



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

Award  Contract  Grant

Requested Board Meeting Date: 12/06/22

or Procurement Director Award

*\* = Mandatory, information must be provided*

**\*Contractor/Vendor Name/Grantor (DBA):**

Kapp-Con Incorporated (Headquarters: Tucson, AZ)

**\*Project Title/Description:**

Martha Cooper Library Expansion (XMLBEX)

**\*Purpose:**

Award: Contract No. CT-FM-23-260. This award of contract is recommended to the lowest, responsive, responsible bidder in the amount of \$6,812,034.00 for a contract term of 12/06/22 to 04/30/24 for the construction of the Martha Copper Library Expansion. Administering Department: Facilities Management.

**\*Procurement Method:**

Invitation for Bid (IFB) No. IFB-PO-2300027 was conducted in accordance with A.R.S. § 34-201 and Pima County Procurement Code 11.12.010. Four (4) responses were received. All bidders met the small business enterprise goal of six percent (6%).

Attachments: Notice of Recommendation for Award and Contract.

**\*Program Goals/Predicted Outcomes:**

This project will provide the adequate space necessary for library functions consistent with the usage of a full service library by: improving space allocation of public meeting space, staff area, collections, study space, and support outreach efforts for community programs for youth and adults, and; by providing for technology resources to meet demands of a service oriented organization.

**\*Public Benefit:**

Expansion will provide additional space for community outreach programs to meet; enhance the availability of study spaces and technology resources to the public; accommodate larger collections for use by more visitors; provide more space for after school study programs, and; enhance library use and services within the community.

**\*Metrics Available to Measure Performance:**

The performance will be measured using the contractor evaluation process as outlined in BOS Policy D29.1 (E).

**\*Retroactive:**

No.

**TO: COB 11/23/22 (1)**

**VER: 1**

**PGS: 50**

**NOV22'22PM0446PO**

**Contract / Award Information**

Document Type: CT Department Code: FM Contract Number (i.e., 15-123): 23-260

Commencement Date: 12/06/22 Termination Date: 04/30/24 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$\* 6,812,034.00  Revenue Amount: \$ \_\_\_\_\_

\*Funding Source(s) required: FM Capital Non-Bond Projects

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds?  Yes  No

If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_

Were insurance or indemnity clauses modified?  Yes  No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number?  Yes  No

If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

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

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

Commencement Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Prior Contract No. (Synergen/CMS): \_\_\_\_\_

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

Is there revenue included?  Yes  No If Yes \$ \_\_\_\_\_

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

Funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information (for grants acceptance and awards)**  Award  Amendment

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

Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_

Match Amount: \$ \_\_\_\_\_  Revenue Amount: \$ \_\_\_\_\_

\*All Funding Source(s) required: \_\_\_\_\_

\*Match funding from General Fund?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources?  Yes  No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Funding Source: \_\_\_\_\_

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? \_\_\_\_\_

Contact: James Johnson Digitally signed by James Johnson Date: 2022.11.17 13:53:31 -07'00'  
Acting

Department: Procurement Director: Scott Loomis

Digitally signed by Scott Loomis Date: 2022.11.17 15:25:47 -07'00'

Dawn Dargan Digitally signed by Dawn Dargan Date: 2022.11.17 15:25:47 -07'00'

Telephone: 520.724.7465

Department Director Signature/Date: \_\_\_\_\_ 4/18/22

Deputy County Administrator Signature/Date: \_\_\_\_\_ 11/22/2022

County Administrator Signature/Date: \_\_\_\_\_ 11/22/2022  
(Required for Board Agenda/Addendum Items)



**NOTICE OF RECOMMENDATION FOR AWARD**

Date of Issue: October 31, 2022

The Pima County Procurement Department hereby issues formal notice to respondents to Solicitation No. IFB-PO-2300027 for MARTHA COOPER LIBRARY EXPANSION (XMLBEX) that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after December 6, 2022.

Award is recommended to the lowest, responsive and responsible Bidder.

<b><u>Awardee</u></b>	<b><u>Base Bid</u></b>	<b><u>Add Alt 1</u></b>	<b><u>Add Alt 2</u></b>	<b><u>Add Alt 3</u></b>	<b><u>Total Bid</u></b>	<b><u>Award Amount</u></b>
Kapp-Con Incorporated <sup>1</sup>	\$6,608,496.00	\$175,022.00	\$7,798.00	\$20,718.00	\$6,812,034.00**	\$6,812,034.00
<b><u>Other Respondents</u></b>						
Durazo Construction	\$6,680,000.00	\$119,275.00	\$23,548.00	25,901.00	\$6,848,724.00	
La Causa Construction, LLC	\$7,195,230.00	\$131,814.00	\$17,805.00	30,000.00	\$7,374,849.00	
Marsh Development, Inc. <sup>2</sup>	\$7,574,544.00	\$152,498.00	\$23,369.00	32,757.00	\$7,783,168.00**	

Engineer's Estimate: \$6,049,992.00

\*\*Bid amount as shown includes corrections.

<sup>1</sup> Scrivener's error on total submitted. Submitted \$6,812,033.00, actual as shown.

<sup>2</sup> Scrivener's error on total submitted. Submitted \$7,756,168.00, actual as shown.

Issued by: /s/ James Johnson, Procurement Officer

Telephone Number: 520-724-7465

This notice is in compliance with Pima County Procurement Code §11.12.010(C) and §11.20.010(C).

Copy to: Pima County SBE via e-mail at [SBE@pima.gov](mailto:SBE@pima.gov)

**PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT**

**PROJECT:** MARTHA COOPER LIBRARY EXPANSION (XMLBEX)

**CONTRACTOR:** Kapp-Con Incorporated  
4847 N. Daisy Dawn Place, Suite #101  
Tucson, AZ 85705

**CONTRACT NO.:** CT-FM-23-260

**AMOUNT:** \$6,812,034.00

**FUNDING:** FM Capital Non-Bond Projects

**CONSTRUCTION SERVICES CONTRACT**

**1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is entered into between Pima County, a body politic and corporate of the State of Arizona, hereafter called County, and Kapp-Con Incorporated, hereinafter called Contractor, and collectively referred to as the Parties.
- 1.2. Authority. County requires, consistent with the provisions of A.R.S. Title 34, the services of a Contractor to provide all equipment, labor, and materials required to construct the Martha Cooper Library Expansion (XMLBEX) ("Project").
- 1.3. Solicitation. County previously issued Solicitation No. IFB-PO-2300027 for Martha Cooper Library Expansion (the Solicitation). Contractor submitted the low responsive, responsible bid in response to the Solicitation for said work and is qualified and willing to provide such services.

**2. Term and Extension/Renewal/Changes.**

- 2.1. Initial Term. This Contract, as approved by the Board of Supervisors, commences on 12/06/2022, and terminates on 04/30/2024, unless sooner terminated or further extended pursuant to the provisions of this Contract.
- 2.2. Construction Completion. Construction completion time for the work to be performed under this Contract will be **427** calendar days after the date of Notice to Proceed. Liquidated damages will be assessed based upon the construction completion time.
- 2.3. Extension Options. County has the option to extend the contract termination date for purposes of project completion. Any modification or extension of the contract termination date must be by formal written amendment executed by the Parties.

**3. Scope of Services.** Contractor will provide County all labor, materials and equipment necessary to complete the project as described in the Construction Documents prepared by Line and Space, LLC, dated 08/12/22 included in the bid documents in Pima County Solicitation No. IFB-PO-2300027, Exhibit B: General Conditions (15 pages), and other documents incorporated into this contract.

**4. Compensation and Payment.**

- 4.1 Compensation. County will pay Contractor as specified.

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

4.1.1.1 For the period of record retention required under Article 24, County reserves the right to question any payment made under this Article and to require reimbursement by setoff or otherwise for payments determined to be improper or contrary to the Contract or law

4.1.2 Price. Total payment for this Contract will not exceed (\$6,812,034.00). Payment for this Contract will be made based on Exhibit A - Bid for Fixed Price Construction Contract (2 Pages) submitted by Contractor in response to Solicitation No. IFB-PO-2300027 for the Total Bid amount which is comprised of the Base Bid plus Additive Alternate 1, Additive Alternate 2 and Additive Alternate 3.

4.1.3 Work Performed. Contractor will not perform work in excess of the contract amount without prior authorization by an amendment executed by the Parties. Work performed in excess of the contract amount without prior authorization by amendment is at Contractor's own risk.

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

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

5.2. Insurance Coverages and Limits.

5.2.1. Minimum Scope and Limits of Insurance: Contractor will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

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

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

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

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

5.2.1.5. Claims-Made Coverage. Claim-Made Insurance Coverage - If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three years following Contract expiration, termination or cancellation.

5.3. Additional Insurance Requirements:

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

5.3.1. Additional Insured: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.

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

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

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

5.4. Notice of Cancellation:

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

5.5. Verification of Coverage:

Contractor will furnish County with certificates of insurance as required by this Contract. An authorized representative of the insurer will sign the certificates.

