range.

2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, contractors are required to identify and report the use of any second tier subcontractors on the project on the Statement of Proposed SBE Plan form.

3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE's subcontractor is itself a SBE.

Supplier Participation - The contractor may contract with one or more certified SBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credit toward SBE goals. The value of the commercially useful function to be performed by such SBE's and credited toward satisfaction of the applicable SBE goals is as follows:

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.

2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer's representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.

3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

Joint Venture - Where a contractor engages in a joint venture to satisfy its SBE commitment, the SBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. The SBE joint venture partner must submit information for determining joint venture eligibility. ***The SBE joint venture must be approved as a SBE joint venture prior to SBE Plan submittal.*** The OEOP shall determine the degree of SBE participation resulting from the joint venture which may be credited toward the applicable SBE goal of the project.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF AN SBE PLAN

The SBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The SBE Plan must include:

1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;

3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

B. REVIEW OF SBE PLANS

The OEOP Director may determine that the contractor is nonresponsive where the contractor: (1) failed to provide a completed Statement of Proposed SBE Plan; (2) failed to identify SBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable SBE goal for that project; (3) failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the SBE goal.

III. GOOD FAITH EFFORT

If the SBE plan does not meet the project goals, the contractor may seek a waiver. The application for a waiver shall be in writing and **must be completed and submitted with the project proposal.** The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and an SBE plan must also be submitted. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals. Evidence of the good faith efforts shall include, but is not limited to the following:

a. Documentation of communication with the OEOP Director seeking technical/professional assistance identifying available SBE's.
b. Copies of written notification to Certified SBE's regarding subcontracting opportunities on a project.
c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
d. Documentation of efforts to assist and negotiate with SBE's for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE's who were contacted and reason for the rejection.
e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.
f. Written quotes or records of verbal quotes solicited from all SBE's seeking subcontract work at the time of the proposal submittal.
g. Verification that the offeror rejected available SBE's because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City's OEOP Director shall review the waiver and approve the waiver where the contractor has demonstrated good faith efforts or deem the contractor nonresponsive where they failed to meet the good faith efforts and shall recommend that the Project Manager reject the proposal.

Right to Appeal Good Faith Effort Waiver or Plan Decision An aggrieved party has a right to protest a good faith waiver request or plan decision made by the OEOP Director as follows:

1. An aggrieved party may submit a protest in writing to the OEOP Director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.
2. Within five (5) days of receipt of the protest, the OEOP Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
3. The decision of the director is final and not appealable.

General Waiver or Reduction of SBE Goals If, after consultation with appropriate City departments, the OEOP Director determines that SBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that SBE's are not in fact available or that the amount of work, which occurred under the contract, was insufficient to support the established goals.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified SBE's, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-SBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that SBE's are not available to provide the needed labor and materials at competitive prices.

A contractor may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a proposal.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND / OR CLARIFY INFORMATION AS IT RELATES TO THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND / OR THE STATEMENT OF PROPOSED SBE PLAN.

IV. MISCELLANEOUS PROVISIONS

A. CONTRACT PERFORMANCE

The contractor's distinct contract items of work to be awarded to SBE's shall be performed by the designated SBE or SBE substitute approved by the OEOP. SBE contract work items shall not be performed by the contractor in lieu of subcontracting, without the OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for SBE participation. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all SBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY SBE's

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the Office of Equal Opportunity Programs and the Project Manager and provide all facts surrounding the matter. Such failure on the part of an SBE will not relieve the contractor of responsibility for meeting the SBE participation goal on the contract. The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE to perform an equal or greater dollar value of the work. The substitute SBE's name, description of work and dollar value of the work shall be submitted to the OEOP and OEOP's approval must be obtained prior to the substitute SBE beginning the work.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the SBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

CITY OF TUCSON - OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF PROPOSED SBE PLAN

ALL SBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A SBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE SBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a SBE)	Trade/Industry	Dollar Value of Contract (SBE Only)

Project Amount $ _____

Total Claimed SBE Participation $_____ _____%

I hereby certify by signing below that the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project. The information shown above is a true reflection of the proposed subcontracts expressed as a percentage of the base bid.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED SBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Office of Equal Opportunity Programs

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET SBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE CONTRACTOR WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing SBE firms to meet the City of Tucson's SBE goal. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.

_____
_____
_____
_____
_____

2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to SBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for SBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which SBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to SBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact			Telephone #

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the SBE goal.) Attach necessary documentation.

Yes ____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide SBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist SBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which SBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of SBE Firm	Explanation for Rejecting Quotes

10. Were any bids from SBE Subcontractors that were no more than 15% or $250,000 greater than the accepted Non-SBE Subcontractor rejected?
If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

DBE PROGRAM PROVISIONS FOR ALTERNATIVE PROJECT DELIVERY METHOD (APDM) CONSTRUCTION SERVICES

PROJECT GOAL

The City of Tucson's Disadvantaged Business Enterprise Participation goal for this project is as follows:

__X____ % DBE

I. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Commercially Useful Function - The performance of real and actual services in the discharge of any contractual endeavor. A DBE is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE firm is not performing a commercially useful function and no DBE credit may be awarded toward the DBE goal.

Contract - A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor - One who participates, through a contract or subcontract (at any tier), in a federally funded program. For the purposes of DBE Plan evaluation, any offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the Contractor DBE program compliance requirements.

Disadvantaged Business Enterprise or DBE - A for-profit small business concern certified under the Arizona Unified Certification Program (AZUCP) --
(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Good Faith Efforts - Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture - An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Primary Industry Classification - The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA 22261). NTIS also makes materials available through its web site (www.ntis.gov/products/naics.aspx).

Program - Any undertaking on the City of Tucson's part to use federal financial assistance, authorized by the laws to which this part applies.

Race and Gender-Conscious - A measure or program that is focused specifically on assisting only DBEs.

Race and Gender-Neutral - A measure or program that is, or can be, used to assist all small businesses.

Recipient - Any entity, public or private, to which federal financial assistance is extended, whether directly or through another recipient, or who has applied for such assistance.

Set-Aside - A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Concern - With respect to firms seeking to participate as a DBE, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and Economically Disadvantaged Individual - Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --
(a) Any individual who the City of Tucson finds to be a socially and economically disadvantaged individual on a case-by-case basis.
(b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Lorea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americans," which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

B. APPLICABILITY

The City of Tucson has received federal financial assistance and has established a DBE Diversity Program for Contracts in accordance with 49 CFR 26, which is incorporated herein by this reference. The DBE Diversity Program applies to all City and subrecipient contracts that are funded, in whole or in part, by federal financial assistance. In the event of any conflicts or inconsistencies between 49 CFR 26 and this DBE Diversity Program, 49 CFR 26 shall prevail.

ALL CONTRACTORS INCLUDING DBEs MUST COMPLY. Contractors who are DBEs must also comply with all requirements stated herein. However, a DBE on a prime contract may meet the contract goal by virtue of the work it performs on the prime contract with its own forces. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's DBE goals and federal regulations.

Firms that are certified ***at time of DBE Plan submittal*** through the Arizona Unified Certification Program (AZUCP) under 49 CFR 26 are eligible to participate as DBEs on City of Tucson contracts that are federally funded wholly or in part.

The Arizona Unified Certification Program (AZUCP) Database contains the ***complete*** listing of those firms which are certified and therefore eligible to participate as a DBE on a project. DBE participation is NOT limited to Pima County firms. Any DBE firm recognized through the AZUCP is eligible to be recognized as a certified DBE. The AZUCP Database can be accessed through the following internet address: (http://www.azdbe.org/). If the name of a firm does not appear in the AZUCP database, it shall be the bidder's responsibility to ascertain the certification status of the firm.

Questions regarding the AZUCP and the City's DBE Program can be addressed to the City's Office of Equal Opportunity Programs (OEOP) at (520) 791-4593.

The City of Tucson has provided an overall DBE goal for this project. Prime contractors should be aware that **your obligation is to meet the DBE goal or submit an Affidavit of Good Faith Effort** to waive any or all of the portion of the goal not met.

C. DBE PARTICIPATION

A DBE goal may only be met by a certified DBE firm performing a commercially useful function. A DBE may participate as a prime contractor, subcontractor, second-tier

subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE shall be responsible for a specific contract amount and a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control. Open ended contracts or reimbursable contracts may not be used to meet a DBE goal at the time of bid submission. A copy of an executed subcontract must be submitted upon request by the City of Tucson.

D. DBE GOALS

To satisfy the DBE goals, a certified DBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Unless specific subcontractor participation goals are expressed in the specifications, contractors may meet the DBE project goals through the following methods:

Subcontractor Participation - Where a prime contractor utilizes one or more certified DBE subcontractor(s) to satisfy its DBE participation commitment, the prime contractor may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

1. Prime Contractors who utilize certified DBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the DBE firm and may only take credit for the dollar value of that contract towards satisfying its DBE commitment in their proposed DBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.

2. When a DBE participates in a contract, only the work actually performed by the DBE will count toward DBE goals.

a. Credit will be given for the entire amount of that portion of a contract by the DBE performing a commercially useful function, including the cost of supplies and materials obtained by the DBE for the work of the contract (including supplies purchased or equipment leased by the DBE except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

b. Credit will be given for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a federally funded contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The value of work that a non-DBE subcontractor subcontracts (second-tier) to a DBE firm may count toward DBE goals. Therefore, **prime contractors are required to identify and report the use of any second tier subcontractors on the project on the DBE Plan form.**

d. Credit will be given when a DBE subcontracts part of the work of its contract to another firm only if the DBE's subcontractor is itself a DBE.

3. When a DBE is used as the source for materials or supplies:

a. If a DBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable DBE participation goal.

b. If a DBE supplier is a regular dealer (a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock, and regularly sold or leased to the public), 60% of the cost of the materials or supplies will be credited toward DBE goals.

