



**BOARD OF SUPERVISORS AGENDA ITEM REPORT  
CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: October 18, 2016

or Procurement Director Award

**Contractor/Vendor Name (DBA):** Durazo Construction Corp.; Hark General Contracting, LLC; Kittle Design & Construction, LLC; SCBS, LLC; Sellers and Sons, Inc.(Headquarters:Tucson, AZ)  
**Project Title/Description:**  
Bus Stop Improvement Project

**Purpose:**

Award of Job Order Master Agreement: Agreement No. MA-PO-17-085 to the City of Tucson's five Job Order Contractors, who are Certified by the Federal Transit Authority (FTA), in an amount not to exceed \$500,000.00 for an agreement term from October 18, 2016 to December 31, 2017.

This award does not include authority for the Procurement Director to execute annual renewals. Due to the FTA funding, all Contractors will be given the opportunity to compete on the basis of cost or cost and schedule through a request for quotation. No individual job order may exceed \$250,000.00 Administering Department: Transportation.

**Procurement Method:**

Pursuant to Pima County Procurement Code 11.24.10, Cooperative Procurement Authorization, and City of Tucson Request for Qualifications (RFQ) No. 120530 and established Contract No. 120530 for Job Order Contracting for Facility Modifications, Repair and Maintenance. The City of Tucson's RFQ No. 120530 generated fourteen (14) submittals. The submittals were evaluated and the five (5) highest scoring responsive contractors were awarded contracts. The City of Tucson evaluation process is in accordance with A.R.S., Title 34, Chapter 6, and is in line with the requirements of the Board of Supervisors Policy D29.1(F)(III).

Attachments: Master Agreement

**Program Goals/Predicted Outcomes:**

To improve bus stops throughout Pima County.

**Public Benefit:**

Improved bus stops will provide a safe area for residents while waiting for transportation.

**Metrics Available to Measure Performance:**

Projects are completed on time and within budget.

**Retroactive:**

No.

**Original Information**

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 17-085

Effective Date: 10/18/16 Termination Date: 12/31/17 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$ \$500,000.00  Revenue Amount: \$ \_\_\_\_\_

Funding Source(s): Federal Transit Administration (FTA) Grant AZ-90-X 130 (80%)  
County Vehicle License Tax (20%)

Cost to Pima County General Fund: 00.00

Contract is fully or partially funded with Federal Funds?  Yes  No  Not Applicable to Grant Awards

Were insurance or indemnity clauses modified?  Yes  No  Not Applicable to Grant Awards

Vendor is using a Social Security Number?  Yes  No  Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Expense  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

Contact: Anthony V. Schiavone, Commodity/Contracts Officer *A. Schiavone* 10/7/16

Department: Procurement *Procurement* Telephone: 520-724-3245

Department Director Signature/Date: \_\_\_\_\_ *[Signature]* 10/10/16

Deputy County Administrator Signature/Date: \_\_\_\_\_ *[Signature]* 10/10/16

County Administrator Signature/Date: \_\_\_\_\_ *[Signature]* 10/11/16  
*(Required for Board Agenda/Addendum Items)*

**PIMA COUNTY PROCUREMENT DEPARTMENT  
ADMINISTERING DEPARTMENT: TRANSPORTATION**

**PROJECT: Bus Stop Improvement Project**

**CONTRACTOR: Durazo Construction Company**  
P.O. Box 629  
Tucson, AZ 85702  
**Hark General Contracting, LLC**  
245 S. Plumer Ave.  
Tucson, AZ 85719  
**Kittle Design & Construction**  
2539 N. Balboa Ave., #125  
Tucson, AZ 85705  
**SCBS, LLC**  
2127 E. 14<sup>th</sup> St.  
Tucson, AZ 85719  
**Sellers and Sons, Inc**  
2845 E. Ganley Rd.  
Tucson, AZ 85706

**NOT-TO-EXCEED AMOUNT: \$500,000.00**

**FUNDING: Federal Transit Administration (FTA)**  
**Grant AZ-90-X 130 80%**  
**County Vehicle License Tax 20%**

**PIMA COUNTY CONTRACT NO.: MA-PO-17-085**

**CONTRACT**

**NO. MA-PO-17-085**

**AMENDMENT NO. \_\_\_\_\_**

This number must appear on all  
invoices, correspondence and  
documents pertaining to this  
contract.

**COOPERATIVE PROCUREMENT AGREEMENT**

THIS AGREEMENT is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and Durazo Construction Company, Hark General Contracting, LLC, Kittle Design and Construction, SCBS, LLC, and Sellers and Sons, Inc., hereinafter called CONTRACTOR, collectively referred to as the Parties.

**WITNESSETH**

**WHEREAS**, COUNTY requires, consistent with the provisions of A.R.S. Title 34, the services of a CONTRACTOR to provide all equipment, labor, and material required for the Bus Stop Improvement Project ("Project"); and,

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

**WHEREAS**, Pursuant to Pima County Procurement Code 11.24.010 Cooperative Procurement Authorized, and A.R.S. Title 34-603 Job-Order-Contracting Construction Services, purchase (delivery) order documents are authorized to be issued utilizing the terms and conditions defined by the **City of Tucson Request for Qualifications No. 120530**, and **City of Tucson Job Order Contract No. 120530**, incorporated by reference herein; and

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

## **ARTICLE 1 – TERM**

This Job Order Master Agreement (Agreement), as approved by the Board of Supervisors commences on October 18, 2016 and terminates on December 31, 2017, unless sooner terminated or further extended pursuant to the provisions of this Agreement.

## **ARTICLE 2 – SCOPE OF SERVICES**

CONTRACTOR will provide for COUNTY all labor, materials and equipment necessary to complete the work identified in individual Job Orders awarded to CONTRACTOR by COUNTY under this Agreement. The scope of work under this Agreement is more fully set forth in **Exhibit "A" Scope of Work (3 Pages)**, attached and incorporated herein. All work will be done per specifications called for in Job Orders, **General Conditions, Exhibit "B" (12 Pages), Special Conditions – Multiple Award Job Order Master Agreement, Exhibit "C" (3 Pages)**, and other documents incorporated into this Agreement, all made a part hereof.