5.5.1. All certificates and endorsements, as required by this Contract, are to be received and approved by County before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

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

5.6. Approval and Modifications:

The Pima County Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or

endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

**6. Indemnification.**

- 6.1. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and its officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractor . This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.
- 6.2. All warranty and indemnification obligations under this contract shall survive expiration or termination of the Contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with A.R.S. § 34-226 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.
- 6.3. Upon request, Contractor may fully indemnify and hold harmless any private property owner granting a right of entry to Contractor for the purpose of completing the project.

**7. Laws and Regulations.**

- 7.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract.
- 7.2. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in Superior Court in Pima County.
- 7.3. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract.

- 8. Status of Independent Contractor.** Contractor is an independent Contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

**9. Contractor/Subcontractor Performance.**

- 9.1. Performance. Contractor will perform the work with the degree of care and skill which a licensed contractor in Arizona would exercise under similar conditions. Contractor will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will obtain County's approval.
- 9.2. Responsibility. Contractor is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by Contractor under this Contract. Without additional compensation, Contractor will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any

deficiencies arising out of the acts or omissions of Contractor found during or after the course of the services performed by or for Contractor under this Contract, regardless of County having knowledge of or condoning or accepting the products or the services. Correction of such deficiencies will be at no cost to County.

- 9.3. Subcontractor License. Contractor will ensure that all Subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this Contract. Contractor will not permit any Subcontractor to perform work that does not fall within the scope of the Subcontractor's license, except as may be permitted under the rules of the Registrar of Contractors.
- 9.4. Subcontractor Acts and Omissions. Contractor will be fully responsible for all acts and omissions of its Subcontractor(s) and of persons directly or indirectly employed by Subcontractor and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract creates any obligation on the part of County to pay any Subcontractor, except as may be required by law.
- 9.5. Subcontractor List. Contractor must use the Subcontractor's named on Contractor's Subcontractor List submitted with the bid. No Subcontractor may be added or changed without the prior written approval of County subsequent to review and approval by the Administering Department Director and Procurement Director. Substitution of non-SBE Subcontractors may be approved at the discretion of County for reasons including but not limited to, availability, insolvency or any other reason deemed to be in the best interest of County. Approval for substitution of SBE Subcontractors that are listed on the Bidders Statement of Proposed SBE Utilization submitted with the bid will only be granted if the provisions of Section 20.28.050 of the Pima County Code have been met.
10. **Assignment**. Contractor will not assign its rights or obligations under this Contract in whole or in part, without County's prior written approval. County may withhold approval at its sole discretion.
11. **Non-Discrimination**. Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any Subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
12. **Americans with Disabilities Act**. Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
13. **Authority to Contract**. Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.
14. **Non-Waiver**. The failure of County to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
15. **Cancellation for Conflict of Interest**. This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
16. **Termination of Contract for Default**.
  - 16.1. Upon a failure by Contractor to cure a default under this Contract within 10 days of receipt of notice from County of the default, County may, in its sole discretion, terminate this Contract for default by written notice to Contractor. In this event, County may take over the work and complete it by Contract or otherwise. Contractor and its sureties, if any, will be liable for any damage to County resulting from Contractor's default, including any increased costs incurred by County in completing the work.



16.2. Default Events. The following constitutes an event of default:

- 16.2.1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
- 16.2.2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;
- 16.2.3. Failure to provide competent supervision at the site;
- 16.2.4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or to remove any defective or deficient material;
- 16.2.5. Failure to make prompt payment to Subcontractors or suppliers for material or labor;
- 16.2.6. Loss of Contractor's business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude Contractor's performance of this Contract;
- 16.2.7. Disregard of laws, ordinances, or the instructions of County or its representatives, or any otherwise substantial violation of any provision of the Contract; or
- 16.2.8. If a voluntary or involuntary action for bankruptcy is commenced with respect to Contractor, or Contractor becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.

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

- 16.3.1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by Contractor for this project become County's property and will be delivered to County not later than five business days after the effective date of the termination;
- 16.3.2. County may withhold payments to Contractor arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due County from Contractor is determined; and
- 16.3.3. Subject to the immediately preceding subparagraph 16.3.2, County's liability to Contractor will not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

16.4. Non-Termination. County will not terminate the Contract for default or charge Contractor with damages under this Article if:

- 16.4.1. Except for subparagraph 16.2.8 in subsection 16.2 above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include:
  - 16.4.1.1. Acts of God or of the public enemy,
  - 16.4.1.2. Acts of County in either its sovereign or contractual capacity,
  - 16.4.1.3. Acts of another Contractor in the performance of a contract with County,
  - 16.4.1.4. Fires,

- 16.4.1.5. Floods,
- 16.4.1.6. Epidemics,
- 16.4.1.7. Quarantine restrictions,
- 16.4.1.8. Strikes,
- 16.4.1.9. Freight embargoes,
- 16.4.1.10. Unusually severe weather, or
- 16.4.1.11. Delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and the Subcontractor(s) or suppliers; and

16.4.2. Contractor, within three days from the beginning of any event of default or delay (unless extended by County), notifies County in writing of the cause(s) therefor. In this circumstance, County will ascertain the facts and the extent of the resulting delay. If, in the judgment of County the findings warrant such action, the time for completing the work may be extended.

16.5. Receipt of Notice. For the purposes of subsection 16.1 above, "receipt of notice" includes receipt by hand by Contractor's onsite project manager, by facsimile transmission, or under the Notices clause of this Contract.

16.6. Excusable. If, after termination of the Contract for default, County determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if County had terminated the Contract for convenience as set forth in Article 17.

16.7. Rights and Remedies. The rights and remedies of County in this Article are cumulative and in addition to any other rights and remedies provided by law or under this contract.

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

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

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

COUNTY:  
 Lisa Josker, Director  
 Pima County Facilities Management Department  
 150 W. Congress, 3<sup>rd</sup> Floor  
 Tucson, AZ 85701  
 Tel: (520) 724-3085

CONTRACTOR:  
 Nathan Kappler, President  
 Kapp-Con Incorporated  
 4847 N. Daisy Dawn Place, Suite #101  
 Tucson, AZ 85705  
 Tel: (520) 292-2225

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

## 21. Contract Documents.

21.1. Incorporation of Documents: County and Contractor in entering into this Contract have relied upon information provided in Solicitation No. IFB-PO-2300027 - Martha Cooper Library Expansion, Bonds (Bid, Payment, and Performance Bonds), Exhibit A – Bid for Fixed Price Construction Contract, Exhibit B – General Conditions, Special Provisions, Technical Specifications and Plans, Construction Documents, Drawings and Specifications, Amendments, and on information provided in Contractor's response to this Solicitation. These documents are hereby incorporated into and made a part of this Contract by reference as if set forth in full herein.

21.2. Order of Precedence: In the event of a conflict or inconsistency between or among the contract documents, the documents shall take precedence in the following order:

21.2.1. This Contract

21.2.2. Exhibit B – General Conditions

21.2.3. Special Provisions, Technical Specifications, and Plans

21.2.4. Contractor Response to the Solicitation

21.2.5. Instructions to Bidders

21.2.6. Invitation to Bid

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

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

22. **Bonding Requirements**. In accordance with A.R.S. §34-221, et. seq., the Contractor will provide Payment and Performance bonds for not less than 100% of the contract amount. Copies of the bonds will be attached to this Contract.

23. **Ownership of Documents**. Ownership of all original drawings, boring logs, field data, estimates, field notes, plans, specifications, documents, reports, calculations, maps and models, and other information developed by Contractor under this Contract vests in and become the property of the County and will be delivered to County upon completion or termination of the services, but Contractor may retain record copies thereof. The Granting Agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this Contract or any Subcontract; and (b) Any rights of copyright to which Contractor or County acquires ownership under this Contract.

## 24. Books and Records.

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

24.2. Retention. Contractor will retain all records relating to this contract at least five years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, Contractor may, at its option, deliver such records to County for retention.

25. **Remedies**. Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in Article 28 are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

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

27. **Delays.** Neither party will be considered in default in the performance of its obligations to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

**28. Disputes.**

28.1. Resolving Dispute. In the event of a dispute between County and Contractor regarding any part of this Contract or the Parties' obligations or performance hereunder, either party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a meeting between the Director of the Pima County Department administering this Contract and Contractor's counterpart official, such meeting to be held within one 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.

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

**29. Public Records.**

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

29.2. Records Marked Confidential.

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

29.2.2. Notwithstanding the above provisions, in the event records marked confidential are requested for public release pursuant to A.R.S. § 39-121 et seq., County will release records marked confidential 10 business days after the date of notice to the Contractor of the request for release, unless Contractor has, within the 10 day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. Contractor will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable. County shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential, nor shall County be in any way financially responsible for any costs associated with securing such an order.

**30. Legal Arizona Workers Act Compliance.**

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

- 30.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any Subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 30.3. Remedies for Breach of Warranty. Any breach of Contractor's or any Subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a Subcontractor, and the subcontract is suspended or terminated as a result, Contractor will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement Subcontractor (subject to County approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.
- 30.4. Subcontractors. Contractor will advise each Subcontractor of County's rights, and the Subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:
- "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Contractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."
- 30.5. Costs. Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay will be excusable delay for which Contractor is entitled to an extension of time, but not costs.