4. Where a contractor engages in a joint venture to satisfy its DBE commitment, the DBE joint venture partner must be responsible for a distinct and clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. DBE joint ventures do not have to be certified as a joint venture by the City prior to bid opening. However, prime contractors must submit information at the time of bid opening that includes a copy of the joint venture agreement and clearly outlines the work to be performed by the DBE joint venture partner, including the dollar amount and percentage of the contact to be performed.

When a DBE performs as a joint venture, the OEOP will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF A DBE PLAN

The DBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The DBE Plan must include:

1. The names of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

If the completed Statement of Proposed DBE Plan or, if necessary, a documented waiver application is not included with the proposal, the proposal will be considered non-responsive.

B. DBE ACKNOWLEDGMENT OF PARTICIPATION

The Contractor will be required to submit to the Office of Equal Opportunity Programs (OEOP), a DBE Acknowledgment of Participation for each DBE listed on the proposed

DBE Plan which provides signed confirmation that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

C. REVIEW OF DBE PLANS

The OEOP Director may determine that the Plan and/or Affidavit of Good Faith Effort is nonresponsive where the contractor, (1) failed to provide a completed Statement of Proposed DBE Plan; (2) failed to identify DBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable DBE goals for this project; (3) failed to achieve the dollar value of credible participation by certified DBEs as necessary to meet the project goals; (4) failed to provide written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal prior to contract execution; or (5) failed to meet the requirements for a waiver of the DBE goals. The OEOP Director's determination shall be in writing and shall state the basis for such decision.

III. GOOD FAITH EFFORT

A contractor must, in order to be responsive, make good faith efforts to meet the goal. The contractor can meet this requirement in either of two ways. First, the contractor can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the goal, the contractor can document adequate good faith efforts. This means that the contractor must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

The application for a waiver shall be in writing and must be submitted with the project proposal. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such wavier must be indicated. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals.

The following is a list of types of actions which the City will consider as part of the good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE

participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. **(1)** Negotiating in good faith with interested DBEs. It is the contractors responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve them of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Tucson or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

I. Communicating with the Office of Equal Opportunity Programs (OEOP) seeking technical or professional assistance in identifying available DBEs and requesting the most current Arizona Unified Certification Program (AZUCP) directory of certified DBE firms.

J. In determining whether a contractor has made good faith efforts, the OEOP may take into account the performance of other bidders in meeting the contract. For example, when the Apparent Low Bidder (ALB) fails to meet the contract goal, but others

meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the ALB could have met the goal. If the ALB fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the City may view this, in conjunction with other factors, as evidence of having made good faith efforts.

The City's OEOP Director shall review the waiver application and approve the waiver where the contractor has demonstrated good faith efforts or deem them nonresponsive where they failed to meet the good faith efforts.

IV. ADMINISTRATIVE RECONSIDERATION

If it is determined by the City's OEOP Director that the contractor has failed to meet the goal and/or document adequate good faith efforts, the contractor shall have the opportunity for administrative reconsideration. Therefore, within five (5) working days of being notified by OEOP that it is not responsive because it has not met the goal or documented adequate good faith efforts, a contractor may request administrative reconsideration. Contractors must make this request in writing to the following individual:

Procurement Director
City of Tucson
255 W. Alameda – PO Box 27210
Tucson, Arizona 85726.

The request for reconsideration must include the reasons and factual grounds for reconsideration with any supporting documents. The Procurement Director shall appoint a Reconsideration Official who will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. The Reconsideration Official shall hold a hearing within ten (10) working days of the request for reconsideration. The contractor will have the opportunity to meet in person with the City's Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Reconsideration Official can also take testimony from City employees.

The City will send the contractor, via certified mail, a written decision on reconsideration, explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts to do so. The decision will be sent within five (5) working days of the Reconsideration Hearing. The result of the reconsideration process is not administratively appealable. Copies of the reconsideration documentation, including supporting documents and the Reconsideration Officials final decision, shall be maintained in the contract file at Procurement and OEOP.

FAILURE TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE CONTRACTOR TO BE DEEMED NONRESPONSIVE.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE OEOP DIRECTOR MAY VERIFY AND/OR CLARIFY INFORMATION AND REQUEST RESUBMITTAL OF INFORMATION BASED ON CLARIFICATION AS IT RELATES TO

THE AFFIDAVIT OF GOOD FAITH EFFORTS, AND/OR THE STATEMENT OF PROPOSED DBE PLAN.

V. GENERAL WAIVER OR REDUCTION OF DBE GOALS

If after consultation with appropriate City departments, the OEOP Director determines that DBE availability is less than projected, the OEOP Director may waive or reduce established project goals. In such circumstances, the OEOP Director shall certify that DBEs are not in fact available.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified DBEs, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-DBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars ($250,000). In such circumstances, the OEOP Director shall certify that DBEs are not in fact available to provide the needed labor and materials at competitive prices.

VI. MONITORING PAYMENTS TO SUBCONTRACTORS

Prime contractors must maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. This reporting requirement also extends to any certified DBE subcontractor. As part of the contract documents requirement, the contractor will submit company procedures and policy for prompt payment of work and prompt release of retention to subcontractors.

Prime contractors are required to pay **all** subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson. Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release. Required timelines are indicated below:

A. When a subcontractor has completed all the tasks called for in the subcontract, the subcontractor will submit a written request to the prime contractor for an acceptance inspection and release of all retention.
B. Within 10 days of receipt of an inspection request by a subcontractor, the contractor shall schedule an inspection / walk through for acceptance of the work.
C. Within 30 days of the acceptance of a subcontractors work, the prime contractor shall pay all retention owed to a subcontractor.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

Prime contractors are asked to submit the attached Certification of Payments, for each DBE subcontractor utilized on this project, once that portion of the work has been completed and the subcontractor has been paid in full.

Prime contractors will report the actual value of any contract to DBE firms for work committed to them at the time of the contract award. Contractors must submit the attached Supplier & Subcontractor Utilization List Final Payment Record to OEOP with their request for final payment. The Final Payment Record will record total dollar amounts paid to both DBE and non-DBE suppliers and subcontractors.

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson, Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project. Subcontractors will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the DBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

VII. MISCELLANEOUS PROVISIONS

A. CONTRACT PROVISIONS

The contractor's distinct contract items of work to be awarded to DBEs shall be performed by the designated DBE or DBE substitute approved by the OEOP and the Procurement Department. DBE contract work items shall not be performed by the contractor in lieu of subcontracting, without OEOP's approval. Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for DBE participation. The DBE must perform a commercially useful function, that is, the DBE must manage, perform, and supervise a distinct element of work.

An executed subcontract with all DBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

B. NON-PERFORMANCE BY DBEs

In the event that a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the OEOP and the Project Manager and provide all facts surrounding the matter. The DBE firm can be terminated only for good cause. Good cause includes a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE participation goal on the contract. The contractor shall immediately take adequate good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of the work. The substitute DBEs name, description of work and all written and signed commitments, and dollar value of the work shall be submitted to the OEOP, and the OEOP's approval must be obtained prior to the substitute DBE beginning work. If the contractor fails or refuses to comply, the OEOP will recommend that the City issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City may terminate the contract for cause and/or pursue any other remedy available to the City.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the OEOP Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the OEOP Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the SBE ordinance.

D. RECORD-KEEPING

The City of Tucson will require prime contractors to maintain records and documents of payments to DBE for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. The reporting requirement also extends to any certified DBE subcontractors.

E. FALSE, FRAUDULENT OR DISHONEST CONDUCT

The City of Tucson will bring to the attention of the federal government any false, fraudulent or dishonest conduct in connection with the DBE Diversity Program for Contracts so that the federal government can take steps (e.g., referral to the Department of Justice for criminal prosecution, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109. The City will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

F. NON-DISCRIMINATION

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

CITY OF TUCSON
OFFICE OF EQUAL OPPORTUNITY PROGRAMS
STATEMENT OF
PROPOSED DBE PLAN

ALL DBE's MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A DBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE DBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan.

CONTRACT No. _____ Project Name: _____

Firm Name (Please indicate if firm is a DBE)	Trade/Industry	Proposed Dollar Value of Contract (DBE Only)

Project Amount $ _____

Total Claimed DBE Participation $_____ _____%

I hereby certify by signing below that the foregoing firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project.

Company Name: _____

Signature: _____ Phone No. _____

Date: _____ Name & Title: _____

A COMPLETED DBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

City of Tucson
Equal Opportunity Office

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _____ PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A CONTRACTOR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET DBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing DBE firms to meet the City of Tucson's DBE goals. This certificate will assist the City of Tucson's Office of Equal Opportunity Programs in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the OEOP Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed DBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a DBE plan must also be submitted.

_____
_____
_____
_____
_____

2. Provide a brief summary of why the DBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to DBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for DBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which DBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to DBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact			Telephone #

6. Was the City of Tucson's Office of Equal Opportunity Programs (OEOP) technical or professional staff contacted for assistance? (Note that it is the policy of the OEOP to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the DBE goals.) Attach necessary documentation.

Yes _____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide DBE firms with information about the project plans, specifications and requirements of the contract.

_____

_____

_____

_____

_____

8. Describe any additional efforts undertaken to assist DBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which DBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of DBE Firm	Explanation for Rejecting Quotes

10. Were any proposals from DBE subcontractors that were no more than 15% or $250,000 greater than the accepted Non-DBE subcontractor rejected? If so, describe in detail.

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

MUST BE SUBMITTED WITH THE PROPOSAL

City of Tucson
Office of Equal Opportunity Programs (OEOP)

DBE ACKNOWLEDGMENT OF PARTICIPATION

CONTRACT NO._____ PROJECT NAME: _____

TRADE/INDUSTRY/SUPPLY/EQUIPMENT:_____

DOLLAR VALUE OF THE CONTRACT: _____

DBE Firm: _____

DBE Signature: _____

Phone No. _____ Date: _____

Name: _____

Title: _____

I hereby certify that _____ is participating in the contract as provided in the Proposed DBE Plan and that the information shown above is a true reflection of the proposed subcontract.