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

CONTRACTOR will provide detailed documentation in support of each requested payment. Any payments under this Article do not prevent COUNTY from objecting to charges after payment therefor in appropriate cases, or from seeking reimbursement for any such charges. Payments will be made in accordance with A.R.S. §§ 34-607 and 34-221.

CONTRACTOR must cite the Delivery Order number on all invoices.

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

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

## **ARTICLE 4 – BASIS FOR AWARDING JOB ORDERS**

Job Order Contracting (JOC) 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 the JOC or in awarding job orders under the JOC contract. This Agreement establishes the terms under which the Job Order Contractors will be assigned and perform tasks and projects assigned by COUNTY under this Agreement. See EXHIBIT "C", Special Conditions—Multiple Award Job Order Master Agreement.

Individual job orders will be implemented by issuing a Delivery Order (DO) to the selected Job Order Contractor to perform the work. Each DO will be an independent contract that will incorporate and be subject to the terms of this Agreement. The terms "DO", "Job Order", and "Contract" are used interchangeably in this Agreement. Due to the FTA Grant funding, CONTRACTOR selection will be competitively bid among all CONTRACTORS.

No individual Job Order may exceed \$250,000.00.

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

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

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

#### **ARTICLE 5 – FEDERAL FUNDING**

COUNTY and CONTRACTOR understand that the Job Orders under this Agreement may be funded partially or entirely through a federal grant or other source of federal funding and that the requirements specified in City of Tucson Contract No. 120530, Appendix "F" Federal Transit Administration Terms, Conditions, and Certifications attach to the use of such funding. For those Job Orders that are identified as being federally funded, Federal Labor Standards will be applicable to that Job Order, and the additional requirements (federal forms) will be attached to and be a part of the Job Order. CONTRACTOR agree to be bound by all such requirements and to comply therewith, including the payment of prevailing wages under the Davis Bacon Act (AZ. Wage Decision) Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions and the Work Hour and Safety Standards Act related to overtime pay and safety.

CONTRACTOR will not subcontract on any federally-funded Job Order with any firm or person listed in the Federal Government's System for Award Management (SAM) system (<https://www.sam.gov/portal/public/SAM>) with an active exclusion.

#### **ARTICLE 6 – AGREEMENT DOCUMENTS**

- A. **INCORPORATION OF DOCUMENTS:** CONTRACTOR and COUNTY in entering into this Agreement have relied upon information provided in CITY OF TUCSON JOB ORDER CONTRACT NO. 120530, EXHIBIT "A" SCOPE OF WORK, BONDS (PAYMENT, AND PERFORMANCE BONDS), EXHIBIT "B" - GENERAL CONDITIONS, EXHIBIT "C" SPECIAL CONDITIONS – MULTIPLE AWARD JOB ORDER MASTER AGREEMENT, and on information provided in the CONTRACTORS' response to **City of Tucson Request for Qualifications No. 120530**, Job Orders and Modifications thereto, and all drawings and specifications referenced in this Agreement or included in such Job Orders as may be issued under this Agreement. These documents are hereby incorporated into and made a part of this Agreement by reference as if set forth in full herein.
- B. **ORDER OF PRECEDENCE:** In the event of a conflict or inconsistency between or among the Documents incorporated into this Agreement, the Agreement Documents take precedence in the following order:
- a) This Agreement
  - b) City of Tucson Job Order Contract No. 120530
  - b) Special Conditions – Multiple Award Job Order Master Agreement
  - c) General Conditions
  - d) Job Orders
  - e) Technical Specifications
  - f) Contractors' Response to City of Tucson Request for Qualifications No. 120530

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

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

In the event of a conflict between any Agreement or Job Order document on a Federally-funded job order, the federal requirement takes precedence. The Parties may, by written amendment which will be incorporated into this Agreement, deviate from this order of precedence in resolving inconsistencies between or among Agreement documents.

## **ARTICLE 7 – BONDING REQUIREMENTS**

CONTRACTOR will file payment and performance bonds with COUNTY, as required by A.R.S. §§ 34-610 and 34-611, no later than the time of agreement on the price (or Guaranteed Maximum Price) for any construction under this Agreement. Bonds will be submitted on an annual basis for the full value of all construction reasonably anticipated during the Agreement year or may be provided on a job-order by job-order basis; in the latter case, CONTRACTOR will anticipate additional job orders and provide bonds in reasonable increments. At no time will the cumulative value of the bonds be less than the total value of the construction performed by CONTRACTOR under this Agreement, including job orders awarded to CONTRACTOR but not yet completed. If bonds are secured on a job-order by job-order basis, the Contracting Department will obtain the appropriate bonds from CONTRACTOR upon issuance of a Job Order and release of the Delivery Order.

## **ARTICLE 8 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS**

- A. This Agreement incorporates the terms of City of Tucson Job Order Contract No. 120530 Appendix A, attached hereto as Appendix "A" (13 Pages), with for the following modifications.

References in this Section to City or City of Tucson shall be known as COUNTY.

References to Office of Equal Opportunity Programs (OEOP) shall be known as COUNTY Business Enterprise Program Coordinator.

References to Arizona Unified Certification Program (AZUCP) shall be known as Arizona's Transportation Business Portal (AZUTRACS). The AZUTRACS Database can be accessed at the following: <https://utracs.azdot.gov/Home>.

Questions regarding COUNTY's DBE Program shall be addressed to Pima County Procurement Department, Business Enterprise Program Coordinator, 130 W. Congress Street, 3<sup>rd</sup> Floor, Tucson, Arizona 85701, 520-724-3807.

### **B. DBE PROGRAM REQUIREMENTS**

The Job Order Contractor shall be required to comply with DBE Program requirements. Program requirements are codified in Pima County Code, Title 20, Chapter 20.04. The Job Order Contractor shall submit *to the COUNTY DBE Business Enterprise Program Coordinator, Procurement Department, 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 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. Written and signed documentation of commitment to use a DBE subcontract whose participation it submits to meet a contract goal.
5. 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 for individual project construction. A signed offer in response to this RFQ represents the offeror's intent to comply with the DBE program.