31. **Israel Boycott Certification**. Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
32. **Forced Labor of Ethnic Uyghurs**. Pursuant to A.R.S. § 35-394, if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
33. **Amendment**. Except for the amendment provision above in Article 2, this Contract may be modified, amended, altered or extended only by a written amendment signed by the Parties.
34. **Entire Agreement**. This document constitutes the entire agreement between the Parties and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

35. **Effectiveness and Date.** This contract will become effective when all Parties have signed it. The date of this Contract will be the date the Contract is signed by the last Party to sign it (as indicated by the date associated with that Party's signature).

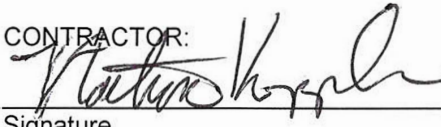
Each Party is signing this Contract on the date below that Party's signature.

APPROVED:

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

\_\_\_\_\_  
Date

CONTRACTOR:

  
\_\_\_\_\_  
Signature

Nathaniel Kappler President  
Name and Title (Please Print)

11/18/22  
Date

ATTEST:

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

This contract template has been approved as to form by the Pima County Attorney's Office.



**EXHIBIT A - BID FOR FIXED PRICE CONSTRUCTION CONTRACT (2 Pages)**

BID OF: Kapp-Con Incorporated  
 (CONTRACTOR'S NAME)

The undersigned bidder has carefully examined the Bid Documents for **IFB-PO-2300027 - MARTHA COOPER LIBRARY EXPANSION (XMLBEX)** for the Pima County Facilities Management Department, and will provide all necessary machinery, tools, apparatus, and other means of construction and do all the work and furnish all material called for by this Contract, including the Plans incorporated herein, and in accordance with the requirements of the Pima County Facilities Management Department.

The undersigned bidder understands that the quantity of work for the base bid amount as shown herein shall be a fixed not-to-exceed amount, complete in place.

**BASE BID:**

BIDDER AGREES TO PERFORM ALL OF THE NECESSARY WORK DESCRIBED IN THESE SPECIFICATIONS AND AS SHOWN ON THE DRAWINGS FOR THE FIXED PRICE OF:

*Six million Six Hundred Eight Thousand four hundred ninety-six Dollars and 00/100*  
 WRITTEN BASE AMOUNT

\$ 6,608,496.00

**ADD ALTERNATE #1**

(Children's Outdoor Play Area and Outdoor Gathering Areas)

\$ 175,022.00

**ADD ALTERNATE #2:**

(Children's Checkout and Selected Upper Cabinets)

\$ 7,798.00

**ADD ALTERNATE #3**

(Restroom Wall Tile and Workroom Ceiling Baffles)

\$ 20,718.00

**TOTAL BID (Base Bid + Alternate #1 + Alternate #2 + Alternate #3):**

\$ 6,812,033.00

*6,812,034.00*

*NK 11/17/22*

The prices are to include the furnishing of all materials, plant, equipment, tools, scaffolds, and all other facilities, all applicable taxes, insurance and bonds, and the performance of all labor and services necessary for proper completion of the work.

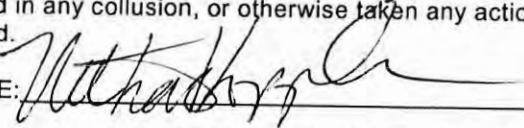
BIDDER SHALL SIGNIFY RECEIPT OF AMENDMENT(S) (IF ANY). Any bid that fails to acknowledge any amendment that directly affects cost, scope or schedule will be rejected as nonresponsive.

Amendment #	By (Bidder Initials)	Date	Amendment #	By (Bidder Initials)	Date
1	<i>NK</i>	10-04-22			
2	<i>NK</i>	10-11-22			
3	<i>NK</i>	10-20-22			



BIDS MUST BE SIGNED BY AN AUTHORIZED CONTRACTOR REPRESENTATIVE

BIDDER HEREBY CERTIFIES that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

SIGNATURE:  DATE: 10-25-22

PRINTED NAME & TITLE: Nathan Kappler, President

LEGAL COMPANY NAME: Kapp-Con Incorporate

TELEPHONE NO.: ( 520 ) 292-2225 EMAIL: nathan@kappcon.com

CORPORATE HEADQUARTERS (CITY, STATE) Tucson, AZ

ARIZONA CONTRACTOR'S LICENSE NUMBER: 252522 CLASS: KB-01

ARIZONA CONTRACTOR'S LICENSE NUMBER: 300376 CLASS: KA

**END OF EXHIBIT A -- BID FOR FIXED PRICE CONSTRUCTION CONTRACT**



## EXHIBIT B - GENERAL CONDITIONS (14 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 shall be interpreted as follows:

**BID:** The offer of the Bidder for the work when properly made out on forms containing the Bid for Fixed Price Construction supplied by the Board 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 covering the performance of the work and the furnishing of labor, equipment, and materials in the construction of the work. The Contract includes the Notice of Invitation to Bid and Bid Documents, including Instruction to Bidders, Bid Schedule, Plans, Technical Specifications, Supplementary General and/or General Conditions, Bonds, Supplementary Agreements, and all written requirements that reasonably could be required to insure the proper completion of the work in a substantial and acceptable manner. These documents may also be referred to as the CONTRACT DOCUMENTS.

**CONTRACT BOND:** The approved form of security furnished by the Contractor and his Surety as a guarantee on the part of the 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.

**DIRECTOR:** The Pima County Facilities Management Director, an assistant or other representative duly authorized by the Director to act for the Director.

**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 the 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.

**SUPPLEMENTARY AGREEMENT:** A written agreement executed by the Contractor and the 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: The Supplementary General Conditions are additional to the General Conditions that are conditions or requirements peculiar to the project under consideration.

SURETY: The corporate body which is bound with and for the 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 shall be investigated and verified in the field by the Contractor before starting work. Excavations in the vicinity of existing structures and utilities shall be carefully done by hand. The Contractor shall 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 -- The Contractor is presumed to be familiar with and at all times shall observe and comply with all Federal and State laws and local ordinances, workmen'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 shall indemnify and hold harmless the County of Pima and its representatives against any claim arising from the violations of such laws, bylaws, ordinances or regulations, whether by the Contractor itself or by the Contractor's employees.
- b. Permits and Licenses -- The County shall procure all County building permits, and sewer connection fees. Contractor shall post required permits on site and give all notices necessary and incidental to the due and lawful prosecution of the work. All other permits, fees, and applications for water, gas, and electric etc., shall be procured and paid for by the Contractor.
- c. Sanitary Provisions -- The Contractor shall 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 State Department of Health or other authorities having jurisdiction therein.
- d. Public Convenience and Safety -- The Contractor shall have due regard for the public health and shall 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 General Conditions.

- e. Barricades, Danger, Warning, and Detour Signs -- The Contractor shall 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 shall 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 -- The Contractor shall be responsible for the preservation of all public and private property on the surface or underground, along and adjacent to the work and shall conduct its operations so as to insure the prevention of injury or damage thereto. No land monuments or property shall 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 the Contractor, such property shall be restored by the Contractor 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 shall make good such damage or injury in an acceptable manner.

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

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

- i. Waiver of Legal Rights -- The County shall not be precluded or 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 the 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 the County or by any representative of the 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 the County shall 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 shall not be held to be waiver of any other subsequent breach.

#### **ARTICLE 4. ACCIDENTS**

The Contractor shall 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.

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

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

#### **ARTICLE 5. PIMA COUNTY BUILDING CODES**

The work embraced herein shall be done in accordance with the following Building Codes, Ordinances and Standards, with all amendments, as currently adopted by Pima County, together with any applicable Special Conditions, which are additional to and may supersede portions of these Codes as detailed at <http://webcms.pima.gov/building>. Where codes and/or regulations of other agencies having jurisdiction are more stringent these will take precedence.

## ARTICLE 6. RESERVED

## ARTICLE 7. DELAYS

Contractor will provide substantial completion, as previously defined, under this contract, within the number of calendar days stated in Contractor's proposed schedule, agreed to by County and incorporated herein by reference, plus the grace period, calculated as an additional **THREE PERCENT (3%)** of the calendar days stated in Contractor's agreed to schedule, rounded up to the next whole day

During the grace period, County will neither 1) apply liquidated damages, nor 2) include overhead and general conditions in any equitable adjustment for delay. Each additional day allowed for completion in excess of the days in Contractor's proposed schedule will replace one (1) day of the grace period until the latter is extinguished. If Contractor fails to substantially complete this contract for beneficial occupancy within the agreed number of calendar days from issuance of a notice to proceed, or that period plus any remaining grace period days, whichever is later, then for each day thereafter that this contract remains uncompleted for beneficial occupancy, County may deduct the sum of **Two Thousand Dollars (\$2,000.00) PER CALENDAR DAY**, from the contract price as payment by Contractor of liquidated damages sustained by reason of the failure of Contractor to substantially complete this contract for beneficial occupancy within the time period agreed.