Prime Contractor's Signature: _____

MUST BE SUBMITTED WITH REQUEST FOR FINAL PAYMENT

City of Tucson
Office of Equal Opportunity Programs (OEOP)

SUPPLIER AND SUBCONTRACTOR UTILIZATION LIST
FINAL PAYMENT RECORD

Pursuant to administrative procedures and policies, the OEOP Director may verify and/or clarify and request resubmittal of information to verify or clarify information as it relates to the contractor's Final Payment Record.

CONTRACT No. _____ Bid Amount: _____ Project Name: _____

FIRM NAME	DBE	TRADE/INDUSTRY	SUPPLIER TOTAL PAYMENT MADE		
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__
_____	Y__N__		_____	Y__N__	__

CERTIFICATION OF PAYMENTS TO DBE FIRMS

Project Name:_____
COT Job No.: _____ Contract No.: _____
Fed Job No.: _____ State TRACS No.: _____

The undersigned prime contractor on the above named City of Tucson project hereby, certifies that full payment was made to the firm indicated for material and/or work performed under this project's contract as follows:

Firm Name _____, was paid $ _____

The subcontract was completed on _____

Full Retention has been released to the Subcontractor by the Prime Contractor Yes / No

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contracts, all documentation supporting the contractors position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Prime Contractor

By: _____

Title: _____

Date: _____

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

_____
Subcontractor/Supplier/Manufacturer

By: _____

Title: _____

Date: _____

MUST BE SUBMITTED WITH THE PROPOSAL

SUBCONTRACTOR PROMPT PAYMENT REQUIREMENTS

CONTRACT NO: _____

PROJECT NAME: _____

DBE Contract Provisions – Section V. Monitoring Payments to Subcontractors

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson.

Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

By signing below I acknowledge and agree to the DBE subcontractor prompt payment requirements.

Company Name: _____

Signature: _____

Name & Title: _____

Date: _____

Client#: 28674 70SANTRIT

ACORD™ # CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/01/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Crest Insurance Group
5285 E Williams Cir. Ste 4500
Tucson, AZ 85711
520 881-5760

CONTACT NAME: Jynessa Shaffer
PHONE (A/C, No, Ext): 520 881-5760 FAX (A/C, No): 520 618-3948
E-MAIL ADDRESS: Jshaffer@crestins.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : National Fire Insurance Co of H	20478
INSURER B : Continental Casualty Company	20443
INSURER C : Transportation Insurance Co.	20494
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Santa Rita Landscaping, Inc.
755 W. Grant Road
Tucson, AZ 85705

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X		5091515036	03/01/2013	03/01/2014	EACH OCCURRENCE	$1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$100,000
	CLAIMS-MADE X OCCUR						MED EXP (Any one person)	$5,000
	X PD Ded: 500						PERSONAL & ADV INJURY	$1,000,000
	X Contractual Liab						GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$2,000,000
	POLICY X PRO-JECT LOC							$
C	AUTOMOBILE LIABILITY	X		5091515019	03/01/2013	03/01/2014	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB / X OCCUR			5091515022	03/01/2013	03/01/2014	EACH OCCURRENCE	$2,000,000
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$2,000,000
	DED X RETENTION $10,000							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**Named Insureds: Santa Rita Landscaping, Inc. (86-0583190); Washout Systems, LLC (20-2868451); S.R. Leasing, LLC; SR Leasings 3, LLC; Santa Rita Properties, LLC; Dragoon Properties, LLC.
RE: JOC #130762. Certificate holder is Additional Insured (General Liability & Automobile Liability). This form is subject to all policy endorsements, terms, conditions & exclusions.

CERTIFICATE HOLDER

City of Tucson
Attn: Matt Hausman
255 W. Alameda
P.O. Box 27210
Tucson, AZ 85726-7210

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Cody Ritchie

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE (OPTIONAL)

Name of Additional Insured Persons Or Organizations
(As required by "written contract" per Paragraph A. below.)

Locations of Covered Operations
(As per the "written contract," provided the location is within the "coverage territory" of this Coverage Part.)

A. **Section II - Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization whom you are required by "written contract" to add as an additional insured on this Coverage Part; and
2. The particular person or organization, if any, scheduled above.

B. The insurance provided to the additional insured is limited as follows:

1. The person or organization is an additional insured only with respect to liability for "bodily injury," "property damage," or "personal and advertising injury" caused in whole or in part by:
   a. Your acts or omissions; or
   b. The acts or omissions of those acting on your behalf

   in the performance of your ongoing operations specified in the "written contract"; or

   c. "Your work" that is specified in the "written contract" but only for "bodily injury" or "property damage" included in the "products-completed operations hazard," and only if:
      (1) The "written contract" requires you to provide the additional insured such coverage; and
      (2) This Coverage Part provides such coverage.
2. We will not provide the additional insured any broader coverage or any higher limit of insurance than the least that is:
   a. Required by the "written contract";
   b. Described in **B.1.** above; or
   c. Afforded to you under this policy.
3. This insurance is excess of all other insurance available to the additional insured whether on a primary, excess, contingent or any other basis. But if required by the "written contract," this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.
4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," or "personal and advertising injury arising out of:
   a. The rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
      (1) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
      (2) Supervisory, inspection, architectural or engineering activities; or

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b. Any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this Coverage Part.

C. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

1. The **Duties In The Event of Occurrence, Offense, Claim or Suit** condition is amended to add the following additional conditions applicable to the additional insured:

   An additional insured under this endorsement will as soon as practicable:

   (1) Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;

   (2) Except as provided in Paragraph B.3 of this endorsement, agree to make available any other insurance the additional insured has for a loss we cover under this Coverage Part;

   (3) Send us copies of all legal papers received, and otherwise cooperate with us in the investigation, defense, or settlement of the claim or "suit"; and

   (4) Tender the defense and indemnity of any claim or "suit" to any other insurer or self insurer whose policy or program applies to a loss we cover under this Coverage Part. But if the "written contract" requires this insurance to be primary and non-contributory, this provision **(4)** does not apply to insurance on which the additional insured is a Named Insured.

   We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a claim or "suit."

2. With respect only to the insurance provided by this endorsement, the first sentence of Paragraph **4.a.** of the Other Insurance Condition is deleted and replaced with the following:

   4. Other Insurance

   a. Primary Insurance

   This insurance is primary and non-contributory except when rendered excess by endorsement G-140331-C, or when Paragraph **b.**below applies.

D. Only for the purpose of the insurance provided by this endorsement, **SECTION V – DEFINITIONS** is amended to add the following definition:

"Written contract" means a written contract or written agreement that requires you to make a person or organization an additional insured on this Coverage Part, provided the contract or agreement:

1. Is currently in effect or becomes effective during the term of this policy; and

2. Was executed prior to:

   a. The "bodily injury" or "property damage"; or

   b The offense that caused the "personal and advertising injury"

   for which the additional insured seeks coverage under this Coverage Part.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS -

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,

   b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an "insured" under any other liability "policy" providing "auto" coverage.

2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

   The insurance afforded by this provision **A.2.**:

   a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.

   b. Does not apply to:

      (1) "Bodily injury" or "property damage" caused by an "accident" that occurred before you acquired or formed the organization; or

      (2) Any such organization that is an "insured" under any other liability "policy" providing "auto" coverage.

3. Any person or organization that you are required by a written contract to name as an additional insured is an "insured" but only with respect to their legal liability for acts or omissions of a person, who qualifies as an "insured" under Section II – Who Is An Insured and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.

4. An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

"Policy," as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from $2,000 to $5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from $250 to $500 a day.

C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.**:

With respect to any covered "auto," any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

a. $60 per day, in lieu of $20; subject to

b. $1,800 maximum, in lieu of $600.

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C. **Loss of Use Expenses**

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

a. $1,000 maximum, in lieu of $600.

D. **Hired "Autos"**

The following is added to **Section III. Paragraph A.**:

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

a. Any covered "auto" you lease, hire, rent or borrow without a driver; and

b. Any covered "auto" hired or rented by your "employee" without a driver, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

c. The most we will pay for any one "accident" or "loss" is the actual cash value, cost of repair, cost of replacement or $75,000, whichever is less, minus a $500 deductible for each covered auto. No deductible applies to "loss" caused by fire or lightning.

d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned "autos."

e. Such physical damage coverage for hired "autos" will:

(1) Include loss of use, provided it is the consequence of an "accident" for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.

(2) Such coverage as is provided by this provision will be subject to a limit of $750 per "accident."

E. **Airbag Coverage**

The following is added to **Section III, Paragraph B.3.**:

The accidental discharge of an airbag shall not be considered mechanical breakdown.

F. **Electronic Equipment**

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any permanently installed electronic equipment including its antennas and other accessories.

d. A $100 per occurrence deductible applies to the coverage provided by this provision.

G. **Diminution In Value**

The following is added to **Section III, Paragraph B.6.**:

Subject to the following, the "diminution in value" exclusion does not apply to:

a. Any covered "auto" of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and

b. Any covered "auto" of the private passenger type hired or rented by your "employee" without a driver for a period of 30 days or less, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

c. Such coverage as is provided by this provision is limited to a "diminution in value" loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.

d. The most we will pay for "loss" to a covered "auto" in any one accident is the lesser of:

(1) $5,000; or

(2) 20% of the "auto's" actual cash value (ACV).

III. **Drive Other Car Coverage – Executive Officers**

The following is added to **Sections II and III**:

1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers," except:

a. An "auto" owned by that "executive officer" or a member of that person's household; or

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b. An "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos."

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

(1) Equal to the greatest of those coverages afforded any covered "auto"; and

(2) Excess over any other collectible insurance.