**C. PROJECT GOAL**

COUNTY's DBE goal for this Agreement is as follows: 2% DBE

**D. DBE FORMS**

The required forms referred to in the City of Tucson Job Order Contract No. 120530 Appendix A are hereby substituted with the County forms attached hereto as Appendix "B" (9 pages).

**ARTICLE 9 – INSURANCE**

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

CONTRACTOR'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M. Best" rating of not less than A- VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect CONTRACTOR from potential insurer insolvency.

**9.1 Minimum Scope and Limits of Insurance:**

CONTRACTOR will procure and maintain, until all of its obligations have been discharged, coverage with limits of liability not less than those stated below.

Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, and products – completed operations.

9.1.2 Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Agreement with a Combined Single Limit (CSL) of \$1,000,000.

9.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.

Note: The Workers' Compensation requirement will not apply to a CONTRACTOR that is exempt under A.R.S. § 23-901, and when such CONTRACTOR executes the appropriate COUNTY Sole Proprietor or Independent CONTRACTOR waiver form.

9.1.4 Builder's Risk Insurance  does  does not apply to this Agreement, but need not be provided unless required for a particular job order. If Builders Risk Insurance applies to a particular job order, then CONTRACTOR is required to maintain throughout the course of construction Builder's Risk Insurance in a dollar amount equal to the full insurable value of the work under the job order, which shall include "All Risk" coverage. Pima County shall be named as a "Loss Payee". CONTRACTOR is responsible for equipment, materials, and supplies until completion of the project and acceptance by Pima County.

**9.2 Additional Insurance Requirements:**

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

9.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, FTA, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insured with respect to liability arising out of the activities performed by or on behalf of CONTRACTOR.

- 9.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of CONTRACTOR.
- 9.2.3 Primary Insurance Endorsement: CONTRACTOR'S policies will stipulate that the insurance afforded CONTRACTOR will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 9.2.4 Insurance provided by CONTRACTOR will not limit CONTRACTOR'S liability assumed under the indemnification provisions of this Agreement.

**9.3 Notice of Cancellation:**

For each insurance policy required by the insurance provisions of this Agreement, CONTRACTOR must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement at 130 W Congress St, Tucson AZ 85701, Fax: 520-724-4434.

**9.4 Verification of Coverage:**

CONTRACTOR will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Agreement. An authorized representative of the insurer will sign the certificates.

9.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Agreement must be in effect at, or prior to, commencement of work under this Agreement. Failure to maintain the insurance coverage or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of this Agreement.

9.4.2 All certificates required by this Agreement will be sent directly to Pima County Procurement. COUNTY project or contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Agreement at any time.

**9.5 Approval and Modifications:**

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

**ARTICLE 10 – INDEMNIFICATION**

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

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



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

**ARTICLE 11 - COMPLIANCE WITH LAWS.**

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

**ARTICLE 12 - INDEPENDENT CONTRACTOR STATUS**

The status of CONTRACTOR shall be that of an independent Contractor. Neither CONTRACTOR nor CONTRACTOR's officers, agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. CONTRACTOR shall be responsible for payment of all federal, state, and local taxes associated with compensation received pursuant to this Agreement and shall indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such taxes.

**ARTICLE 13 - CONTRACTOR/SUBCONTRACTOR PERFORMANCE**

CONTRACTOR shall perform the work in a workmanlike manner with the degree of care and skill which a licensed Contractor in Arizona would exercise under similar conditions, and in accordance with the terms of the Agreement and with prevailing industry methods and standards. CONTRACTOR shall employ suitably trained and skilled personnel to perform all services under this Agreement.

CONTRACTOR shall ensure that all subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this Agreement. CONTRACTOR shall not permit any subcontractor to perform work that does not fall within the scope of the Subcontractor's license, except as may be permitted under the rules of the Registrar of Contractors. The CONTRACTOR is responsible to bind every subcontractor to the terms of this Agreement.

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

**ARTICLE 14 - ASSIGNMENT**

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

**ARTICLE 15 - NON-DISCRIMINATION**

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein including flow down of all provisions and requirements to any subcontractors. During the performance of this Contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

**ARTICLE 16 - AMERICANS WITH DISABILITIES ACT (ADA)**

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

**ARTICLE 17 - AUTHORITY TO CONTRACT**

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

**ARTICLE 18 - FULL AND COMPLETE PERFORMANCE**

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

**ARTICLE 19 - CANCELLATION FOR CONFLICT OF INTEREST**

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

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

**ARTICLE 20 - TERMINATION OF CONTRACT FOR DEFAULT**

A. Upon a failure by CONTRACTOR to cure a default under this Agreement within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Agreement for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by Agreement or otherwise. CONTRACTOR and its sureties, if any, will be liable for any damage to COUNTY resulting from CONTRACTOR'S default, including any increased costs incurred by COUNTY in completing the work.

- B. The occurrence of any of the following constitutes an event of default:
1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Agreement, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
  2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;
  3. Failure to provide competent supervision at the site;
  4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or to remove any defective or deficient Material
  5. Failure to make prompt payment to SUBCONTRACTORS or suppliers for material or labor;
  6. Loss of CONTRACTOR'S business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR'S performance of this Agreement;
  7. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the Agreement; or
  8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONTRACTOR, or CONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.
- C. In the event of a termination for default:
1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONTRACTOR for this project become COUNTY'S property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
  2. COUNTY may withhold payments to CONTRACTOR arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONTRACTOR is determined; and
  3. Subject to the immediately preceding subparagraph (2), COUNTY'S liability to CONTRACTOR will not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.
- D. The Agreement will not be terminated for default nor CONTRACTOR charged with damages under this Article, if—
1. Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. Examples of such causes include—
    - (i) Acts of God or of the public enemy,
    - (ii) Acts of COUNTY in either its sovereign or contractual capacity,
    - (iii) Acts of another contractor in the performance of a Agreement with COUNTY,
    - (iv) Fires,
    - (v) Floods,
    - (vi) Epidemics,
    - (vii) Quarantine restrictions,
    - (viii) Strikes,
    - (ix) Freight embargoes,
    - (x) Unusually severe weather, or
    - (xi) Delays of SUBCONTRACTORS or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and the SUBCONTRACTORS or suppliers; and
  2. CONTRACTOR, within three (3) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, COUNTY will ascertain the facts and the extent of the resulting delay. If, in the judgment of COUNTY, the findings warrant such action, the time for completing the work may be extended.
- E. For the purposes of paragraph A above, "receipt of notice" includes receipt by hand by CONTRACTOR'S onsite project manager, facsimile transmission, or under the Notices clause of this Agreement.