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

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

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

- (1) A delay in the work attributable to County is an excusable delay for which an adjustment may be made to the schedule. In any such case the schedule of the affected task or activity may be extended one day for each day of County-caused delay; provided, however, that if the County-caused delay overlaps a period of delay attributable to any other cause, the extension for County-caused delay is limited to the number of non-overlapped days of County-caused delay.
- (2) There is no adjustment for any Contractor-caused delay in the work, including time to repair or replace defective work. In the event of a significant Contractor-caused delay exceeding three (3) workdays, Contractor will provide a recovery plan to County within five (5) days of County's request.
- (3) A delay in the work attributable to any other cause, including strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the control of County or Contractor and that arises without the fault or negligence of either, is an excusable delay for which County and Contractor agree to negotiate an appropriate schedule adjustment. If the period of delay attributable to any cause under this paragraph overlaps a period of delay attributable to any other cause, the adjustment under this paragraph will be made first and the delay attributed to such other cause will be limited to that occurring outside of the overlap.
- (4) If any of the causes of delay in Paragraphs 1 or 3 above affects a task or activity on the critical path, then the schedule adjustment may include adjustment to the completion date. If the cause does not affect a task or activity on the critical path, then the adjustment will be made from Float and the completion date shall not be changed.
- (5) If any of the causes of delay in Paragraphs 1 or 3 above results in material provable additional costs to the affected task or tasks as a result of disruption of the schedule, then the parties will negotiate an equitable adjustment therefor.

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

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

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

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

#### **ARTICLE 8. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS**

The Bid documents are complementary, and what is called for by any one shall be as binding as if called for by all, and the most stringent requirement shall 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 shall be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

#### **ARTICLE 9. DETAIL DRAWINGS AND INSTRUCTIONS**

The County shall 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 shall be consistent with the Bid documents, true developments thereof, and reasonably inferable therefrom.

#### **ARTICLE 10. COPIES OF DRAWINGS FURNISHED**

County shall provide, at no cost to the contractor, two complete sets of permit submittal documents reviewed and approved for construction by Pima County Development Services.

County shall provide, at no cost to the 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 shall be the contractor's responsibility to insure 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 their expense.

#### **ARTICLE 11. ORDER OF COMPLETION**

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

#### **ARTICLE 12. CONSTRUCTION DOCUMENTS ON THE JOB SITE**

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

### **ARTICLE 13. OWNERSHIP OF DRAWINGS**

All drawings, specifications, and copies thereof furnished by the 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, are to be returned to County on request, at the completion of the work. All models are the property of the County.

### **ARTICLE 14. CONTRACTOR'S UNDERSTANDING**

It is understood and agreed that the 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 the County, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

### **ARTICLE 15. MATERIALS, APPLIANCES, EMPLOYEES**

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

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall not employ on the work any unfit person or anyone not skilled in the work assigned him.

### **ARTICLE 16. ROYALTIES AND PATENTS**

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

### **ARTICLE 17. SURVEYS, PERMITS, AND REGULATIONS**

The County shall furnish all property surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor except as noted in Article 3.b. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the County unless otherwise specified.

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

### **ARTICLE 18. PROTECTION OF WORK AND PROPERTY**

The Contractor shall continuously maintain adequate protection of all its work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. It shall 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 the County. It shall adequately protect adjacent property as provided by law and the Bid documents. It shall provide and maintain all passage ways, 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, the Contractor, without special instruction or authorization from the County, is hereby permitted to act at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so instructed or authorized. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by the County.

#### **ARTICLE 19. INSPECTION OF WORK**

The County representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection. County shall have the authority to reject all work and materials which do not conform to the Contract.

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

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

#### **ARTICLE 20. SUPERINTENDENCE - SUPERVISION**

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

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

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

#### **ARTICLE 21. CHANGES IN THE WORK**

The County, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the work, the Contract Sum being adjusted accordingly. Change orders must be approved by the Procurement Director or the Board of Supervisors, as required by the Pima County Procurement Code, before the work under the change commences. All such work shall be executed under the conditions of the original Contract. Claim for extension of time caused thereby shall be made per the provisions of Article 7: Delays.

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

The value of any such extra work or change shall be determined in one or more of the following ways and included in the approved change order:

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

In the event the parties agree on the application of (c) above, a not-to-exceed amount will be included for approval in the change order. In this circumstance, Contractor shall keep and present in such form as the County may direct, a correct account of the net cost of labor and materials, together with vouchers, for application against the approved not-to-exceed amount in the change order. Contractor may invoice for overhead and profit or fee arising from such work in the last invoice under the change order, all of which is to be applied against the not-to-exceed amount. Any balance remaining in the not-to-exceed amount after final payment under the change order shall be adjusted out by change order.

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

- Overhead Limit: 10% of direct cost;
- Profit Limit: 5% of the sum of direct cost and overhead cost.

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

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

#### **ARTICLE 22. CLAIMS FOR EXTRA COST FOR ADDITIONAL WORK**

If the Contractor claims that any additional instructions by drawings or otherwise involve extra cost under this Contract, it shall give the 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 shall then be as provided for in Article 21 "Changes in the Work". No such claim shall be valid unless so made.

#### **ARTICLE 23. DEDUCTIONS FOR UNCORRECTED WORK**

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

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



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

**ARTICLE 24. RESERVED**

**ARTICLE 25. SUSPENSION OF WORK**

The County may at any time suspend the work, or any part thereof, by giving notice to the Contractor in writing. The work shall be resumed by the Contractor upon written notice from the County to the Contractor to do so. If the suspension period extends for more than one day, then any days in excess of the first day of suspension will not be counted in computing the construction time for the project.

**ARTICLE 26. THE COUNTY'S RIGHT TO DO WORK**

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the County after three (3) days written notice to the Contractor, may, 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 the Contractor.

**ARTICLE 27. RESERVED**

**ARTICLE 28. REMOVAL OF EQUIPMENT**

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

**ARTICLE 29. USE OF COMPLETED PORTIONS**

The County shall have 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 shall not be deemed 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, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the County may determine.

**ARTICLE 30. PAYMENTS WITHHELD**

The 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 the 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 the 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 shall be made for amounts withheld because of them.

**ARTICLE 31. RESERVED**

**(Remainder of Page Intentionally Left Blank)**

**ARTICLE 32. WARRANTY**

The Contractor shall provide a written guarantee covering all costs for repair or replacement of defective work for a period of two years (or longer if noted elsewhere in the construction documents) from substantial completion. Contractor shall complete repair, or respond to County in writing with repair solution, within 72 hours of notification by owner. County may make emergency repairs to ensure life safety or to prevent property loss, without invalidating the warranty. Contractor's obligations under this Article shall survive termination or expiration of the Contract.

**ARTICLE 33. LIENS**

Neither the final payment nor any part of the retained percentage shall become due until the Contractor delivers to the 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 the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the County, to indemnify the County against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall pay to County all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

**ARTICLE 34. RIGHTS OF VARIOUS INTERESTS**

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

**ARTICLE 35. SEPARATE CONTRACTS**

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

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

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

**ARTICLE 36. CLAIMS AND DISPUTES**

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

Written notice of each such claim, demand, dispute, controversy or difference shall be delivered by the Contractor to the County within fifteen (15) days of the occurrence of the event giving rise thereto and written supporting data will be submitted to the County within forty-five (45) days of such occurrence unless the County specifies a different period of time in writing to the Contractor. In his capacity as interpreter and judge, the County will not show partiality to County or Contractor and shall not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the 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.

This section does not relieve the Contractor of any statutory requirement relating to the presentation of claims to the Board of Supervisors of Pima County as a condition precedent to filing suit against the County.

The Contractor shall not cause a delay in the performance of the Contract because of any claim, demand, dispute, controversy or difference that may arise between the parties as a result of or in connection with this Contract.

If either the County or the Contractor is dissatisfied with any decision of the 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 37. CLEANING UP**

The Contractor shall, as directed by the County, remove from the 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 38. FIRE PREVENTION AND PROTECTION REQUIREMENTS FOR CONSTRUCTION PROJECT**

(a) PURPOSE:

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

(b) SCOPE:

Subject requirements shall be applicable to new construction, facilities remodeling, additions, and improvements projects' work conducted for Pima County. Contractor shall 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 39. 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 ARS 41-844 on state, county, and municipal lands, and under ARS 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 shall belong to Pima County. No monetary compensation will be made to the 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 40. PRODUCT AND MATERIAL DATA SAFETY SHEETS**

The contractor shall submit United States Department of Labor product or material data safety sheets on all materials used on the project. Only those forms issued by OSHA and United States Department of Labor will be acceptable.

#### **ARTICLE 41. RESERVED**

#### **ARTICLE 42. HAZARDOUS MATERIALS/ HAZARDOUS WASTES / HAZARDOUS SUBSTANCES ABATEMENT**

Should the 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 shall be served immediately to the Facilities Management Department, and all work surrounding said materials or substances shall be ceased until directed to proceed. The Contractor is hereby advised that 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 shall 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 shall be added to the contract as Additional Services, in accordance with the provisions of Article 22, and time extensions granted in accordance with the provisions of Article 7.

#### **ARTICLE 43. WASTE DISPOSAL FACILITIES**

The Contractor shall 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 shall apply.