2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are "insureds" while using a covered "auto" described in this provision.

IV. **BUSINESS AUTO CONDITIONS**

A. **Duties In The Event Of Accident, Claim, Suit Or Loss**

The following is added to **Section IV, Paragraph A.2.a.**:

(4) Your "employees" may know of an "accident" or "loss." This will not mean that you have such knowledge, unless such "accident" or "loss" is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

(6) Your "employees" may know of documents received concerning a claim or "suit." This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. **Transfer Of Rights Of Recovery Against Others To Us**

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an "accident" or "loss."

C. **Concealment, Misrepresentation or Fraud**

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. **Other Insurance**

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract. That written contract must have been entered into prior to "Accident" or "Loss."

E. **Policy Period, Coverage Territory**

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

a. 45 days of coverage in lieu of 30 days.

V. **DEFINITIONS**

Section V. Paragraph C. is deleted and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

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Why We Are Using the Latest ACORD 25 Certificate of Insurance

***Note:** The underlined sentences below should only be used in states that require certificates to be filed. Be sure to check each statement below to make sure that it accurately reflects your state laws and agency/company agreements. Then delete this paragraph and any other inapplicable comments before providing a copy of this form to a certificate requestor.*

In September 2009, ACORD revised the ACORD 25 Certificate of Insurance form. One of the major changes was the removal of the cancellation notice provision. For the following reasons, we are unable to issue an older edition of this form, modify the current form, or complete a proprietary form you provide:

- ACORD certificate forms must be filed and approved for use in our state. When a new form is approved, prior versions can no longer be used. Therefore, it is illegal for us to issue anything other than the currently approved ACORD form.

- Notice of cancellation is a policy right, not an unregulated service. No insurer shown on this certificate is able to provide the cancellation notice you desire by endorsement. For example, the *insured* can cancel immediately, so it would be impossible for the insurer to give you the notice you request. State law also grants the insurer the right to cancel for reasons such as nonpayment with less notice than you require.

- For the reason just cited, if our agency were to issue a certificate that provides the cancellation notice you request, we would do so with the full knowledge that it would be impossible to actually give that amount of notice under certain circumstances. As such, the certificate could be alleged to constitute a misrepresentation or fraud which could subject our agency and staff to serious civil and criminal penalties.

- If a certificate purports to provide a policy right different from that provided by the policy itself, then the certificate effectively purports to be a policy form. Policy forms must be filed and approved by our state department of insurance. Use of nonfiled policy forms is illegal and could result in legal sanctions distinct from the assertion that the certificate is fraudulent.

- Under the ACORD Corporation's licensing agreement, the prior editions of superseded forms can be used for one year from the time the new forms are introduced. Beginning in September 2010, this is another reason we cannot use an older edition of the ACORD 25. Doing so would violate ACORD's licensing agreement and, as a copyrighted document, federal copyright law.

- Likewise, we are unable to modify the new certificate to add a notice of cancellation. ACORD forms are designed to be completed, not altered. ACORD's Forms Instruction Guide says that a certificate should not be used "To waive rights...To quote wording from a contract...To quote any wording which amends a policy unless the policy itself has been amended." Also, since our state requires ACORD forms to be filed, any alteration to a filed form would require its refiling. In addition, our insurance company contracts only allow us to issue unaltered ACORD forms.

- We are often asked to issue proprietary certificates provided by the certificate requestor. Again, our insurance company contracts only allow us to issue unaltered ACORD forms. In addition, our state requires the filing of all certificates of insurance and has very specific regulatory guidelines on certificate language. Many proprietary certificates include broad, vague or ambiguous language that may or may not be incompliance with state laws, regulations, and insurance department directives. Therefore, we cannot issue any proprietary certificates that have not been reviewed by our state insurance department.

You may be interested in how the City of Atlanta, Georgia is now reportedly dealing with this issue based on a very detailed study they conducted in 2006:

http://tinyurl.com/26guax8

We appreciate your understanding of the legal restrictions on our ability to fully comply with your request.

BONDING

CHOOSE ONE OF THE FOLLOWING PAYMENT & PERFORMANCE BOND OPTIONS:

X "Bond per Job"; each project bonded individually prior to Notice to Proceed.

___ "Annual" bonds in the amount of $50,000; each project over $50K or concurrent projects totaling more than $50K must be additionally bonded.

Bonding option may be changed, at the request of the contractor, at contract renewal.

The amount of the bonds provided by the Contractor must always be at least equal to the total amount of the contract prices for construction work under job orders issued and not complete. Contractor agrees to provide such additional bonding as may be required to satisfy this requirement as provided under A.R.S. 34-608.

A Certified copy of Power of Attorney of the person signing for the Surety Company must be dated and filed with the bonds.

KINDLY HAVE RESIDENT AGENT COUNTERSIGN THE BONDS (other than the "Attorney in Fact"), AS PROVIDED FOR ON THE BOND FORMS UNDER "ATTEST".

SANTA RITA LANDSCAPING, INC
Company Name

Signature of Person Authorized to Sign

RICHARD SPROSS
Printed Name

RFQ 130762
Contract Number

9/30/2013
Date

SANTA10 OP ID: ER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 09/30/13

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Hill & Usher LLC
Insurance. Bonds. Benefits.
3033 North 44th Street, #300
Phoenix, AZ 85018
Steve R. Shields
Phone: 602-956-4220
Fax: 602-956-4418

CONTACT NAME: Commercial Service Team
PHONE (A/C, No, Ext): 602-956-4220 FAX (A/C, No): 602-956-4418
E-MAIL ADDRESS: doccontrol@hillusher.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: SCF American Insurance Company	13751
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Santa Rita Landscaping, Inc.
SR Leasing, LLC, Santa Rita Properties LLC & Washout Systems, LLC
755 W. Grant Rd.
Tucson, AZ 85705-5486

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	POLICY PRO-JECT LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		A60168	01/01/13	01/01/14	X WC STATUTORY LIMITS / OTHER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: RFQ NO. 130762

CERTIFICATE HOLDER

CITYOT2

CITY OF TUCSON
P.O. BOX 27210
TUCSON, AZ 85726-7210

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT B
SCOPE OF WORK, LIST OF MATERIALS, SPECIFICATIONS AND OTHER MODIFICATIONS TO UNDERLYING CONTRACT

SEE EXHIBIT A

EXHIBIT C
PAYMENT & COMPENSATION TERMS

SEE EXHIBIT A

EXHIBIT D
INSURANCE REQUIREMENTS

COVERAGE AFFORDED	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Commercial General Liability Insurance Including:	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

A. Products & Completed Operations
B. Blanket Contractual
C. Premises-Operations-Personal Injury

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which require automobile travel by Contractor.

Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

SPECIAL CONDITIONS:

1. THE TOWN OF SAHUARITA WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the Town.
3. Deductibles will be stated on the certificate of insurance and are subject to the review and approval of the Town.
4. Contractor shall provide Town with proof of compliance with the insurance provisions and requirements within ten (10) days of the date this Contract is executed by all parties by providing a current certificate of insurance and the associated endorsement to the policy. Failure of Contractor to comply with the insurance requirements at any time shall result in a breach of this Agreement, and shall, among other things, allow immediate termination of this Agreement.
5. Contractors performing any portion of a Project that shall acquire funding from the Regional Transportation Authority (RTA) shall name the RTA as additional insured and additional indemnitee. The RTA shall be identified as an additional insured with respect to insurance policies for general liability, automobile liability and defects in design. Contractor is also required to name the RTA as an additional beneficiary in any performance and payment related assurances posted for the Project.

EXHIBIT E
LEGAL NOTICES

TOWN:	CONTRACTOR:
L. Kelly Udall, Town Manager Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **with a copy to:** Daniel J. Hochuli, Town Attorney Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **and:** Sheila M. Bowen, P.E. Public Works Director / Town Engineer Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629	Richard Spross, Treasurer Santa Rita Landscaping, Inc. 755 W. Grant Road Tucson, AZ 85705 **With a copy to:** NONE

TOWN COUNCIL AGENDA COMMUNICATION

MEETING DATE: August 22, 2016 ***DATE PREPARED:*** August 9, 2016

AGENDA ITEM: **8**

TO: Honorable Mayor and Council

FROM: Sheila M. Bowen, P.E., Public Works Director / Town Engineer

SUBJECT: **Staff presentation on the findings of the Camino Rancheria/Rancho Sahuarita Boulevard Intersection Alternatives Study and approval of Professional Services Contract No. 170018 with Psomas, Inc., for Rancho Sahuarita Boulevard Turn Lanes; not-to-exceed $58,975, commencing August 23, 2016 and terminating March 31, 2017.**

☐ **Economic Development** ☒ **Infrastructure** ☐ **Planning for Our Community's Future**

☐ **Organizational Effectiveness** ☐ **Quality of Life** ☐ **Other**

GOALS/OTHER:

- Goal 1 a: Identify community priorities regarding the provision of clean and safe streets, sidewalks, landscaping, and parks and recreational facilities
- Goal 1 d: Prioritize parks and recreational facility needs through assessment and development of a capital needs and replacement plan

FINANCIAL / BUDGET SUMMARY

1. Cost: $58,975
2. Available Budget/Project Capacity ($): CIIF

STAFF RECOMMENDATION

Staff recommends approval of Professional Services Contract No. 170018 with Psomas, Inc.

SUGGESTED MOTION

I move to approve Contract No. 170018 with Psomas, Inc.

DISCUSSION

In March 2016, the Town commissioned an evaluation of potential improvements at the intersection of Camino Rancheria and Rancho Sahuarita Boulevard. Preliminary concepts were developed and a preferred alternative was identified for further design.