- F. If, after termination of the Agreement for default, it is determined that the CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of COUNTY.
- G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Agreement.

#### **ARTICLE 21 – TERMINATION FOR CONVENIENCE OF COUNTY**

COUNTY may terminate this Agreement at any time by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of COUNTY, become its property. If COUNTY terminates the Agreement as provided herein, COUNTY will pay CONTRACTOR an amount based on the time and expenses incurred by CONTRACTOR prior to the termination date. However, COUNTY will make no payment for anticipated profit on unperformed services.

#### **ARTICLE 22 – NON-APPROPRIATION OF FUNDS**

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

#### **ARTICLE 23 – NOTICES**

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

##### **COUNTY:**

Priscilla Cornelio, Director  
Department of Transportation  
Public Works Building  
201 N Stone, 4th Floor  
Tucson, AZ 85701  
Tel: (520) 724-6410

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

#### **ARTICLE 24 - NON-EXCLUSIVE CONTRACT**

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

#### **ARTICLE 25 – BOOKS AND RECORDS**

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

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

## **ARTICLE 26 – REMEDIES**

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

## **ARTICLE 27 – SEVERABILITY**

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

## **ARTICLE 28 – DELAYS**

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

## **ARTICLE 29 – DISPUTES**

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

The Parties will continue performance of their respective obligations under this Agreement notwithstanding the existence of any dispute.

## **ARTICLE 30 – PUBLIC INFORMATION**

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

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

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONTRACTOR of the request for release, unless CONTRACTOR has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. CONTRACTOR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

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

**ARTICLE 31 – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

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

COUNTY has the right at any time to inspect the books and records of CONTRACTOR and any SUBCONTRACTOR in order to verify such party's compliance with the State and Federal Immigration Laws.

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

CONTRACTOR will advise each SUBCONTRACTOR of COUNTY'S rights, and the SUBCONTRACTOR'S obligations, under this Article by including a provision in each subcontract substantially in the following form:

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

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

**ARTICLE 32 – ISRAEL BOYCOT CERTIFICATION**

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

***THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK***

**ARTICLE 33 - ENTIRE AGREEMENT**

This document, in all its parts, together with Attachments and documents incorporated by reference 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. Except as otherwise specifically provided in Article I, this Agreement may be modified, amended, altered or extended only by a written Amendment signed by the Parties.

---

IN WITNESS WHEREOF, the CONTRACTORS have affixed their signatures to the attached Letters of Commitment and the COUNTY has affixed its signatures to this Agreement on the dates written below.

**APPROVED:**

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


Date: \_\_\_\_\_

**ATTEST:**

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

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Deputy County Attorney **ANDREW FLAGG**

10/16/2016  
Date

EXHIBIT "A" SCOPE OF WORK (3 PAGES)

Bus Stop Improvement Project

#	LOCATION	Bus R	Existing Amenities	Recommend Improvements				BOS District
				Scope of Work				
PALO VERDE/BENSON HIGHWAY								
69	Alvernon/Valencia	26	sign, pad, sidewalk,	Install shelter on pad.		X		2
21	Belvedere/Benson Hwy	26	backless bench	Construct 6' x 22' x 6" concrete pad. Install shelter. Install 7 bollards		X		2
14	Benson Hwy/Columbus Blvd	26	backless bench	Pima County DOT to construct pad and sidewalk as separate project		X		2
60	Benson Hwy/3562 E Benson	26	sign	Relocate stop approx. 150' southeast to area next to mail boxes in		X		2
22	Benson Hwy/Alvernon	26	sign	Construct 10' x 22' x 6" concrete pad. Install shelter.		X		2
59	Benson Hwy/Drexel	26	sign	Install shelter. PCDOT to construct pad and sidewalk as separate		X		2
11	Benson Hwy/Palo Verde	26	backless bench	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shelter		X		2
13	Benson Hwy/Palo Verde	26	backless bench	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shelter		X		2
5	Butterfield Dr/Gas Rd	11	sign	Construct 6' x 22' x 6" concrete pad, install shelter.		X		2
15	Butterfield Dr/Gas Rd	11	sign, bench	Construct 6' x 22' x 6" pad, install shelter on pad.		X		2
8	Country Club/Ajo	11, 2	sign	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shelter		X		2
39	Country Club/Ajo	2	bench, trash	Construct 6' x 22' x 6" concrete pad behind sidewalk, install shelter		X		2
51	Country Club/Drexel	26	sign	Construct pad if needed, shelter on pad.		X		2
9	Craycroft/1-10 IIT	26	2 flat benches, trash	Install shelter on pad.		X		2
73	Drexel/Ray Strav	26	sign, lighting request	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.		X		2
56	Drexel/Rex Strav	26	sign	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.		X		2
27	Gas Rd/Palo Verde	11	bench, trash	Construct 10' x 22' x 6" concrete pad with ramp to street. Install		X	ADA ramp	2
37	Gas Rd/Palo Verde	11	sign	Construct 10' x 22' x 6" concrete pad with ramp to street. Install		X	ADA ramp/sidewalk	2
4	Hotel Dr/Irvington	11	sign, bench, trash	Construct 30' of 4' wide sidewalk between sidewalk and curb. Ins		X	30' sidewalk	2
6	Hotel Dr/Irvington	11	sign, bench, trash	Construct 5' x 22' x 6" concrete pad/ret. walls behind sidewalk; 3'		X		2
68	Littletown/Craycroft (COT)	26	flat bench	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.		X		2
2	Palo Verde/Ajo	11, 20	shelter, benches, trash	Construct approx. 55' sidewalk (5' wide) from existing stop south		-	55' sidewalk, curb cuts	2
18	Palo Verde/Benson Hwy	11	sign	Construct 140' of 5' wide sidewalk south of Benson Highway with		X	140' sidewalk	2
1	Palo Verde/Broadmont	11	sidewalk, pullout	Acquire ROW, construct 6' x 22' x 6" concrete pad behind sidewalk		X	ROW, rip rap, railing	2
34	Palo Verde/Felix Blvd	11	sign	Construct 10' x 22' x 6" concrete pad. Install shelter on pad. Insta		X	bollards	2
17	Palo Verde/Milton (NE no)	11	bench w back	Install shelter on asphalt or on new sidewalk and pad if built.		X	pad and sidewalk	2
29	Palo Verde/Milton (SW no)	11	sign. Pullout now?	Install shelter on newly built pad as soon as pad completed by PC		X		2
54	Palo Verde/Mossman	11	sign	Construct 10' x 22' x 6" concrete pad with 5' x 5' pad connecting t		X		2
62	Palo Verde/Mossman	11	sign	Construct 10' x 22' x 6" concrete pad adjacent to curb. Install she		X		2
55	Palo Verde/Nebraska	11	flat bench, trash	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.		X		2
40	Palo Verde/Veterans	11	sign, pullout	Construct 10' x 22' x 6" concrete pad. Install shelter on pad. Insta		X	bollards	2
58	Palo Verde/Veterans	11	sign, pullout	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.		X		2
46	Valencia/Benson Hwy	26	pullout, pad	Install shelter on pad.		X		2