#### **ARTICLE 44. EXISTING CONDITIONS**

The Contractor shall, before the conditions are disturbed, give immediate (within 8 hours) verbal notice to the onsite Construction Manager and/or onsite County representative to be followed up by written notice within 24 hours of initial discovery to the Construction Manager and County of:

- (a) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
- (b) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

The Construction Manager, Architect and/or County shall investigate the site conditions within 24 hours after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an adjustment shall be made pursuant to Article 21 of the General Conditions, Changes in the Work.

No request by Contractor for an adjustment to the contract under this clause shall be allowed, unless Contractor has given the written notice required; provided, that the time prescribed in this clause for giving written notice may be extended by the County.

No request by the Contractor for an adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

#### **ARTICLE 45. SECURITY CHECK**

At the discretion of the County, the contractor shall provide a fully Pima County Adult Detention Center Cleared Corrections Visitation (CCV) Request for all personnel who will be working in buildings/locations that are the property of Pima County Government, so that a background check may be run on each individual. This includes the general contractor and all sub-contractors, etc., working within the buildings/location.

The CCV should be submitted no less than two to three weeks in advance of the starting of a job. This will give the contractor time to replace anyone who might not be approved to work. The CCV should be submitted to the project manager of the Pima County Facilities Management Department, who will forward it on to the Pima County Sheriff's Department for processing.

The background check is conducted by the Pima County Sheriff's Department Records Section and includes any arrest, citation, contact or report under the names submitted - nationwide. The purpose of this background check is to prevent individuals who have been involved in certain criminal acts and who may increase liability for the County, access to the County buildings/locations and personnel. A lot of work is done in areas that are sensitive, restricted and confidential, as well as populated.

Anyone with a background history of a class 1 felony, theft history of any kind, sex offense history, or any crime involving moral turpitude, illegal drug or narcotics use, sale or possession, or who has any felony charge pending or who has any outstanding warrants of any type, including misdemeanor, traffic or felony warrants, will be denied permission to work.

On occasion, the Sheriff's Department will ask that an individual call them. This usually means they have some minor problem, such as a misdemeanor or traffic warrant that the Sheriff's Department will make them aware of. Once the individual has taken care of it they may be approved.

Once the background check has been done, the Sheriff's Department will notify the project manager from Facilities Management and he, in turn, will notify the contractor. If the Sheriff's Department denies approval for one of the contractor's employees because of the background check and the employee wishes to inquire as to why, the contractor shall have them call the Sheriff's Department at 740-8345, who will talk with them and explain why they have been denied.

On occasion, an individual supervisor will call the Sheriff's Department and want to know why the Sheriff's Department has denied permission to work to one of his employees. By Federal law, the Sheriff's Department cannot release that information to anyone but the individual employee. If the employee wishes to advise their boss after the Sheriff's Department has talked with the employee that is their prerogative.

It should further be noted that even though a person may have a criminal history background, he may still receive permission to work on a County project. The deciding factors include the nature, extent, time since last incident and any other circumstances which the reviewer feels may be a liability or an asset.

#### **END EXHIBIT B – GENERAL CONDITIONS**

**ARIZONA STATUTORY PAYMENT BOND**  
PURSUANT TO TITLE 34, ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)  
Bond No. 1099137

KNOW ALL MEN BY THESE PRESENTS THAT:

**Kappcon Inc.**

(hereinafter "Principal"), as Principal, and The Hanover Insurance Company (hereinafter "Surety"), a corporation organized and existing under the laws of the State of New Hampshire, with its principal office in the City of Worcester, Massachusetts, holding a certificate of authority to transact surety business in Arizona issued by the Director of Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto Pima County (hereinafter "Obligee") in the amount of Six Million, Eight Hundred Twelve Thousand, Thirty Four & 00/100 Dollars (\$6,812,034.00), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the, **6<sup>th</sup> of December, 2022** for:

**Solicitation No. IFB-PO-2300027 Martha Cooper Library Expansion (XMLBEX), 1377 North Catalina Avenue, Tucson, Arizona 85701**

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

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


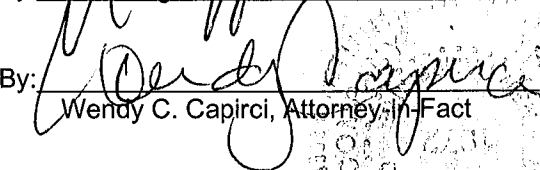
PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes,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

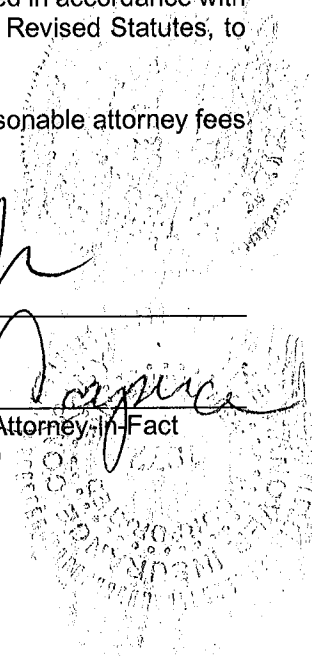
The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge in the court.

Witness our hands this 16th day of November, 2022.

Kappcon Inc.  
Principal

The Hanover Insurance Company  
Surety

By:   
By:   
Wendy C. Capirci, Attorney-in-Fact



**ARIZONA STATUTORY PERFORMANCE BOND**  
**PURSUANT TO TITLE 34, ARIZONA REVISED STATUTES**  
(Penalty of this bond must be 100% of the Contract amount)  
Bond No. 1099137

KNOW ALL MEN BY THESE PRESENTS THAT:

**Kapcon Inc.**

(hereinafter "Principal"), as Principal, and The Hanover Insurance Company (hereinafter "Surety"), a corporation organized and existing under the laws of the State of New Hampshire with its principal office in the City of Worcester, Massachusetts, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto Pima County, Arizona (hereinafter "Obligee") in the amount of Six Million, Eight Hundred Twelve Thousand, Thirty Four & 00/100 Dollars (\$6,812,034.00), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 6<sup>th</sup> of **December 2022** for:

**Solicitation No. IFB-PO-2300027 Martha Cooper Library Expansion (XMLBEX), 1377 North Catalina Avenue, Tucson, Arizona 85701**

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

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

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

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

Witness our hands this 16<sup>th</sup> day of November, 2022.

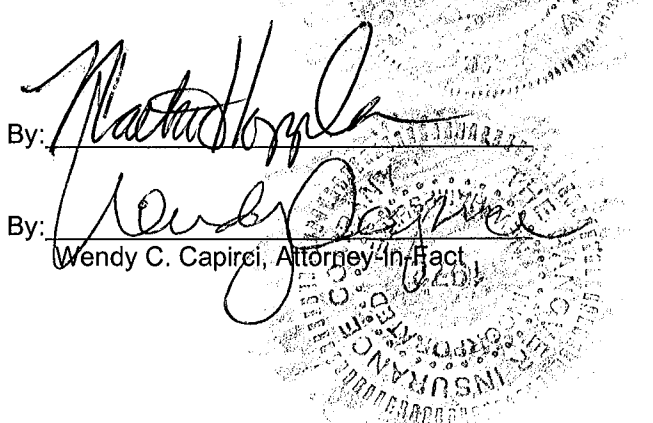
Kapcon Inc.  
Principal

The Hanover Insurance Company  
Surety

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

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

Wendy C. Capirci, Attorney-in-Fact







**Insurance Producer Endorsement**

**This endorsement changes the policy/bond to include:**

**Your agent/agency for this policy is:**

**INSURICA Southwest Insurance Services, LLC  
4686 E. Van Buren #310  
Phoenix AZ 85008  
602-273-1625**

**All other terms and conditions of the policy/bond remain unchanged.**

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWER OF ATTORNEY

THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

KNOW ALL PERSONS BY THESE PRESENTS:

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint,

Deborah K. Anderson, Lori L. Dawson-Brown, Wendy C. Capirci, Nick Duckworth, Blake C. Johnson and/or Clifford J. Spickler

Of Insurica Southwest Ins. of Phoenix, AZ each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below:

Any such obligations in the United States, not to exceed Ten Million and No/100 (\$10,000,000) in any single instance

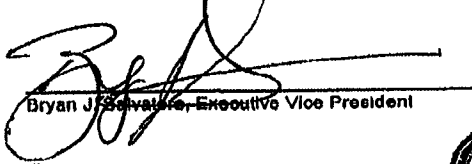
That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect:

RESOLVED: That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.

RESOLVED: That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 – The Hanover Insurance Company; Adopted April 14, 1982 – Massachusetts Bay Insurance Company; Adopted September 7, 2001 – Citizens Insurance Company of America and affirmed by each Company on March 24, 2014)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 26<sup>th</sup> day of October, 2022.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Bryan J. Salvatore, Executive Vice President



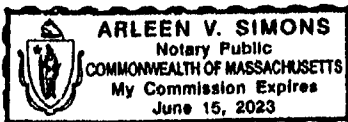
THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

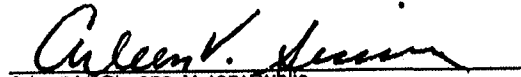
  
James H. Kawiecki, Vice President



THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.