Earlier in 2015, the Town completed a Roadway Safety Study, which identified locations where minor and/or major improvements could enhance safety. Improvements at recommended locations were prioritized based on multiple factors, including the number of crashes and crash severity. In the overall priority rankings, the intersections of Camino Rancho Tierra, Camino Rancho Caliente, and Camino Rancheria along Rancho Sahuarita Boulevard ranked 2, 7, and 10, respectively, out of 21 projects.

The FY16/17 CIP budget includes $450,000 for intersection improvements at Rancho Sahuarita Boulevard/Camino Rancheria (CIP Project #16S06). Based on the March 2016 study and an initial assessment of cost, it is recommended that the budgeted funds be used to accomplish improvements at the intersections of Camino Rancho Tierra, Camino Rancho Caliente, and Camino Rancheria along Rancho Sahuarita Boulevard, thus accomplishing recommendations of the 2015 Roadway Safety Study.

Psomas will provide the design of traffic safety and operational improvements at the three intersections.

Design services will be completed by March 31, 2017. Construction of improvements will be completed under a separate contract after the conclusion of design services.

ATTACHMENTS

1. Contract No. 170018
2. Presentation

APPROVED
Town of Sahuarita
Department of Law

CONTRACT
FOR PROFESSIONAL SERVICES

Town of Sahuarita, Arizona

Department:	Public Works
Contractor:	Psomas, Inc.
Project Name:	Rancho Sahuarita Turn Lanes
Project Number:	16S06
Contract Dates:	Start: 8/23/2016 End: 03/31/2017
Contract Number:	170018
Amount:	$58,975.00
Funding Source:	CIIF

TOWN COUNCIL MEMBERS

Mayor Duane Blumberg
Vice Mayor Bill Bracco
Kara Egbert
Gil Lusk
Tom Murphy
Lynne Skelton
Melissa L. Hicks

TOWN MANAGEMENT

L. Kelly Udall, Town Manager
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into between the Town of Sahuarita, Arizona, an Arizona municipal corporation (hereinafter "Town"), and Psomas, Inc., a California corporation authorized to do business in Arizona (hereinafter "Contractor").

W I T N E S S E T H

Whereas, Town requires the services of a contractor qualified and duly licensed in the Town of Sahuarita and the State of Arizona and qualified to provide evaluation services for potential intersection safety improvements; and

Whereas, Contractor is qualified and willing to provide such services; and

Whereas, Contractor submitted a proposal/bid to the Town, and the Town has determined that entering into this Contract with the Contractor is advantageous to the Town.

A G R E E M E N T

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter provided, it is agreed between the Town and the Contractor as follows:

1 EFFECTIVE DATE; TERM; RENEWAL.

1.1 This Contract shall commence on August 23, 2016, and shall terminate on March 31, 2017, unless sooner terminated or further extended pursuant to the provisions of this Contract.

1.2 Any modification or extension to this Contract shall be by formal written amendment executed by the parties hereto.

2 SCOPE OF WORK.

2.1 The work to be performed under this Contract is that work which is requested pursuant to the Scope of Work attached hereto as Exhibit "A" and incorporated herein by this reference. This Contract is not intended to cover services rendered by Contractor for Town pursuant to any other Contract.

2.2 The design or performance of architectural, structural, mechanical, electrical, civil, surveying, or other engineering features of the services described in this Contract shall be under the direct supervision of professionals, registered to practice in the pertaining field or endeavor in the State of Arizona.

2.3 Contractor shall be responsible for the completeness and accuracy of all services rendered and correction of all negligent errors of omission or commission on the drawings, specifications, and other documents, notwithstanding prior approval of Town.

2.4 Contractor agrees to maintain books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, and other graphic or written data generated in connection with the work performed. All said information and documentation shall become the property of Town, and upon expiration or termination of this Contract for any reason whatsoever, shall be promptly delivered to Town.

2.5 Contractor agrees to render professional services promptly and diligently upon receipt of notice to proceed with services on any specific project. Town will not be liable to pay Contractor for any work performed without a request to perform such work by the Town.

2.6 Contractor warrants that it has all personnel and professional capacity required in performing the services pursuant to this Contract.

3 PAYMENT.

3.1 In consideration of the services specified in this Contract, the Town agrees to pay the Contractor as follows: The total of all payments to Contractor under this Contract shall not exceed twenty nine thousand three hundred thirty five Dollars ($29,335.00).

3.2 Contractor's fees and method of compensation shall be "Not to Exceed" in accordance with Exhibit "B" of this Contract.

3.3 Town may add additional services throughout the term of the Contract by providing notice in writing to Contractor. Hourly rates and all other rates included under this Contract shall remain fixed throughout the term of the contract unless otherwise provided on Exhibit "B" of this Contract.

3.4 Contractor shall provide Town with monthly billing statements in a form acceptable to Town, listing specifically each task undertaken, the identity of the person performing the task, the time expended, and the cost of such task. Each invoice must bear a written certification by an authorized employee of Contractor confirming the professional services for which payment is requested.

3.5 Town will not pay for mileage or other direct costs except as provided on Exhibit "B" to this Contract.

3.6 Contractor shall not perform work in excess of the contract amount without prior authorization by an amendment executed by all parties to this Contract. Work performed in excess of the contract amount without prior authorization by amendment shall be at Contractor's own risk.

4 STATUS OF CONTRACTOR.

4.1 The status of the Contractor shall be that of an independent contractor and Contractor shall not be considered an employee of the Town of Sahuarita and shall not be entitled to receive any of the fringe benefits associated with regular employment. Contractor will be responsible for payment of all federal, state and local taxes associated with the compensation received by Contractor from Town.

4.2 Town will not provide any insurance coverage to Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes or social security payments shall not be withheld from a Town payment issued hereunder, and that Contractor should make arrangements to directly pay such expenses, if any.

5 SUBCONTRACTORS. Contractor will be fully responsible for all acts and omissions of its subcontractor(s) and of persons directly or indirectly employed by subcontractors, and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of Town to pay or see to the payment of any money due any subcontractor except as may be required by law.

6 OWNERSHIP OF DOCUMENTS.

6.1 All work of authorship, including but not limited to calculations, designs, drawings, specifications, graphics, text, and all copyrightable works resulting from this Contract shall become property of the Town. Additionally, all services, information, computer program elements, reports, plans, specifications, and other deliverables which may be created under this Contract are the sole property of the Town. Property of the Town shall not be used or released by the Contractor or any other person except with prior written permission by the Town.

6.2 All designs, inventions, or other intellectual property, and any refinement, modification, or improvement on any design, invention, or other intellectual property, conceived, created, or first reduced to practice as part of, or a result of, and activity undertaken by the Contractor pursuant to this Contract, shall become the exclusive property of the Town. It is the intent of this paragraph that the Town shall have exclusive ownership of all intellectual property created as a result of this Contract. The Contractor shall cooperate with the Town

in securing patents, or other certificates of property rights, and shall make such assignments to the Town as are needed to effect the purposes of this paragraph.

7 **PATENT INFRINGEMENT.** The Contractor and the surety shall defend any suit or proceeding brought against the Town, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark or copyright, and the Contractor shall pay all damages and costs awarded therein, against the Town and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the Town the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or replace same with non-infringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or modify it so it becomes non-infringing.

8 **BOOKS AND RECORDS.** Contractor shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of Town. In addition, Contractor shall retain all records relating to this contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

9 **RIGHT TO ASSURANCE.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, it may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

10 **RIGHT TO AUDIT RECORDS.** The Town may, at reasonable times and places, audit the books and records of any Contractor as related to this Contract.

11 **RIGHT TO INSPECT PLACE OF BUSINESS.** The Town may, at reasonable times, inspect the place of business of a Contractor or Subcontractor which is related to the performance of this Contract.

12 **INSPECTION.** All material and/or services are subject to final inspection and acceptance by the Town. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. The Town may elect to do any or all of the following, based upon a written determination by the Town:

a. Waive the non-conformance

b. Stop the work immediately

c. Bring material into compliance

13 **LIENS.** All materials, service or construction shall be free of all liens, and if the Town requests, a formal release of all liens shall be delivered to the Town.

14 **LICENSES.** Contractor shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

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

16 **CONTINUATION OF SERVICES.** Contractor shall continue to render all services requested in the Contract without interruption, notwithstanding any disputes concerning the interpretation of this Contract, all disputes to be adjusted at a later time, if appropriate.

17 **GRATUITIES.** The Town may, by written notice to the Contractor, cancel this Contract if it is found by the Town that gratuities, in the form of entertainment, gifts or otherwise, were offered or given

by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Town with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event the Town, pursuant to this provision, cancels the resultant contract, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of gratuity. Paying the expense of normal business meals, which are generally made available to all eligible Town government customers, shall not be prohibited by this paragraph.

18 **CONFLICT OF INTEREST.** This Contract is subject to the provisions of A.R.S. § 38-511, which provides in pertinent part:

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

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

20 **ARBITRATION.** It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration shall apply to or be binding upon the Town except by the Town's express written consent given subsequent to the execution of the Contract. However, if both parties agree, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. § 12-1501, *et seq*. Contractor shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this section.

21 **NON-ASSIGNMENT.** Contractor shall not assign its rights to this Contract in whole or in part, without prior written approval of the Town. Assignment may be withheld at the sole discretion of the Town, provided that such approval shall not be unreasonably withheld.

22 **NON-DISCRIMINATION.** The Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive Order 99-4 and amends Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://azmemory.azlibrary.gov/cdm/ref/collection/execorders/id/680 which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

23 **COMPLIANCE WITH FEDERAL AND STATE LAWS.** The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract.

23.1 The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1988. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees".

23.2 Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the Town that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that

relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the Town in regard to any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor agrees to assist the Town in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214, Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

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

25 **OVERCHARGES BY ANTITRUST VIOLATIONS.** The Town maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the Town any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

26 **INSURANCE.** Contractor agrees to obtain insurance coverage of the types, terms and amounts required in Exhibit "C" to this Contract, and keep such insurance coverage in force throughout the life of this Agreement. If a certificate of insurance is submitted as verification of coverage as required in Exhibit "C," the Town shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Contract. If any of the required policies expire during the life of this Contract, it shall be Contractor's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions.