Bus Stop Improvement Project

#		LOCATION	Bus R	Existing Amenities	Recommend Improvements			BOS District
					Scope of Work	Shelter	Sidewalk/ Other	
<b>DREXEL HEIGHTS/SOUTHWEST</b>								
48	Cardinal/Los Reales	29	flat bench, trash	Construct 10' x 22' x 6" concrete pad; shelter on pad w/ bollards if	X	bollards	5	
36	Cardinal/Valencia	27	bench, pad, trash	Install shelter on pad.	X		5	
16	Cardinal/Valencia	29	bench, trash	Construct 10' x 22' x 6" concrete pad at bus stop off shoulder. Ins	X	-	5	
67	Drexel/Cardinal	27	sign, trash	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.	X		5	
45	Drexel/Mission	27	sign	Construct 10' x 22' x 6" concrete pad. Install shelter on pad. Insta	X	bollards	5	
49	Drexel/Mission	27	bench, trash	Construct 10' x 22' x 6" concrete pad. Install shelter on pad. Insta	X	bollards	3	
74	Drexel/Westover	27	sign	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.	X		3	
65	Los Reales/Bolingbroke	29	sign	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.	X		5	
70	Los Reales/Bolingbroke	29	sign	Add fill. Construct 6' x 22' x 6" concrete pad behind sidewalk. Ins	X		5	
35	Los Reales/Cardinal	29	flat bench, trash	Construct 10' x 22' x 6" concrete pad. Install shelter on pad. Insta	X	bollards?	5	
52	Valencia/Hildreth.	29	pad, pullout, sidewa	Install shelter on pad.	X		5	
<b>FLOWING WELLS</b>								
12	Davis/Fire Station	17	sign, trash	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.	X	-	3	
32	Davis/Ruthrauff	17	sign	Construct 10' x 22' x 6" concrete pad behind curb, adjacent to dri	X	ADA ramp/sidewalk	3	
3	Flowing Wells/Roger (Tucs	10	sign, bench, trash	Construct 6' x 22' x 6" concrete pad behind sidewalk just north of	X	-	3	
38	Flowing Wells/Wabash	11	no bench, pad, trash	Construct 6' x 22' x 6" concrete pad behind sidewalk; shelter on p	X	bollards	3	
44	Flowing Wells/Wabash	10	sign	Construct 6' x 22' x 6" concrete pad behind sidewalk; shelter on p	X	bollards	3	
47	Flowing Wells/Wetmore	10	flat bench, trash	Construct 6' x 22' x 6" concrete pad. Install shelter on pad, with b	X	bollards	3	
63	Kain/Kimberly Pl	17	flat bench, sign	Construct 10' x 22' x 6" concrete pad. Install shelter on pad.	X		3	
42	La Cholla/Curtis	61	bench w back, pad	Install shelter on pad.	X		3	
10	La Cholla/Ruthrauff	202X	bench, sign, pullout	Install shelter on pad.	X		3	
43	La Cholla/Wetmore	17	flat bench	Construct approx. 95' sidewalk (5' wide) from corner of Wetmore	X	95' sidewalk, curb pad	3	
30	Romero/Wetmore	61	bench w back, pad,	Install shelter on pad.	X		3	
66	Ruthrauff/kain	17	flat bench, pad	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shelte	X		3	
19	Ruthrauff/La Cholla	202X	bench, sign, pad, pu	Install shelter on pad.	X		3	
24	Ruthrauff/La Cholla	17	bench, trash, pad, s	Install shelter on pad.	X		3	
28	Ruthrauff/Romero	61	bench w back, trash	Construct 10' x 22' x 6" concrete pad between sidewalk and wall.	X		3	
41	Ruthrauff/Romero	61	bench w back, trash	Construct 6' x 22' x 6" concrete pad behind sidewalk, install shelte	X		3	
61	Wetmore/Flowing Wells	61	sign	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shel	X		3	
71	Wetmore/Iroquois	61	bench, trash	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shel	X		3	
72	Wetmore/Pomona	61	bench, sidewalk	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shel	X		3	
33	Wetmore/Romero	17	flat bench, pad, side	Install shelter on pad. Install bollards next to pad if necessary.	X	bollards	3	