On this 26<sup>th</sup> day of October, 2022 before me came the above named Executive Vice President and Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



  
Arleen V. Simons, Notary Public  
My Commission Expires June 15, 2023

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 16<sup>th</sup> day of November, 2022.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA  
  
John A. Rowedder, Vice President

CERTIFIED COPY



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/22/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Liberty Mascolino Insurance Services, LLC 1201 S. Alma School Road, Suite 14700 Mesa, AZ 85210	<b>CONTACT NAME:</b> Richard J. Mascolino <b>PHONE (A/C, No, Ext):</b> _____ <b>FAX (A/C, No):</b> _____ <b>E-MAIL ADDRESS:</b> RMascolino@libertycompany.com
	<b>INSURER(S) AFFORDING COVERAGE</b>
<b>INSURED</b>  Kapp-Con, Inc. 4847 N. Daisy Dawn Pl. Ste. 101 Tucson, AZ 85705	<b>INSURER A :</b> RLI Insurance Company <b>NAIC #</b> 13056
	<b>INSURER B :</b> Contractors Bonding & Ins Co
	<b>INSURER C :</b> Service American Indemnity Company <b>39152</b>
	<b>INSURER D :</b> Chubb
	<b>INSURER E :</b>
	<b>INSURER F :</b>


**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	RKA0400065	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	CKA04000083	1/1/2022	1/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED _____ RETENTION \$ _____			CKA0400087	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	SAMTWC0016401	1/1/2022	1/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Builders Risk			I21058865 011	1/1/2022	1/1/2023	Limit 10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 IFB-PO-2300027 Martha Cooper Library Expansion (XMLBEX)  
 Where required per written contract or agreement, Certificate holder and others are Additional Insured subject to all policy terms conditions and exclusions. Coverage is primary and non contributory. Waiver of subrogation shall apply.

Pima County as Additional Insured/loss payee as their interest may appear.

<b>CERTIFICATE HOLDER</b>  Pima County Procurement, Design and Construction Division 150 W Congress, 5th Floor Tucson, AZ 85701	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – WHERE REQUIRED BY CONTRACT**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE (Optional)**

Name of Additional Insured Persons or Organizations (as required by "written contract" per Paragraph A. below)	Locations of Covered Operations (per "written contract", provided the location is within the "coverage territory" of this Coverage Part)
,	

- A. **WHO IS AN INSURED (Section II)** is amended to include as an insured:
    - 1. Any person(s) or organization(s) whom you are required pursuant to a "written contract" to add as an additional insured on this policy; and
    - 2. The particular person or organization, if any, scheduled above.
  - B. When required in the "written contract", the coverage provided to the additional insured under this policy shall be primary and non-contributory to the additional insured subject to the limitations set forth below.
  - C. The insurance provided to the additional insured is limited as follows:
    - 1. The person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by:
      - a. Your acts or omissions; or
      - b. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations as specified in the "written contract".

When required in the "written contract", the coverage provided to the additional insured by this endorsement will apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard".
    - 2. The Limits of Insurance applicable to the additional insured are the lesser of the available limits in this policy, or those limits you agreed to provide in the "written contract".
  - 3. With respect to the coverage provided under this endorsement, the following duties are added to **Section IV – Commercial General Liability Conditions, paragraph 2. Duties In The Event of Occurrence, Offense, Claim or Suit:**
    - e. An additional insured under this endorsement will as soon as practicable:
      - (1) Give written notice of an "occurrence" to us which may result in a claim or "suit" under this insurance;
      - (2) Agree to trigger or activate any other insurance which the additional insured has for a loss we cover under this Coverage Part by tendering the defense to the insurers of all such other insurance.
  - 4. If required by the "written contract", we waive the right of recovery we may have against the additional insured to which this endorsement applies for payments we make for "bodily injury" or "property damage" arising out of "your work" on the "written contract".
  - 5. Unless otherwise agreed in the "written contract", this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis that is available to the additional insured.
- D. **SECTION V – DEFINITIONS** is amended to include the following definition:

"Written contract" means a written contract or written agreement that requires you to make a person or organization an additional insured on this Coverage Part, provided the contract or agreement is:

1. Valid and legally enforceable;
2. Currently in effect or becoming effective

during the term of this policy; and

3. Executed prior to an "occurrence" resulting in "bodily injury" or "property damage" for which the additional insured seeks coverage under this Coverage Part.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

## CONTRACTORS GENERAL LIABILITY ENHANCEMENT

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

### SCHEDULE OF COVERAGES ADDRESSED BY THIS ENDORSEMENT

This schedule is provided only as a convenience. It should not be assumed to provide a reference to every provision that can affect a question, claim or coverage. To determine the full scope of coverage and pertinent restrictions and exclusions, the policy, including endorsements, must be read in its entirety.

- A. Reasonable Force – Bodily Injury Or Property Damage**
- B. Aircraft, Auto or Watercraft**
- C. Damage To Premises Rented To You**
- D. Property damage care, custody or control**
- E. Lost Key Coverage**
- F. Supplementary Payments**
- G. Newly Acquired Or Formed Organizations**
- H. Additional Insured – Owner, Manager or Lessor Of Premises Or Leased Equipment**
- I. Additional Insured – State or Political Subdivisions – Permits Related to Premises or Operations**
- J. Unnamed Partnership Or Joint Venture**
- K. General Aggregate Limit – Per Project or Per Location**
- L. Damage To Premises Rented To You Limit**
- M. Knowledge And Notice Of Occurrence Or Offense**
- N. Unintentional Omission**
- O. Waiver Of Transfer Of Rights Of Recovery Against Others To Us**
- P. Amended Bodily Injury Definition**
- Q. Amended Insured Contract Definition**

## SECTION I – COVERAGES

### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### A. Reasonable Force – Bodily Injury Or Property Damage

Paragraph **2.a. Exclusions; Expected Or Intended Injury**, is deleted and replaced by the following:

##### a. Expected or Intended Injury

“Bodily Injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.

#### B. Aircraft, Auto or Watercraft

1. Paragraph **2.g.(2) Exclusions; Aircraft, Auto Or Watercraft** is deleted and replaced by the following:

(2) A watercraft you do not own that is:

- (a) Up to seventy-five (75) feet long; and
- (b) Not being used to carry persons or property for a charge;

2. The following is added to the exceptions to the exclusions:

(6) Any non-owned aircraft chartered to you with a crew including a pilot.

3. The following is added to paragraph **2.g.:**

Only as respects to the insurance provided by this provision, **Section II - Who Is An Insured** is amended to include as an insured any person who, with your express consent uses a watercraft owned by you.

The insurance provided by this provision shall be excess over any valid and collectible other insurance available to the insured, whether primary, excess, contingent or on

any other basis, except for the insurance purchased specifically by you to apply in excess of the Limits of Insurance shown in the declarations for this Coverage Part.

#### C. Damage To Premises Rented To You

The last paragraph of **2. Exclusions** is deleted and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by water, fire, explosion, lightning, or smoke resulting from fire to premises while rented to you, or temporarily occupied by you with permission by the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance.**

This provision does not apply if coverage for Damage To Premises Rented To You is excluded by another endorsement to this policy.

#### D. Property damage care, custody or control

1. The following is added to Exclusion **2 j. :**

Paragraphs **(4), (5)** and **(6)** do not apply for the limited purpose of providing the sub-limits of liability set forth below.

2. We will pay those sums that the insured becomes legally obligated to pay as damages arising out of “property damage” to:

- a. Personal property in the care, custody or control of the insured;
- b. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; and
- c. That particular part of any property that must be restored repaired or replaced because “your work” was incorrectly performed on it.

The most we will pay under **a, b,** and **c.** above in any one “occurrence” is a sub-limit of \$50,000. The most we will pay for all damages during any one policy period is \$100,000.

These limits are included in and not in addition to The Limits of Insurance shown

in the Declarations of the Commercial General Liability Policy.

Our right and duty to defend the insured against any "suit" for damages under this coverage ends when we have used up the applicable sub-limit of liability in the payment of judgments or settlements under it.

#### **E. Lost Key Coverage**

1. Coverage is extended to include the following:

If a customer's master or grand key, excluding electronic key card, is lost while in your care, custody or control we will pay the cost of replacing the keys, including the master lock and all keys used in the same lock, the cost of adjusting locks to accept the new keys, or the cost to replace the locks, whichever is less.

2. The most we will pay for "loss" arising out of any one "occurrence" is \$10,000.
3. The following definition is added:

"Loss" means unintentional physical damage or destruction to tangible property, including theft or disappearance. Tangible property does not include money or securities.

#### **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.**

##### **F. Supplementary Payments**

Paragraphs 1.b. and 1.d. are deleted and replaced with the following:

- b. Up to \$2,500 for the cost of bail bonds required because of accidents or traffic violations arising out of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off work.

## **SECTION II – WHO IS AN INSURED**

### **G. Newly Acquired Or Formed Organizations**

The following replaces Paragraph 3.:

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the one hundred eightieth (180<sup>th</sup>) day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
  - d. This provision does not apply to any organization for which coverage is excluded by another endorsement to this policy.

