

ARTICLE III – COMPENSATION AND PAYMENT

In consideration for the goods and services specified in this Contract, the DISTRICT agrees to pay CONTRACTOR in an amount not to exceed thirty-four thousand two hundred thirty -five dollars and three cents (\$34,235.03). Pricing for work will be as set forth in Exhibit B.

Although State and City sales tax may not be fully or accurately defined on an order, they will be paid when they are DIRECTLY applicable to Pima County and invoiced as a separate line item; those taxes should not be included in the item unit price.

CONTRACTOR shall provide detailed documentation in support of requested payment. Payment requests shall assign all costs to items identified by Exhibit A.

It is the intention of both parties that pricing shall remain firm during the term of the contract. Price increases shall only be considered in conjunction with a renewal of the Contract. In the event that economic conditions are such that unit price increases are desired by the CONTRACTOR upon renewal of the Contract, CONTRACTOR shall submit a written request to DISTRICT with supporting documents justifying such increases at least 90 days prior to the termination date of the Contract. It is agreed that the Unit Prices shall include compensation for the CONTRACTOR to implement and actively conduct cost and price control activities. DISTRICT will review the proposed pricing and determine if it is in the best interest of DISTRICT to renew or extend the Contract as provided for in Article I of this Contract.

CONTRACTOR shall not provide goods and services in excess of the Exhibit A Line Item and Contract Amounts without prior authorization by an amendment executed by DISTRICT. Goods and Services provided in excess of Line Item or Contract Total Amounts without prior authorization by fully executed amendment shall be at CONTRACTOR'S own risk.

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

ARTICLE IV - INSURANCE

The CONTRACTOR'S insurance shall be primary insurance and non-contributory with respect to all other available sources. CONTRACTOR shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

- a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage. DISTRICT and Pima County are to be named as additional insureds for all operations performed within the scope of the Contract between DISTRICT and CONTRACTOR;
- b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage;
- c) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00; and,
- d) If required by law, workers' compensation coverage including employees' liability coverage.

CONTRACTOR shall provide DISTRICT with current certificates of insurance. All certificates of insurance must provide for guaranteed thirty (30) days written notice to the DISTRICT of cancellation, non-renewal or material change.

ARTICLE V - INDEMNIFICATION

CONTRACTOR shall indemnify, defend, and hold harmless DISTRICT and Pima County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by the CONTRACTOR, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of this Contract.

CONTRACTOR warrants that all products and services provided under this contract are non-infringing. CONTRACTOR will indemnify, defend and hold DISTRICT and Pima County harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

ARTICLE VI - COMPLIANCE WITH LAWS

CONTRACTOR shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation. In the event any services provided under this contract require a license issued by the Arizona Registrar of Contractors (ROC), Contractor certifies that those services will be provided by a contractor licensed by ROC to perform those services in Arizona. The laws and regulations of the State of Arizona shall govern the rights, performance and disputes of and between the parties. Any action relating to this Contract shall be brought in a court of the State of Arizona in Pima County.

Any changes in the governing laws, rules, and regulations during an agreement shall apply, but do not require an amendment/revisions.

ARTICLE VII - INDEPENDENT CONTRACTOR

The status of the CONTRACTOR shall be that of an independent contractor. Neither CONTRACTOR, nor CONTRACTOR'S officer's 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 the compensation received pursuant to this Contract and shall indemnify and hold DISTRICT harmless from any and all liability which DISTRICT may incur because of CONTRACTOR'S failure to pay such taxes. CONTRACTOR shall be solely responsible for program development and operation.

ARTICLE VIII - SUBCONTRACTOR

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

ARTICLE IX - ASSIGNMENT

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

ARTICLE X - NON-DISCRIMINATION

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website <http://www.azsos.gov/aar/2009/46/governor.pdf> which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE XI - AMERICANS WITH DISABILITIES ACT

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.