Bus Stop Improvement Project

# LOCATION		Bus R	Existing Amenities	Scope of Work	Shelter	Sidewalk/ Other	BOS District
<b>Recommend Improvements</b>							
<b>NORTHWEST</b>							
57	Ina/Cmo De La Tierra	16, 10	2 benches, sidewalk	Construct 6' x 22' x 6" concrete pad with 5' x 5' pad connecting to	X	curb pad	1
20	Ina/La Cholla	103X	2 benches with back	Construct 60' of 6' wide sidewalk and curb from stop to to corner	X	60' sidewalk	1
7	Ina/Oracle (in Oro Valley)	16, 10	bench, trash	Install shelter on sidewalk area.	X		1
50	Ina/Shama Wing	16, 6	bench w back	Construct 6' x 22' x 6" concrete pad behind sidewalk. Install shelte	X		1
75	Ina/Shama Wing	16, 10	bench w back, trash	Add fill. Construct 10' x 22' x 6" concrete pad. Install shelter on p	X		1
23	La Cholla/Orange Grove	202X	bench w back, trash	Construct 6' x 22' x 6" concrete pad behind sidewalk, install shelte	X		1
53	Oracle/Las Lomitas	16	sign, pad	Install shelter on pad.	X		1
64	Oracle/Lavery Ln	16	pad, pullout, railing	Install shelter on pad.	X		1
25	River/La Canada	10, 4	bench w back, trash	Construct 75' of 6' wide sidewalk from bus stop to to La Canada c	X	75' sidewalk	3
26	River/Oracle	10, 10	2 benches w backs,	Construct 6' x 22' x 6" concrete pad behind sidewalk, install shelte	X		3
31	Shannon/Ina	61	bench with back	Construct 6' x 22' x 6" concrete pad between sidewalk and wall. I	X		1

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

### ARTICLE 1 – DEFINITIONS

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

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

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

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

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

Building Code: The directions, provisions, and requirements contained in the current edition of the Building Codes, with Amendments, as adopted by Pima County, supplemented by such special provisions as may be necessary, pertaining to the method and manner of performing the work, quality and quantity of material to be furnished and measurement for payment of same.

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

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

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

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

Department: The Pima County [Department of Transportation].

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

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

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

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

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

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

Standard Specifications: The directions, provisions, and requirements contained in the current edition of the Pima Association of Governments Standard Specifications for Public Improvements, 2014 Edition with

Amendments, as adopted by Pima County, supplemented by such special provisions as may be necessary, pertaining to the method and manner of performing the work, quality and quantity of material to be furnished and measurement of payment of same.

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

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

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

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

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

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

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

- a. Laws to be Observed -- Contractor is presumed to be familiar with and at all times will observe and comply with all Federal and State laws and local ordinances, worker's compensation, occupational disease, and unemployment compensation laws together with the payment of all premiums and taxes therefor, also all laws, ordinances, and regulations in any manner affecting the conduct of the work and will indemnify and hold harmless County and its representatives against any claim arising from the violations of such laws, bylaws, ordinances or regulations, whether by Contractor or by Contractor's employees.
- b. Permits and Licenses -- County will procure all County building permits, and sewer connection fees. Contractor will post required permits on site and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor will procure and pay for all other permits, fees, and applications for water, gas, electric and other utilities.
- c. Sanitary Provisions -- Contractor will provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the Arizona Department of Health Services or other authorities having jurisdiction therein.
- d. Public Convenience and Safety -- Contractor will have due regard for the public health and will conduct the work in such a manner as to provide and insure the safety and convenience of the public.

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

- e. Barricades, Danger, Warning, and Detour Signs -- Contractor will at its expense and without further order provide, erect, and maintain at all times during the progress or temporary suspension of the work such barricades, fences, warning lights, danger signals, reflectors, signs,

or other protective devices as are required to insure the safety of the public, those engaged in connection with the work and the work itself.

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

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

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

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

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

- i. Waiver of Legal Rights -- County will not be precluded or be estopped, by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the Contract. Neither the acceptance by County or by any representative of County nor any payment, nor acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by County will operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damage herein provided. A waiver of any breach of the Contract is not a waiver of any other subsequent breach.

#### **ARTICLE 4 - ACCIDENTS**

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

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

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

**ARTICLE 5 – RESERVED**

**ARTICLE 6 – RESERVED**

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

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

**ARTICLE 8 – DETAIL DRAWINGS AND INSTRUCTIONS**

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

**ARTICLE 9 – COPIES OF DRAWINGS FURNISHED**

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

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

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

**ARTICLE 10 – ORDER OF COMPLETION**

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

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

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

**ARTICLE 12 – OWNERSHIP OF DRAWINGS**

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

### **ARTICLE 13 – CONTRACTOR'S UNDERSTANDING**

Contractor has, by careful examination, satisfied itself as to the nature and location of the work, the conformation of the ground, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract. No verbal agreement or conversations with any officer, agent or employee of County, either before or after the execution of this Contract, will affect or modify any of the terms or obligations herein contained.

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

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

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

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

### **ARTICLE 15 – ROYALTIES AND PATENTS**

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

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

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

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

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

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

If an emergency should occur affecting the safety of life or the work or of adjoining property, Contractor, without special instruction or authorization from County, is hereby permitted to act at his discretion, to prevent such threatened loss or injury, and Contractor will so act, without appeal, if so instructed or

authorized. Any compensation claimed by Contractor on account of emergency work will be determined by County.

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

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

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

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

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

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

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

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

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

#### **ARTICLE 20 – RESERVED**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

County has the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired, but such taking possession and use is not an acceptance of any work not completed in accordance with the

Bid documents. If such prior use increases the cost of or delays the work, Contractor will be entitled to such extra compensation, or extension of time, or both, as County may determine.

#### **ARTICLE 28 – PAYMENTS WITHHELD**

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

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

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

#### **ARTICLE 29 – WARRANTY**

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

#### **ARTICLE 30 – LIENS**

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

#### **ARTICLE 31 – RIGHTS OF VARIOUS INTERESTS**

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

#### **ARTICLE 32 – SEPARATE CONTRACTS**

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

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

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

### **ARTICLE 33 – COUNTY'S STATUS**

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

### **ARTICLE 34 – CLAIMS AND DISPUTES**

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

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

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

### **ARTICLE 35 – CLEANING UP**

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

### **ARTICLE 36 – FIRE PREVENTION AND PROTECTION REQUIREMENTS FOR CONSTRUCTION PROJECT**

(a) **PURPOSE:**

To provide guidelines for Contractor's practices in prevention of and protection against fire causes, property damage and losses on County Construction projects work.