### **H. Additional Insured – Owner, Manager Or Lessor Of Premises Or Leased Equipment**

The following paragraph is added:

4. Any person or organization that you have agreed in a contract or agreement to include as an additional insured on this policy, but:
  - a. Only with respect to liability for "bodily injury" or "property damage" that occurs, or "personal and advertising injury" caused by an offense committed, after you have entered into that contract or agreement; and
    - (1) Only if the "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by you or any person or organization performing operations on your behalf,



and arises out of the ownership, maintenance or use of that part of any premises leased to you under that contract or agreement; or

(2) The “bodily injury”, “property damage” or “personal and advertising injury” is caused, in whole or in part, by you or any person or organization performing operations on your behalf, and arises out of the maintenance, operation or use of equipment leased to you by such additional insured.

b. The insurance provided to such additional insured under this provision is subject to the following:

(1) The limits of insurance afforded to such additional insured shall be the limits which you agreed to provide in the contract or agreement, or the limits shown in the Declarations, whichever are less; and

(2) The insurance afforded to such additional insured does not apply:

(a) To any “bodily injury” or “property damage” that occurs, or “personal and advertising injury” caused by an offense committed, after you cease to be a tenant in that premises;

(b) To any structural alterations, construction or demolition operations performed by or on behalf of such additional insured;

(c) To any premises for which coverage is excluded by another endorsement to this Coverage Part;

(d) To any “bodily injury” or “property damage” that occurs, or “personal and advertising injury” caused by an offense committed, after the equipment lease expires; or

(e) If the equipment is leased with an operator.

c. This provision does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.

**I. Additional Insured – State Or Political Subdivisions – Permits Related To Premises Or Operations**

The following paragraphs are added:

5. Any state or political subdivision that has issued a permit in connection with premises owned or occupied by, or rented or loaned to, you, but only with respect to “bodily injury”, “property damage”, “personal and advertising injury” arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations for which that state or political subdivision has issued such permit.

6. Any state or political subdivision that has issued a permit, but only with respect to “bodily injury”, “property damage”, “personal and advertising injury” arising out of operations performed by you or on your behalf for which that state or political subdivision has issued such permit. However, no such state or political subdivision is an insured for:

a. “Bodily injury”, “property damage” “personal and advertising injury” arising out of operations performed for that state or political subdivision; or

b. “Bodily injury” or “property damage” included within the “products-completed operations hazard”.

**J. Unnamed Partnership Or Joint Venture**

1. The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any current

or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations. However this limitation does not apply to your liability with respect to your conduct of the business of any current or past partnership or joint venture:

- a. That is not shown as a Named Insured in the Declarations; and
  - b. In which you are a member or partner but only if:
    - (1) Each and every member or partner in that joint venture or partnership is not a construction contractor; and
    - (2) The joint venture or partnership is not providing construction contracting services.
2. This provision does not apply to any person or organization for which coverage is excluded by another endorsement to this policy.
  3. The insurance provided by this provision shall be excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis.

### **SECTION III – LIMITS OF INSURANCE**

#### **K. General Aggregate Limit – Per Project Or Per Location**

1. **General Aggregate Limits Of Insurance Per Project**
  - a. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to ongoing operations at a single construction project :
    - (1) A separate Construction Project General Aggregate Limit applies to each construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

(2) The Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

(3) Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other single construction project

(4) The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Construction Project General Aggregate Limit

2. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to ongoing operations at a single construction project.

- a. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  - b. Such payments shall not reduce any Construction Project General Aggregate Limit.
3. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Construction Project General Aggregate Limit.
4. If the applicable construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
5. The provisions of **Section III – Limits Of Insurance** not otherwise modified by this endorsement shall continue to apply as stipulated
- 2. General Aggregate Limits Of Insurance – Per Location**
- a. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which can be attributed only to operations at a single "location":
    - (1) A separate Location General Aggregate Limit applies to each "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
    - (2) The Location General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
      - a. Insureds;
      - b. Claims made or "suits" brought; or
      - c. Persons or organizations making claims or bringing "suits".
    - (3) Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Location General Aggregate Limit for any other single designated "location".
    - (4) The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Location General Aggregate Limit.
2. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which cannot be attributed only to operations at a single "location":
- a. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  - b. Such payments shall not reduce any Location General Aggregate Limit.

3. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Location General Aggregate Limit.
4. For the purposes of this endorsement, the **Definitions** Section is amended by the addition of the following definition:  
 "Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
5. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

**L. Damage To Premises Rented To You Limit**

Paragraph 6. is deleted and replaced by the following:

6. Subject to paragraph 5. above, which ever applies, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of fire, explosion, lightning, smoke resulting from such fire; or water while rented to you or temporarily occupied by you with permission of the owner.

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

**M. Knowledge And Notice Of Occurrence Or Offense**

Paragraph 2.a. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** is deleted and replaced by the following:

- a. Notice of an "occurrence" or of an offense which may result in a claim must be given as soon as practicable after knowledge of the "occurrence" or offense has been reported to you, one of your "executive officers" (if you are a corporation), one of

your partners who is an individual (if you are a partnership), one of your managers (if you are a limited liability company), one of your trustees who is an individual (if you are a trust), or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice.

Knowledge by any other "employee" of an "occurrence" or offense does not imply that you also have such knowledge.

Notice of an "occurrence" or of an offense which may result in a claim will be deemed to be given as soon as practicable to us if it is given in good faith as soon as practicable to your workers' compensation, accident, or health insurer. This applies only if you subsequently give notice of the "occurrence" or offense to us as soon as practicable after you, one of your "executive officers" (if you are a corporation), one of your partners who is an individual (if you are a partnership), one of your managers (if you are a limited liability company), one of your trustees who is an individual (if you are a trust), or an "employee" (such as an insurance, loss control or risk manager or administrator) designated by you to give such notice discovers that the "occurrence" or offense may involve this policy.

To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

**N. Unintentional Omission**

The following is added to paragraph 6. **Representations:**

However, the unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy shall not prejudice your rights under this insurance. This provision does not affect our right to collect additional premium or to exercise our

right of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

**O. Waiver Of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to paragraph **8. Transfer of Rights of Recovery Against Others to Us**:

However, we waive any rights of recovery we may have against any person or organization because of payments we make for “bodily injury”, “property damage”, “personal injury and advertising injury” arising out of:

- a. Premises owned by you, temporarily occupied by you with permission of the owner, or leased or rented to you;
- b. Ongoing and completed operations performed by you, or on your behalf, under a contract or agreement with that person or organization;
- c. Your “work”; or
- d. “Your products”.

We waive these rights only where you have agreed to do so as part of a contract or agreement entered into by you before the “bodily injury” or “property damage” occurs or the “personal and advertising injury” offense is committed.

**SECTION V - DEFINITIONS**

**P. Amended Bodily Injury Definition**

Paragraph **3.** is deleted and replaced by the following:

- 3. “Bodily injury” means injury to the body, sickness, disease, or death. “Bodily injury” also means mental injury, mental anguish, emotional distress, pain and suffering, or shock resulting from injury to the body, sickness, disease or death of any person.

**Q. Amended Insured Contract Definition**

- 1. Paragraph **9.a.** is deleted and replaced by the following:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by water, fire, explosion, lightning, or smoke resulting from fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”;
- 2. Paragraph **9.c.** is deleted and replaced by the following:
  - c. Any easement or license agreement
- 3. Subsection **9.f.(1)** is deleted. **4.** The following is added to the end of paragraph **9.:** The insurance provided by the above definitions of “Insured Contract” shall be excess over any valid and collectible Railroad Protective Liability insurance available to an insured, whether primary, excess, contingent or on any other basis, except for the insurance purchased specifically by you to apply in excess of the Limits of Insurance shown in the declarations for this Coverage Part.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **BUSINESS AUTO ENHANCEMENT**

### **SCHEDULE OF COVERAGES ADDRESSED BY THIS ENDORSEMENT**

- A. Broad Form Named Insured**
- B. Employees As Insureds**
- C. Blanket Additional Insured**
- D. Blanket Waiver Of Subrogation**
- E. Employee Hired Autos**
- F. Fellow Employee Coverage**
- G. Auto Loan Lease Gap Coverage**
- H. Glass Repair – Waiver Of Deductible**
- I. Personal Effects Coverage**
- J. Hired Auto Physical Damage Coverage**
- K. Hired Auto Physical Damage – Loss Of Use**
- L. Hired Car – Worldwide Coverage**
- M. Temporary Transportation Expenses**
- N. Amended Bodily Injury Definition – Mental Anguish**
- O. Airbag Coverage**
- P. Amended Insured Contract Definition – Railroad Easement**
- Q. Coverage Extensions – Audio, Visual And Data Electronic Equipment Not Designed Solely For The Production Of Sound**
- R. Notice Of And Knowledge Of Occurrence**
- S. Unintentional Errors Or Omissions**

This endorsement modifies insurance provided under the following:  
BUSINESS AUTO COVERAGE FORM

**A. Broad Form Named Insured**

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

**B. Employees as Insureds**

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any “employee” of yours is an “insured” while using a covered “auto” you don’t own, hire or borrow in your business or your personal affairs.

**C. Blanket Additional Insured**

The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the “bodily injury” or “property damage” occurs is an “insured” for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an “insured” under the Who Is An Insured provision contained in **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured’s own business auto coverage if you are required to do so in a contract or agreement

that is executed by you before the “bodily injury” or “property damage” occurs.