ARTICLE XII - AUTHORITY TO CONTRACT

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

ARTICLE XIII - FULL AND COMPLETE PERFORMANCE

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

ARTICLE XIV - CANCELLATION FOR CONFLICT OF INTEREST

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

ARTICLE XV – TERMINATION OF CONTRACT FOR DEFAULT

A. Upon a failure by CONTRACTOR to cure a default under this Contract within 10 days of receipt of notice from DISTRICT of the default, DISTRICT may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, DISTRICT may take over the work and complete it by contract or otherwise. In such event, CONTRACTOR shall be liable for any damage to the DISTRICT resulting from CONTRACTOR's default, including any increased costs incurred by DISTRICT in completing the work.

B. The occurrence of any of the following, without limitation to the named events, shall constitute an event of default:

1. Abandonment of or failure by CONTRACTOR to observe, perform or comply with any material term, covenant, agreement or condition of this Contract, or to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
2. Persistent or repeated refusal or failure to supply adequate staff, resources or direction to perform the work on schedule or at an acceptable level of quality;
3. Refusal or failure to remedy defective or deficient work within a reasonable time;
4. Loss of professional registration or business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR's performance of this Contract;
5. Disregard of laws, ordinances, or the instructions of DISTRICT or its representatives, or any otherwise substantial violation of any provision of the contract;
6. Performance of work hereunder by personnel that are not qualified or permitted under state law or local law to perform such services;
7. Commission of any act of fraud, misrepresentation, willful misconduct, or intentional breach of any provision of this Contract; or
8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONTRACTOR, or CONTRACTOR becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

C. In the event of a termination for default:

1. All finished and unfinished drawings, specifications, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONTRACTOR for this project shall become DISTRICT's property and shall be delivered to DISTRICT not later than five (5) business days after the effective date of the termination;
2. DISTRICT 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 DISTRICT from CONTRACTOR is determined; and
3. Subject to the immediately preceding subparagraph (2), DISTRICT's liability to CONTRACTOR shall not exceed the Contract value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

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

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

- (i) Acts of God or of the public enemy,
- (ii) Acts of the DISTRICT in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the DISTRICT,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and the subcontractor(s); and

(2) The CONTRACTOR, within seven (7) days from the beginning of any event of default or delay (unless extended by DISTRICT), notifies the DISTRICT in writing of the cause(s) therefore. In this circumstance, the DISTRICT shall ascertain the facts and the extent of the resulting delay. If, in the reasonable judgment of DISTRICT, the findings warrant such action, the time for completing the work may be extended.

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

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

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

ARTICLE XVI – TERMINATION FOR CONVENIENCE

DISTRICT reserves the right to terminate this Contract at any time and without cause by serving upon CONTRACTOR 30 days advance written notice of such intent to terminate. In the event of such termination, the DISTRICT'S only obligation to CONTRACTOR shall be payment for services rendered prior to the date of termination.

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

ARTICLE XVII - NOTICE

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

Regional Flood Control District :
Suzanne Shields
Director and Chief Engineer
97 E. Congress 3rd floor
Tucson, AZ 85701

CONTRACTOR:
Nanette Pageau
110 S. Church Avenue Suite 3350
Tucson, AZ 85701-7617
PH: (520) 885-9009
Fax: (520) 885-0311

ARTICLE XVIII - NON-EXCLUSIVE CONTRACT

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

ARTICLE XIX - OTHER DOCUMENTS

CONTRACTOR and DISTRICT in entering into this Contract have relied upon information provided in the attached *scope of work* and documents submitted by the CONTRACTOR. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this contract.

ARTICLE XX - REMEDIES

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

ARTICLE XXI - SEVERABILITY

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

ARTICLE XXII - BOOKS AND RECORDS

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

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

ARTICLE XXIII- PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation, 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 records submitted in response to this solicitation that respondent reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by respondent prior to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., DISTRICT shall release records marked CONFIDENTIAL ten

(10) business days after the date of notice to the respondent of the request for release, unless respondent has, within the ten 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 shall not be counted in the time calculation. Respondent shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