27 **NON-APPROPRIATION OF FUNDS.** Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Sahuarita Town Council does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, Town shall have no further obligation to Contractor, other than for services rendered prior to termination.

28 **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless Town, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court

costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any negligent actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this Contract, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and subcontractor's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the Town. The amount and type of insurance coverage requirements set forth in this Contract and Exhibit "C" will in no way be construed as limiting the scope of indemnity in this paragraph.

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

30 **OTHER DOCUMENTS.** Contractor and Town in entering into this Contract have relied upon information provided in, if applicable, the Request for Proposals, Request for Qualifications, Solicitation for Qualifications, or similar solicitation, and on information provided in the Contractor's response to said solicitation. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract.

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

32 **NOTICES.** Any notice required or permitted to be given under this Contract shall be in writing and shall be served by delivery or by certified mail upon the other party as provided on Exhibit "D" to this Contract.

33 **PUBLIC INFORMATION.** Pursuant to A.R.S. § 39-121 *et seq*., and A.R.S. § 34-603(G) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation that underlies this contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors. In addition, the Contractor agrees that any other documents that the Town believes, in its sole discretion, are public records, may be released pursuant to state law. Town shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records, nor shall Town be in any way financially responsible for any costs associated with securing such an order.

34 **COOPERATIVE PURCHASING.** In addition to the Town, this Contract may be extended for use by other municipalities, counties, government agencies, governing bodies, and political subdivisions of the State of Arizona. Any such usage by other entities must be in accord with the ordinances, charter, and/or rules and regulations of the respective entity and the approval of the Contractor.

35 **APPLICABLE LAW.** This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Pima County, State of Arizona.

36 **ENTIRE AGREEMENT.** This document constitutes the entire Contract between the parties and shall not be modified, amended, altered or changed except through a written amendment signed by the parties.

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

TOWN OF SAHUARITA, ARIZONA

_____
Duane Blumberg
Mayor

Date: _____

ATTEST:

_____
Lisa Cole, MMC, Town Clerk

TOWN OF SAHUARITA

_____
L. Kelly Udall, Town Manager/Purchasing Director

DEPARTMENT HEAD:

_____
Sheila M. Bowen, P.E. Public Works Director / Town Engineer

APPROVED AS TO FORM:

_____
Daniel J. Hochuli, Town Attorney

Federal Tax ID Number: 86-0777111

D-U-N-S Number: 963704101

CONTRACTOR:
PSOMAS, INC.

_____
Name: Alejandro Angel, PE, PhD, PTOE
Title: Vice President

Date: 07/27/2016

Federal Tax ID Number: 95-2863554

D-U-N-S Number: 153872346

EXHIBIT A
SCOPE OF WORK

PSOMAS

Balancing the Natural and Built Environment

July 22, 2016

Rick Robinson
Project Manager
Town of Sahuarita - Public Works Department
375 W. Sahuarita Center Way
Sahuarita, AZ 85629

Re: Rancho Sahuarita Boulevard Turn Lanes
Psomas Project #7SAH084532

Dear Rick:

Per our conversation, Psomas is pleased to provide this scope of work and fee for the design of traffic safety and operational improvements at major intersections along Rancho Sahuarita Boulevard. Specifically, the project will include the following improvements:

- Northbound and southbound left turn lanes at Camino Rancheria
- Eastbound right turn lane at Camino Rancheria
- Northbound and southbound left turn lanes at Camino Rancho Tierra
- Northbound and southbound left turn lanes at Camino Rancho Caliente

We intend to perform the services described in the scope of work for a total amount of $58,975 as detailed in the attached fee estimate. If you have any questions, please do not hesitate to give me a call at (520) 292-2300. We look forward to the opportunity to provide our services to the Town of Sahuarita.

Respectfully Submitted,

PSOMAS

Alejandro Angel, PE, PhD, PTOE
Vice President
aangel@psomas.com

Attachments – Scope of work (3 pages)
Project Fee Estimate (2 pages)

RANCHO SAHUARITA BOULEVARD TURN LANES

SCOPE OF WORK

The purpose of this project is to design traffic safety and operational improvements at major intersections along Rancho Sahuarita Boulevard. Specifically, the project will include the following improvements:

- Northbound and southbound left turn lanes at Camino Rancheria
- Eastbound right turn lane at Camino Rancheria
- Northbound and southbound left turn lanes at Camino Rancho Tierra
- Northbound and southbound left turn lanes at Camino Rancho Caliente

Task 76001. Predesign Survey and Mapping

Psomas will perform three individual as-built design surveys along with record right-of-way information for the following intersections:

1. Rancho Sahuarita Blvd and Camino Rancheria – 400 feet north and south, 200 east and 400 feet west of intersection.

2. Rancho Sahuarita Blvd and Camino Rancho Tierra - 400 feet north and south of intersection.

3. Rancho Sahuarita Blvd and Camino Rancho Caliente - 400 feet north and south of intersection.

Survey work will be completed using a combination of GPS and conventional survey equipment. Horizontal control will be establish utilizing existing Psomas control points from our previous waste water treatment plant project in the area with NAVD88 benchmark elevations. A 40 scale AutoCAD base map drawing with 1 foot contours and spot elevations will be provided for the project design plans.

All Features to be collected will be within the approximate right-of-way or within 75 feet of the existing road centerline and include edge of pavement, curb, sidewalks, handicap ramps, railings, signs, above ground visible utilities, major vegetation (trees, saguaros and large shrubs), top and toe of slopes and drainage channels.

The record right-of-way information shown will be based on existing assessor's information and subdivision plats. Existing centerline survey monuments will be located to establish a construction baseline. No title reports will be reviewed and a record of survey is not required at this time as all work is anticipated to be completed within the existing right-of-way. Any centerline monuments shown will be made a part of the public record with the improvement plans files of the Town of Sahuarita. If no centerline

monuments are recovered within the project perimeters, construction control will be tied to Psomas control points.

A utility bluestake ticket will not be requested as they no longer mark for design surveys.

Task 70700 – Utility Mapping (2500)

Psomas will request maps from utility companies. The utility maps and surface features surveyed by Psomas will be combined to develop a utility base map. No potholing of utilities or utility modification plans are anticipated. If these services become necessary, they will be authorized as additional services. The Town of Sahuarita will be responsible for submittals to utility companies. The Town of Sahuarita will be responsible for providing Sanitary Sewer base maps or as-built plans to Psomas.

Task 75100 – Drainage Analysis ($1500)

No changes are anticipated to the drainage patterns in the area. However, Psomas will prepare a drainage memorandum identifying the existing drainage facilities and recommending a configuration for reconstructing the catch basin on the northwest corner of Camino Rancheria and Rancho Sahuarita Boulevard.

Task 70650. Preliminary Plans and Cost Estimate (50% Plans)

The proposed widening for turn lanes is based on the following assumptions:

- The left turn lanes on Rancho Sahuarita Boulevard will be added by widening the roadway entirely to the west. This will avoid moving the curb on the east side of the road, minimize landscape impacts and maximize the use of the additional road width on the west side of the road.
- All turn lanes are expected to provide 110 ft of storage, except for the eastbound right turn lane and northbound left turn lane at Camino Rancheria which will provide 150 ft of storage.
- Approximately 300 linear feet of sidewalk will be reconstructed. Most of the new sidewalk will be 8 ft in width to match the existing facility, except that at constrained locations (such as the culvert on the north side of Camino Rancho Caliente) the sidewalk width may be reduced to no less than 5 ft.
- All the ADA ramps on the west side of the intersections will be reconstructed.
- A street light will be added to each of the crosswalks at Camino Rancho Caliente and Camino Rancho Tierra
- The crosswalk on the south leg of the Rancho Sahuarita Blvd/Camino Rancheria will be removed to encourage pedestrians to use the crosswalk on the north leg, which leads to the park sidewalks
- None of the existing cross-culvert or drainage facilities will be affected by the project except for the catch basin on Rancho Sahaurita Blvd north of Camino Rancheria.

- The Town of Sahuarita will provide as-built plans for Rancho Sahaurita Boulevard and for the sanitary sewer lines.
- No landscape plans or improvements are included in this scope of work.

The plans for the project are expected to include:

- Cover sheet, including horizontal control with basis of bearing and elevation
- General notes
- Typical sections
- Civil Details (catch basins, ramps, sidewalks, 2 sheets)
- Demolition sheets – indicating removals (2 sheets)
- Plan sheets – showing the proposed improvements. Plan view only with proposed elevations labeled (2 sheets)
- Signing and pavement markings sheets (combined in one set, 3 sheets)
- Street lighting plan (2 sheets)

We anticipate that the total project disturbance will be less than one acre, and as a result a Storm water Pollution Prevention Plan is excluded from the scope of work.

Psomas will also prepare quantities and an engineer's estimate for the submittal. The plans, quantities and estimate will be submitted to the Town of Sahuarita. The Town of Sahuarita will submit the plans to the utility companies. The preparation of special provisions is excluded from the scope of work.

Task 70699 – Final Plans and Cost Estimate (100%)

Upon receiving comments from the Town of Sahuarita on the 50% plan set, Psomas will revise the project plans, quantities and cost estimate to incorporate those comments. No additional sheets (relative to the 50% submittal) are anticipated. The final plans will be submitted as electronically sealed pdfs or as a bond set as requested by the Town of Sahuarita.

Task 78100 – Project Administration

Psomas will perform coordination with the Town. A total of two meetings and one field visit are anticipated throughout the project. This task also includes project setup and closeout, monthly billing detail and miscellaneous clerical tasks.