(b) **SCOPE:**

Subject requirements will be applicable to new construction, facilities remodeling, additions, and improvements projects work conducted for Pima County. Contractor will also comply with all applicable ordinances, laws, rules, and regulations of public authority having jurisdiction for fire prevention and protection.

(c) **CONTRACTOR REQUIREMENTS:**

1. Make a survey of the suitability and effectiveness of existing fire control facilities, measures and devices.
2. Arrange for, provide and install a sufficient number of portable fire extinguishers suitable for work operations in accordance with the requirements of the National Fire Protection Association and local agencies having jurisdiction.

3. Fire extinguisher and devices will be inspected, serviced and maintained in accordance with manufacturer's instructions.
4. Fire Fighting and control equipment will be readily visible and unobstructed at all times; will not be made inoperative or used for other purposes.
5. Installation of fire protection piping and hydrants (as specified in bid documents) will be as prompt as possible so hose stream protection will be available when combustible materials arrive on site and potential fire causing operations begin.
6. Provide ready access for public fire department.
7. Provide safe temporary lighting and power services; properly insulate, ground, and substantially support strung wires; overloading of conductors and overfusing of circuits is prohibited; poor contacts and defective terminals, switches, wire and outlets will not be installed. Temporary electrical installations will be in accordance with National Electric Code and other applicable ordinances, regulations, specifications.
8. Bulk storage of lumber, gasoline, fuel oil, paint, solvents, gases will be kept outside of buildings under construction; one day's working supply of such items may be inside at any time. Flammable fluids will be in approved containers only; open containers are prohibited.
9. Only flame resistant tarpaulins or coverings will be used for protecting stored supplies and equipment.
10. Smoking is prohibited in all areas where flammable or combustible materials are stored and in other hazardous areas, as well as on any County-owned property. "No Smoking" signs will be posted accordingly.
11. Fires, welding, flame cutting, melting, and similar operations in combustible areas will not be left unattended.
12. Accumulations of flammable liquids on floors, walls, etc. are prohibited; spills will be cleaned up promptly.
13. All rags, waste, etc. soiled by combustible or flammable materials will be placed in tightly closed metal containers and disposed of daily.
14. Tar kettles will be located outside of and as far away as possible from building.
15. All portable cylinders of compressed gases will be constructed, maintained and marked in accordance with Interstate Commerce Commission regulations; will be properly secured against tipping or accidental upset, handled with care, protected against excessive heat and cold; valve protection caps will be in place when cylinders are not in use.
16. Welding and cutting operations will be performed only by competently proven personnel.
17. Construction debris will be removed from buildings and site daily. Reasonably good housekeeping will be maintained at all times.
18. All machines using cutting oil will have metal drip pans under them to catch oil drippings, oil turnings and shavings.
19. No solvent with flash point below one hundred degrees Fahrenheit (100 degree F). will be used for cleaning equipment or parts.

20. No smoking or open fire of any kind will be permitted in areas where spray guns are in operation.
21. Wood sawdust and shavings and wood rubbish will not be allowed to accumulate on project site.
22. Adequate precautions will be taken to protect extensive formwork and scaffolding from exposure to and spread of fire.
23. Moveable heating devices, when used, will have safe clearances at bottom, top, and sides from combustible materials. Use of salamanders is generally prohibited; exceptions may be granted when use is considered essential.
24. Regularly scheduled inspections will be made by Contractor's authorized personnel to assure compliance with these and other jurisdictional requirements. Contractor's supervisory personnel will be instructed in their duties concerning safe fire protection practices.

#### **ARTICLE 37 – ARCHAEOLOGICAL FEATURES**

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

#### **ARTICLE 38 – RESERVED**

#### **ARTICLE 39 – RESERVED**

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

Should Contractor uncover, or otherwise become aware of the presence of any Hazardous Materials, Hazardous Wastes or Hazardous Substances during the construction of this project, notice will be served immediately to the County Project Manager, and all work surrounding said materials or substances will be ceased until directed to proceed. Construction delays due to Hazardous Materials, Hazardous Wastes or Hazardous Substances abatement may occur.

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

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

**ARTICLE 41 – WASTE DISPOSAL FACILITIES**

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

**ARTICLE 42 – AS-BUILT DRAWINGS**

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

**ARTICLE 43 – RESERVED**

**End of General Conditions**

**SPECIAL CONDITIONS- MULTIPLE AWARD JOB ORDER MASTER AGREEMENT  
EXHIBIT C (3 pages)**

**ARTICLE 1    JOB ORDERS**

**Overview of Job Order Contracting Arrangement**

This Master Agreement establishes a Multiple-Award, indefinite quantity, unit priced, or lump sum job order contracting arrangement for such construction services within the scope of this Contract as COUNTY may request from time to time by issuance of an individual Job Order for each Project. **Job Order Contractors must provide a quote within seven (7) business days of a request for quotation and begin work within five (5) business days of the Notice to Proceed via the Purchase Order.**

The COUNTY reserves the right to include Design Services under an individual Job Order, if required. There will be a separate Job Order for each Project. Each Job Order will describe the Work to be provided by Contractor for that Project. There will be multiple Projects and multiple Job Orders.

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

- (a) The Contract Price for each Job Order shall not exceed \$250,000.00, including any Change Orders.
- (b) There is no limit on the number of Job Orders that COUNTY may issue to CONTRACTOR during the entire period this Agreement is in effect.

CONTRACTOR shall assist COUNTY in preparing the portion of the annual report required by law relating to the Job Order Contracting Program. Among other actions in this regard, Contractor shall provide such data regarding the JOC Program as COUNTY may request.

**Content of Job Orders**

Each Job Order shall identify, at a minimum, the work to be performed, the location of the work, and the required completion date for the work, including completion of all punch list items.

**Job Order Pricing**

Job Orders will generally be based on a lump sum to complete the work including materials, labor, tax, insurance and bonds.