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

ARTICLE XXIV – LEGAL ARIZONA WORKERS ACT COMPLIANCE

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

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

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

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

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

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

ARTICLE XXV- GRANT COMPLIANCE

Not Applicable

ARTICLE XXVI - ENTIRE AGREEMENT

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

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

PIMA COUNTY FLOOD CONTROL DISTRICT

CONTRACTOR

Chair, Board of Directors

Richard D. Kaneen
Authorized Officer Signature

Date

RICHARD D. KANEEN
Printed Name and Title

JAN 23, 2015
Date

ATTEST

Clerk of Board

Date

APPROVED AS TO FORM

Andrew Flagg
Deputy County Attorney

ANDREW FLAGG

Print DCA Name

1/22/2015
Date

APPROVED AS TO CONTENT

Suzanne Shields
Suzanne Shields, Director Regional Flood Control District

1-27-15
Date



**Pima County Flood Control
Tucson Drainage Project
January 15, 2015**

**SCOPE OF SERVICES
February 2015 through June 2015**

1. Planning Meetings/Weekly Construction Meetings – Attend and participate in weekly construction meetings and additional planning meetings as needed. Provide strategic input to planning and implementation of effective public outreach.
2. Property Owner Meetings– Coordinate and organize small neighborhood group meetings to notify of significant construction and schedule changes; coordinate one-on-one outreach with interested property owners and team members as needed; provide supporting informational materials as needed. Assumes a member of the design or construction team will be available.
3. Construction and Post-Construction Outreach – Kaneen will provide ongoing coordination with businesses, homeowners and school to address any concerns or issues during construction and immediate post-construction period through June 2015.
4. Construction Alerts – Prepare alerts for posting to website, coordinate edits and revisions, obtain final approval, and send electronically to contact database.
5. Contact Database/Project Information Line - Maintain project information phone line; respond to incoming phone calls on project information line during regular office hours of 8 AM to 5 PM Monday through Friday; forwarding phone line to project manager during nighttime and weekend hours.
6. Website – Kaneen will continue to provide project updates to Pima County Flood Control for posting to existing website.

7. Media Relations and Elected Official Outreach – Coordination with Pima County Communications Office to keep the media current on project progress and assist with placing an advertisement announcing project completion. Assist with preparing project update for elected officials as requested.

8. Ribbon Cutting Ceremony – Assist Pima County with the planning and execution of a ribbon cutting ceremony to celebrate the project completion. This may include creation of a newspaper advertisement announcing the ceremony, development of an invitee list, creation of an invitation, creation of photo display boards, logistic planning and additional materials preparations as needed.



**Pima County Flood Control
Tucson Drainage Project
January 15, 2015**

Public Outreach February 11, 2015 through June 30, 2015

ESTIMATE OF MANHOURS

Task	Project Principal/Manager*	Designer/Artist*	Public Relations Coordinator*	Clerical*	Total Hours	Total Labor Costs	Direct Expenses	Total Costs
	\$120	\$95	\$80	\$45				\$ 34,235.03
1. Planning Meetings/Weekly Construction Meetings (Assumes weekly meetings through March 2015; additional meetings as needed)	38	0	24	0	62	\$6,480	\$ 50.00	\$ 6,530.00
2. Property Owner Meetings (As needed)	16	2	6	0	24	\$2,590	\$ 50.00	\$ 2,640.00
3. Construction/Post-Construction Outreach	30	4	9	6	49	\$4,970	\$ 2,405.03	\$ 7,375.03
4. Construction Alerts	10	0	6	0	16	\$1,680	\$ 200.00	\$ 1,880.00
5. Contact Database/Project Information Line	20	0	6	3	29	\$3,015	\$ 480.00	\$ 3,495.00
6. Website - provide project overview information and updates to PC Flood control for posting to existing website	7	2	0	0	9	\$1,030	\$ 120.00	\$ 1,150.00
7. Media and Elected Official Outreach	12	0	2	0	14	\$1,600	\$ 950.00	\$ 2,550.00
8. Ribbon Cutting Ceremony (Provide support to Pima County as needed and attend ceremony)	32	12	12	5	61	\$6,165	\$ 2,450.00	\$ 8,615.00
TOTAL	165	20	65	14	264	\$27,530	\$ 6,705.03	\$ 34,235.03