Rancho Sahuarita Turn Lanes

ESTIMATED DIRECT LABOR (Psomas)

Classification	Estimated Man-hours	Hourly Rate	Labor Costs
Project Principal	1	$210.00	$ 210.00
Sr Project Manager	31	$185.00	$ 5,735.00
Project Engineer	112	$125.00	$ 14,000.00
Designer	247	$100.00	$ 24,700.00
Intern	44	$60.00	$ 2,640.00
Sr. Hydrologist	0	$0.00	$ -
Project Hydrologist	0	$145.00	$ -
Hydrologist	0	$100.00	$ -
Project Surveyor	16	$125.00	$ 2,000.00
Survey Tech.	36	$75.00	$ 2,700.00
Party Chief	0	$0.00	$ -
2-Man Survey	44	$145.00	$ 6,380.00
Administration	6	$85.00	$ 510.00
Total	537		

Total Estimated Labor $ 58,875.00

ESTIMATED DIRECT EXPENSES $ -

Item	Quantity	Amount	Total
Reproductions	1	$100.00	$ 100.00
			$ -

Direct Expenses TOTAL $ 100.00

TOTAL ESTIMATED LABOR (Psomas)	$ 58,875.00
TOTAL ESTIMATED DIRECT COSTS (Psomas)	$ 100.00
TOTAL ESTIMATED OUTSIDE SERVICES	$ -
TOTAL ESTIMATED COST	$ 58,975.00
CONTRACT TOTAL	$ 58,975.00

Psomas
Project Fee Estimate / Authorized Task List

Project Number: 7SAH084532
Project Name: Rancho Sahuarita Blvd Turn Lanes
Project Manager: Chenggang Zhang
Date: 7/21/2016

No.	Design Description	Project Principal $ 210 / Hr. Hrs.	Amount	Sr Project Manager $ 185 / Hr. Hrs.	Amount	Project Engineer $ 125 / Hr. Hrs.	Amount	Designer $ 100 / Hr. Hrs.	Amount	Intern $ 60 / Hr. Hrs.	Amount	Project Surveyor $ 125 / Hr. Hrs.	Amount	Survey Tech. $ 75 / Hr. Hrs.	Amount	2-Man Survey $ 145 / Hr. Hrs.	Amount	Administration $ 85 / Hr. Hrs.	Amount	Psomas Task Total
70200	**Predesign Survey and Mapping**																			
	Survey Control		$ -		$ -		$ -		$ -		$ -	6	$ 750	4	$ 300		$ -		$ -	$ 1,050
	Field Survey		$ -		$ -		$ -		$ -		$ -		$ -		$ -	44	$ 6,380		$ -	$ 6,380
	Field data processing		$ -		$ -		$ -		$ -		$ -	4	$ 500	20	$ 1,500		$ -		$ -	$ 2,000
	Record right-of-way basemap		$ -		$ -		$ -		$ -		$ -	6	$ 750	12	$ 900		$ -		$ -	$ 1,650
			$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -	$ -
	Total Predesign Survey and Mapping	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**16**	**$ 2,000**	**36**	**$ 2,700**	**44**	**$ 6,380**	**-**	**$ -**	**$ 11,080**
70700	**Utility Mapping**																			
	Request utility maps		$ -		$ -	1	$ 125	4	$ 400		$ -		$ -		$ -		$ -		$ -	$ 525
	Prepare utility base map		$ -		$ -	4	$ 500	12	$ 1,200		$ -		$ -		$ -		$ -		$ -	$ 1,700
			$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -	$ -
	Total Utility Mapping	**-**	**$ -**	**-**	**$ -**	**5**	**$ 625**	**16**	**$ 1,600**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**$ 2,225**
75100	**Drainage Analysis**																			
	Drainage memorandum		$ -	1	$ 185	6	$ 750	6	$ 600		$ -		$ -		$ -		$ -		$ -	$ 1,535
			$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -	$ -
			$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -	$ -
			$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -	$ -
	Total Drainage Analysis	**-**	**$ -**	**1**	**$ 185**	**6**	**$ 750**	**6**	**$ 600**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**$ 1,535**
70650	**Preliminary Plans and Cost Estimate (50%)**																			
	Cover sheet (including control)		$ -	1	$ 185	4	$ 500	6	$ 600		$ -		$ -		$ -		$ -		$ -	$ 1,285
	General Notes		$ -		$ -	1	$ 125	4	$ 400		$ -		$ -		$ -		$ -		$ -	$ 525
	Typical Sections		$ -	1	$ 185	2	$ 250	7	$ 700		$ -		$ -		$ -		$ -		$ -	$ 1,135
	Civil Details (2 sheets)		$ -	2	$ 370	6	$ 750	18	$ 1,800	6	$ 360		$ -		$ -		$ -		$ -	$ 3,280
	Demolition sheets (2)		$ -	2	$ 370	10	$ 1,250	24	$ 2,400	8	$ 480		$ -		$ -		$ -		$ -	$ 4,500
	Plan sheets (2)		$ -	3	$ 555	12	$ 1,500	32	$ 3,200	8	$ 480		$ -		$ -		$ -		$ -	$ 5,735
	Signing and Pavement Markings (3 sheets)		$ -	2	$ 370	8	$ 1,000	22	$ 2,200	4	$ 240		$ -		$ -		$ -		$ -	$ 3,810
	Lighting Plan (2 sheets)		$ -	1	$ 185	8	$ 1,000	14	$ 1,400		$ -		$ -		$ -		$ -		$ -	$ 2,585
	Quantities and Cost Estimate		$ -	1	$ 185	6	$ 750	12	$ 1,200		$ -		$ -		$ -		$ -		$ -	$ 2,135
			$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -	$ -
	Total Preliminary Plans and Cost Estimate (50%)	**-**	**$ -**	**13**	**$ 2,405**	**57**	**$ 7,125**	**139**	**$ 13,900**	**26**	**$ 1,560**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**$ 24,990**
70699	**Final Plans and Cost Estimate (100%)**																			
	Cover sheet (including control)		$ -		$ -	1	$ 125	3	$ 300		$ -		$ -		$ -		$ -		$ -	$ 425
	General Notes		$ -		$ -	1	$ 125	2	$ 200		$ -		$ -		$ -		$ -		$ -	$ 325
	Typical Sections		$ -	1	$ 185	2	$ 250	4	$ 400	4	$ 240		$ -		$ -		$ -		$ -	$ 1,075
	Civil Details (2 sheets)		$ -	1	$ 185	3	$ 375	8	$ 800	4	$ 240		$ -		$ -		$ -		$ -	$ 1,600
	Demolition sheets (2)		$ -	1	$ 185	4	$ 500	12	$ 1,200	4	$ 240		$ -		$ -		$ -		$ -	$ 2,125
	Plan sheets (2)		$ -	2	$ 370	8	$ 1,000	20	$ 2,000	4	$ 240		$ -		$ -		$ -		$ -	$ 3,610
	Signing and Pavement Markings (3 sheets)		$ -	1	$ 185	5	$ 625	12	$ 1,200	2	$ 120		$ -		$ -		$ -		$ -	$ 2,130
	Lighting Plan (2 sheets)		$ -		$ -	5	$ 625	10	$ 1,000		$ -		$ -		$ -		$ -		$ -	$ 1,625
	Quantities and Cost Estimate		$ -	1	$ 185	6	$ 750	12	$ 1,200		$ -		$ -		$ -		$ -		$ -	$ 2,135
			$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -		$ -	$ -
	Total Final Plans and Cost Estimate (100%)	**-**	**$ -**	**7**	**$ 1,295**	**35**	**$ 4,375**	**83**	**$ 8,300**	**18**	**$ 1,080**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**$ 15,050**
78100	**Project Administration**																			
	Project setup/closeout	1	$ 210		$ -		$ -		$ -		$ -		$ -		$ -		$ -	2	$ 170	$ 380
	Field visit (1)		$ -		$ -	3	$ 375	3	$ 300		$ -		$ -		$ -		$ -		$ -	$ 675
	Team meetings (2)		$ -	6	$ 1,110	6	$ 750		$ -		$ -		$ -		$ -		$ -		$ -	$ 1,860
	Miscellaneous clerical tasks		$ -	4	$ 740		$ -		$ -		$ -		$ -		$ -		$ -	4	$ 340	$ 1,080
	Total Project Administration	**1**	**$ 210**	**10**	**$ 1,850**	**9**	**$ 1,125**	**3**	**$ 300**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**-**	**$ -**	**6**	**$ 510**	**$ 3,995**
	Proposal Total	**1**	**$ 210**	**31**	**$ 5,735**	**112**	**$ 14,000**	**247**	**$ 24,700**	**44**	**$ 2,640**	**16**	**$ 2,000**	**36**	**$ 2,700**	**44**	**$ 6,380**	**6**	**$ 510**	**$ 58,875**

EXHIBIT B
CONTRACTOR'S FEES

See Fee Schedule Contained in Exhibit A

EXHIBIT C
INSURANCE REQUIREMENTS

COVERAGE AFFORDED	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Commercial General Liability Insurance Including:	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

A. Products & Completed Operations
B. Blanket Contractual
C. Premises-Operations-Personal Injury

Professional Liability Insurance (Errors and Omissions) (See Special Conditions)	$1,000,000 (Minimum) Combined Single Limit

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which require automobile travel by Contractor.

Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles	$1,000,000 - Bodily Injury Combined Single Limit $100,000 Property Damage

SPECIAL CONDITIONS:

1. THE TOWN OF SAHUARITA WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the Town.
3. Deductibles will be stated on the certificate of insurance and are subject to the review and approval of the Town.
4. Professional liability insurance limits will be increased for projects or contracts based upon the degree of risk to which the Town is exposed.
5. Professional liability insurance carried by the Contractor must cover all elements of the project including professional services performed by subcontractors. If the Contractor's professional liability insurance does not provide coverage for work performed by subcontractors, separate project insurance will be required to comply with the professional liability insurance requirement. The Town may require a copy of the professional liability policy to verify coverage.
6. Contractor shall provide Town with proof of compliance with the insurance provisions and requirements within ten (10) days of the date this Contract is executed by all parties by providing a current certificate of insurance and the associated endorsement to the policy. Failure of Contractor to comply with the insurance requirements at any time shall result in a breach of this Agreement, and shall, among other things, allow immediate termination of this Agreement.
7. Contractors performing any portion of a Project that shall acquire funding from the Regional Transportation Authority (RTA) shall name the RTA as additional insured and additional indemnitee. The RTA shall be identified as an additional insured with respect to insurance policies for general liability, automobile liability and defects in design. Contractor is also required to name the RTA as an additional beneficiary in any performance and payment related assurances posted for the Project.

Client#: 25181 PSOMAS

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/02/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Greyling Ins. Brokerage/EPIC
3780 Mansell Road, Suite 370
Alpharetta, GA 30022
877 908-5619

CONTACT NAME: Jerry Noyola
PHONE (A/C, No, Ext): 770-552-4225 FAX (A/C, No): 866-550-4082
E-MAIL ADDRESS: jerry.noyola@greyling.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : National Union Fire Ins Co of P	19445
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Psomas
555 South Flower Street; Suite 4300
Los Angeles, CA 90071

COVERAGES CERTIFICATE NUMBER: 16-17 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			5268212	04/01/2016	04/01/2017	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE / X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$500,000
	X Contractual Liab.						MED EXP (Any one person)	$25,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	POLICY / X PRO-JECT / X LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY			4489706	04/01/2016	04/01/2017	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS / X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			015893764 (AOS)	04/01/2016	04/01/2017	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N	N / A					E.L. EACH ACCIDENT	$1,000,000
A	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			015893765 (CA)	04/01/2016	04/01/2017	E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

7SAH084532; Rancho Sahuarita Boulevard Turn Lanes; Project #16S06; Contract #170018. The Town of Sahuarita & The Regional Transportation Authority (RTA) are named as Additional Insureds with respects to General & Automobile Liability where required by written contract. Deductibles: General Liability - $0; Automobile Liability - $0; Workers Compensation - $0. Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, 30 days' written notice (except 10 days for nonpayment of premium) will be provided to the Certificate Holder.

CERTIFICATE HOLDER

Town of Sahuarita & The Regional Transportation Authority (RTA)
Cherie Odeski
375 West Sahuarita Center Way
Sahuarita, AZ 85629

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT D
LEGAL NOTICES

TOWN: L. Kelly Udall, Town Manager Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **with a copy to:** Daniel J. Hochuli, Town Attorney Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629 **and:** Sheila M. Bowen, P.E. Public Works Director / Town Engineer Town of Sahuarita 375 W. Sahuarita Center Way Sahuarita, Arizona 85629	**CONTRACTOR:** Alejandro Angel, PE, PhD, PTOE, Vice President Psomas, Inc. 333 E. Wetmore Road Tucson, AZ 85705 **With a copy to:** NONE

Sahuarita
ARIZONA

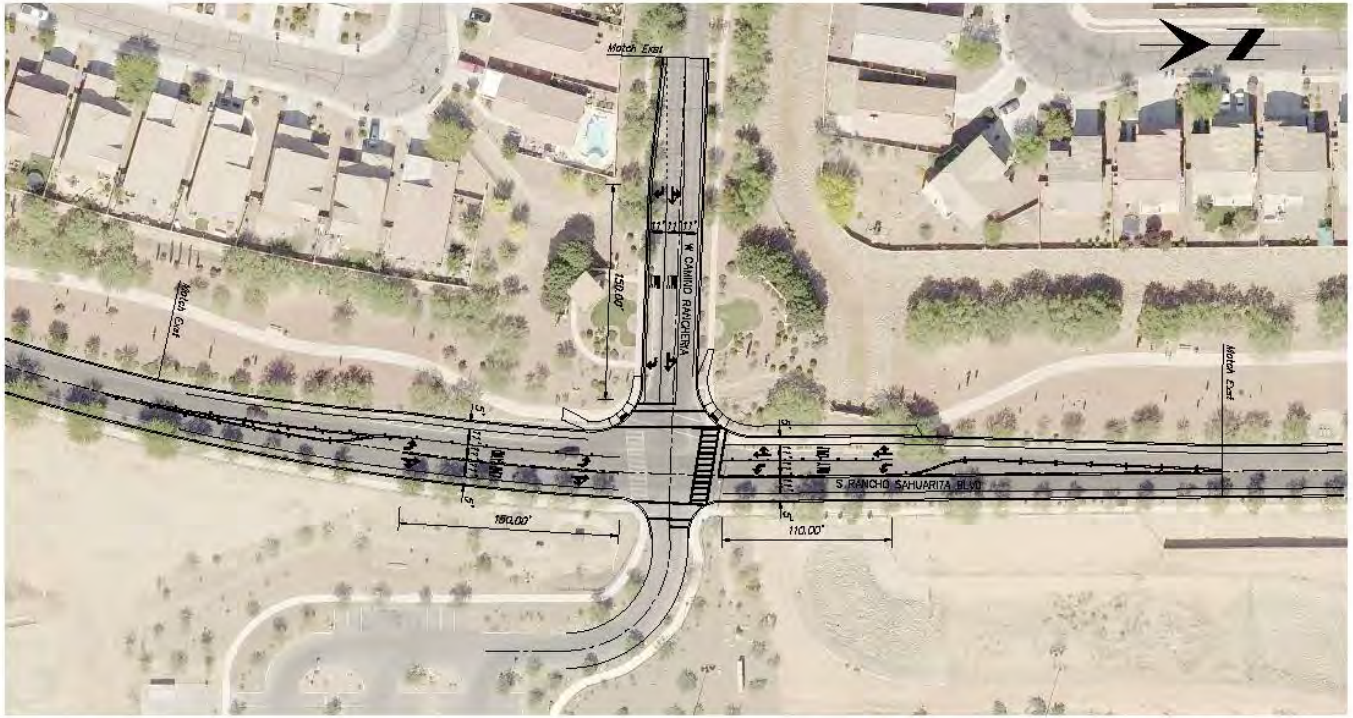
Rancho Sahuarita Blvd Intersection Update

Agenda Item 8

August 22, 2016

Camino Rancheria/Rancho Sahuarita Intersection Alternatives Study

- Identified as a safety priority in the 2015 town-wide safety study
- Complaints about delays at the intersection
- Five build alternatives evaluated



Turn Lane Alternative

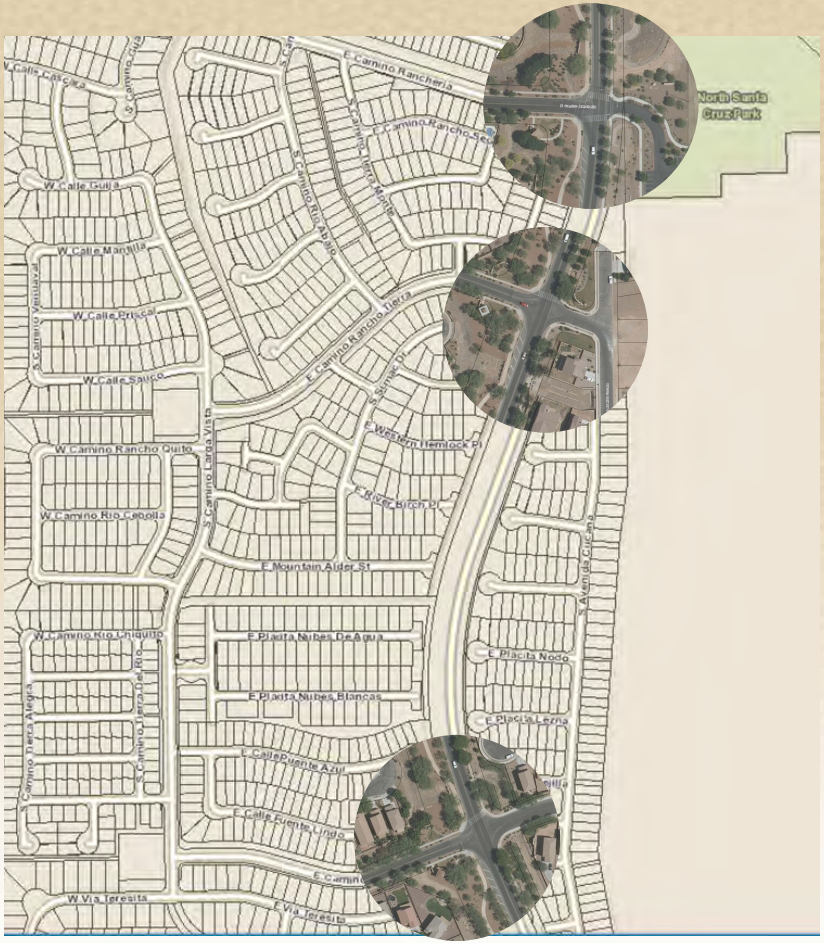
PSOMAS
333 E. Wetmore Road, Suite 410
Tucson, AZ 85705
(520) 592-5200 (520) 592-1290 fax
www.psomas.com

RANCHO SAHUARITA BLVD / CAMINO RANCHERIA

PROJ NO: 17RAN04630 SCALE: HORZ: 1" = 20'
DATE: 07/2016 VERT: N/A
1 OF 1

Engineering • Planning • Environmental • Surveying • Water Resources

Sahuarita ARIZONA



Revised Scope

- Includes turn lanes at intersections of Camino Rancheria, Camino Rancho Tierra and Camino Rancho Caliente
- Accomplishes safety enhancements at 3 intersections identified as safety priorities in the 2015 town-wide safety study

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Questions/Discussion?

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