**ARTICLE 2 JOB ORDER DEVELOPMENT**

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

- (a) The COUNTY may notify all Job Order Contractors under contract to PCDOT, advise them of the nature of the Work to be done, and schedule a meeting or site visit to explain and discuss the Work and further refine the scope of the project. Design documents, if any, will be provided in advance of the meeting or site visit.
- (b) Upon establishment of the final Project scope, COUNTY will provide a request for quotation to each CONTRACTOR who shall respond with their proposal for accomplishment of the Project, including their price and schedule, if requested. The time for submittal of proposals for individual Projects shall not exceed seven (7) days unless approved by the COUNTY.

(i) The Job Order will then be issued by COUNTY to the Job Order Contractor that submitted the best quotation (including schedule), as measured by the criteria in the request for quotation.

(c) Upon issuance of each Job Order by COUNTY, the Job Order will be one of the Contract Documents and will be binding upon Contractor and COUNTY. A Job Order is considered "issued" when delivered to Contractor or sent by facsimile copy, in which case the Job Order will be "issued" when sent to Contractor's fax number and COUNTY's fax machine prints an acknowledgement of receipt or COUNTY.

(d) In the event COUNTY is unsuccessful in securing two Job Order Contractors, the method and structure for issuing Job Orders will be modified accordingly.

### **ARTICLE 3. JOB MANAGEMENT**

The CONTRACTOR shall competently and thoroughly direct and superintend all of the Work under each Job Order and shall be solely responsible for all safety, means, methods, techniques, sequences and procedures. It shall coordinate and schedule all Work under the Contract Documents, the performance of all its employees, agents, independent contractors, Subcontractors, Sub-subcontractors and Suppliers, and the timely procurement of all necessary labor, materials, equipment, supplies, and all else needed to do the Work under each Job Order.

### **ARTICLE 4. COUNTY DESIGNATED LIMITED WORK AREAS FOR CERTAIN JOB ORDERS**

COUNTY may elect to designate to CONTRACTOR specific limitations to the Work area for a Job Order. Whenever COUNTY does this, CONTRACTOR shall not, intentionally or accidentally or otherwise, disturb or otherwise access any areas adjacent to or outside the designated Work area unless Contractor has requested and obtained approval from the COUNTY. Any question about the scope of the Work area must be resolved by the COUNTY. Any Release of a Hazardous Substance resulting from any scraping, disturbance, penetration or other access outside the Work area will be a Contractor Release.

### **ARTICLE 5. CONSTRUCTION SITE SAFETY REQUIREMENTS**

As between CONTRACTOR and COUNTY, CONTRACTOR shall have sole responsibility and liability for construction site safety. Without limiting other actions in this regard, CONTRACTOR shall, and shall cause each Subcontractor and Sub-subcontractor to comply with worker health and safety requirements in Environmental Law and OSHA. In addition, CONTRACTOR shall take all reasonable, necessary and appropriate steps to assure the health and safety of persons occupying any part of the facility in which the Work site under a Job Order is located or in the vicinity of or passing by the Work site under a Job Order and shall also take all reasonable, necessary and appropriate steps to protect from damage or destruction the property of COUNTY and other persons in any part of the Facility in which the Work site under a Job Order is located or in the vicinity of or passing by the Work site under a Job Order. Among other actions in this regard, CONTRACTOR shall comply with the requirements of the applicable fire code.

### **ARTICLE 6. TERMINATION FOR CAUSE**

In addition to the termination rights of COUNTY in **ARTICLE XV – TERMINATION OF CONTRACT FOR CAUSE** and **ARTICLE XVI – TERMINATION FOR CONVENIENCE OF COUNTY** of the Master Agreement between Owner and CONTRACTOR, COUNTY may terminate any or all Job Orders and/or the participation of any CONTRACTOR in the Master Agreement, at the election of Owner, upon the occurrence of any one or more of the following events:

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

(b) If the CONTRACTOR or any of its key Subcontractors under any Job Order is adjudged bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if the CONTRACTOR or any of its



key Subcontractors under any Job Order or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the CONTRACTOR or any of its key Subcontractors under any Job Order, or if a trustee or receiver is appointed for the CONTRACTOR or any of its key Subcontractors under any Job Order or for any of the CONTRACTOR's property on account of the CONTRACTOR or a key Subcontractor under any Job Order, and, in each case, the CONTRACTOR or its successor in interest or its respective key Subcontractor under any Job Order does not provide reasonably adequate assurance of future performance in accordance with the Contract Documents within 10 days after receipt of a request for assurance from COUNTY;

(c) If the CONTRACTOR persistently fails to supply sufficient skilled workmen or suitable materials or equipment for the Work under any Job Order;

(d) If, as to any Job Order, the CONTRACTOR fails to make prompt payments to Subcontractors or Suppliers at any tier, or for labor, materials or equipment;

(e) If the CONTRACTOR fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

(f) If, as to any Job Order, the CONTRACTOR fails to follow any reasonable instructions by COUNTY, which instructions are consistent with the Contract Documents and the Job Order;

(g) If, as to any Job Order, the CONTRACTOR performs Work which deviates from the Contract Documents and neglects or refuses to correct rejected Work; or

(h) If, as to any Job Order, the CONTRACTOR otherwise violates in any material way any provisions or requirements of the Contract Documents; or

(i) If the CONTRACTOR repeatedly refuses or fails to respond with either a quote or a no quote to a Job Order Quote request in writing to the Pima County requestor.

In the event of Termination for Cause under this or any other applicable Article of the Master Agreement, the COUNTY's only obligation shall be to pay CONTRACTOR for work completed prior to the effective date of the Termination and accepted by COUNTY.

**END SPECIAL CONDITIONS -- MULTIPLE AWARD JOB ORDER MASTER AGREEMENT**

JOB ORDER CONTRACT 120530

FACILITY MODIFICATIONS, REPAIR AND MAINTENANCE

APPENDIX A (13 PAGES)

DBE PROGRAM REQUIREMENTS

# 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](http://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, Korea, 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, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose 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 contract 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 waiver 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 contractor's 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**