**D. Blanket Waiver Of Subrogation**

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Condition, 5. Transfer of Rights Of Recovery Against Others To Us**:

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any “accident” or “loss”, provided that the “accident” or “loss” arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

**E. Employee Hired Autos**

1. The following is added to the **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, Paragraph **A.1. Who Is An Insured** Provision:

An “employee” of your is an “insured” while operating an “auto” hired or rented under a contract or agreement in that “employee’s” name, with your permission, while performing duties related to the conduct of your business.

2. Changes In General Conditions:

Paragraph **5.b.** of the **Other Insurance Condition** in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

**b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered “autos” you own:

- (1)** Any covered “auto” you lease, hire, rent or borrow; and
- (2)** Any covered “auto” hired or rented by your “employee” under a contract in that individual “employee’s” name, with your permission, while performing duties related to the conduct of your business. However any “auto” that is leased, hired, rented or borrowed with a driver is not a covered “auto”.

## F. Fellow Employee Coverage

**SECTION II – COVERED AUTOS LIABILITY COVERAGE, Exclusion B.5.** does not apply if you have workers compensation insurance in-force covering all of your employees.

## G. Auto Loan Lease Gap Coverage

**SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance,** is amended by the addition of the following:

In the event of a total “loss” to a covered “auto” shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered “auto” less:

1. The amount paid under the **PHYSICAL DAMAGE COVERAGE** section of the policy; and
2. Any:
  - a. Overdue lease/loan payments at the time of the “loss”;
  - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
  - c. Security deposits not returned by the lessor;
  - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
  - e. Carry-over balances from previous loans or leases.

## H. Glass Repair – Waiver Of Deductible

**SECTION III – PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended by adding the following:

No deductible for a covered “auto” will apply to glass damage if the glass is repaired rather than replaced.

## I. Personal Effects Coverage

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions:**

### c. Personal Effects Coverage

In the event of a total theft loss of your covered “auto” we will pay up to \$400

for “loss” to wearing apparel and other personal effects which are:

- (1) Owned by an “insured”; and
- (2) In or on your covered “auto”;

No deductible applies to Personal Effects Coverage.

## J. Hired Auto Physical Damage Coverage

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 4. Coverage Extensions:**

### d. Hired Auto Physical Damage Coverage

If hired “autos” are covered “autos” for Liability Coverage and this policy also provides Physical Damage Coverage for an owned “auto”, then the Physical Damage Coverage is extended to “autos” that you hire, rent or borrow subject to the following:

- (1) The most we will pay for “loss” in any one “accident” to a hired, rented or borrowed “auto” is the lesser of:
  - (a) \$60,000
  - (b) The actual cash value of the damaged or stolen property as of the time of the “loss”; or
  - (c) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
- (2) An adjustment for depreciation and physical condition will be made in the event of a total “loss”.
- (3) If repair or replacement results in better than like kind or quality, we will not pay for the betterment.
- (4) A deductible equal to the highest Physical Damage deductible applicable to any owned auto will apply.
- (5) This Coverage Extension will not apply to:
  - (a) Any “auto” that is hired, rented or borrowed with a driver; or
  - (b) Any “auto” that is hired, rented or borrowed from your “employee”.



**K. Hired Auto Physical Damage – Loss Of Use**

The following is added to **SECTION II - COVERED AUTOS LIABILITY COVERAGE, A.2. Coverage Extensions:**

c. We will pay sums which you legally must pay to the lessor of a covered “auto” which you have leased without a driver for thirty (30) days or less for the lessor’s loss of use of the covered “auto”, provided:

- (1) This insurance provides comprehensive, specified causes of loss or collision coverage on the covered “auto”;
- (2) The loss of use results from the covered “auto” being damaged in an “accident” while you are leasing it.

We will pay up to a maximum limit of \$1,500 for this coverage extension.

**L. Hired Car – Worldwide Coverage**

The following is added to **SECTION II – COVERED AUTOS LIABILITY COVERAGE, A.2. Coverage Extensions:**

**d. Hired Car – Worldwide Coverage**

(1) We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” which occurs outside of the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada resulting from the maintenance, or use of any covered “auto” of the private passenger type you lease, hire, rent or borrow without a driver for thirty (30) days or less.

(2) With respect to any claim made or “suit” instituted outside the United States of America, the territories and possessions of the United States of America, Puerto Rico, and Canada:

(a) You shall undertake the investigation, settlement and defense of such claims and “suits” and keep us advised of all proceedings and actions.

(b) You will not make any settlement without our consent.

(c) We will reimburse you:

(i) For the amount of damages because of liability imposed upon you by law on account of “bodily injury” or “property damage” to which this insurance applies, and

(ii) For all reasonable expenses incurred with our consent in connection with the investigation, settlement or defense of such claims or “suits”. Reimbursement for expenses will be part of the Limit of Insurance for liability coverage shown in the Business Auto Coverage Declarations, and not in addition to such limits.

(3) The limit of insurance for Liability Coverage shown in the Business Auto Coverage Declarations is the most we will reimburse you for the sum of all damages imposed on you, as set forth in paragraph (2)(c) above, and all expenses incurred by you arising out of any single “accident” or “loss”.

(4) You must maintain the greater of the following primary auto liability insurance limits:

(a) Compulsory admitted insurance with limits required to be in force to satisfy the legal requirements of the jurisdiction where the accident occurs; or

(b) Insurance limits required by law and issued by a government entity or by an insurer licensed or permitted by law to do business in the jurisdiction where the “accident” occurs; or

(c) Auto liability insurance limits of at least \$300,000 combined single limit or \$100,000 per person / \$300,000 per accident Bodily Injury, \$100,000 Property Damage.

If you fail to comply with the above this insurance is not invalidated. However in the event of a "loss", we will pay only to the extent that we would have been liable had you so complied.

- (5) The insurance provided by this coverage extension is excess over any other collectible insurance available to you whether on a primary, excess, contingent or any other basis.

#### **M. Temporary Transportation Expenses**

**SECTION III – PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions**, subparagraph **a. Transportation Expense** is deleted and replaced by the following:

##### **a. Transportation Expenses**

- (1) We will pay up to a maximum of \$1,500 for temporary transportation expense incurred by you because of Physical Damage to a covered "auto".
- (2) We will pay only for those covered "autos" for which you carry Comprehensive, Collision or Specified Cause of Loss Coverage.
- (3) We will pay only for those expenses incurred by you during the period of time that begins twenty-four (24) hours after the covered "loss" and ends at the time when the covered "auto" can be reasonably repaired or replaced.
- (4) This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

#### **N. Amended Bodily Injury Definition - Mental Anguish**

The following is added to **SECTION V - DEFINITIONS, Definition C.:**

"Bodily injury" also includes mental anguish, but only when the mental anguish arises from other bodily injury, sickness or disease.

#### **O. Airbag Coverage**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE B. Exclusions 3.a.:**

However, this exclusion will not apply to accidental discharge of an airbag due to mechanical or electrical breakdown.

#### **P. Amended Insured Contract Definition – Railroad Easement**

**SECTION V – DEFINITION** paragraph H. "Insured contract" is modified as follows:

1. Paragraph H.3. is replaced by the following:
  3. Any easement or license agreement.
2. Paragraph H.6.a. is deleted.

#### **Q. Coverage Extensions – Audio, Visual And Data Electronic Equipment Not Designed Solely For The Production Of Sound**

**SECTION III – PHYSICAL DAMAGE COVERAGE B. Exclusions**, exception paragraph **a.** to exclusion **4.c.** and **4.d.** is deleted and replaced with the following:

- a. Equipment and accessories used with such equipment, except for tapes, records, discs or other electronic media device, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or is removable from the housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "autos" electrical system, in or upon the covered "autos"; or

#### **R. Notice Of And Knowledge Of Occurrence**

**SECTION IV – BUSINESS AUTO CONDITIONS, A.2. Duties In The Event Of Accident, Claim, Suit or Loss**, subparagraph **a.** is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss" including:

- (1) How, when and where the “accident” or “loss” occurred;
- (2) The “insured’s” name and address; and
- (3) To the extent possible, the names and addresses of any injured person and witnesses.

Your duty to give us or our authorized representative prompt notice of the “accident” or “loss” applies only when the “accident” or “loss” is known to:

- (1) You, if you are an individual;
- (2) A partner if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

#### **S. Unintentional Errors Or Omissions**

**SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions; 2. Concealment, Misrepresentation or Fraud** is amended by adding the following:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Blanket Waiver of Subrogation as required by written contract  
contract

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Date: 01/01/2021    Policy No. SAMTWC0016401    Endorsement No.  
Policy Effective Date: 01/01/2021 to 01/01/2022    Premium \$  
Insured: Kapp-Con, Inc.

DBA:

Carrier Name / Code: Service American Indemnity Company    (Method)

WC 00 03 13  
(Ed. 4-84)

Countersigned by Chi-Ding



**PROCUREMENT DEPARTMENT**  
DESIGN & CONSTRUCTION DIVISION • 150 W. CONGRESS STREET, 5<sup>th</sup> FLOOR • TUCSON, ARIZONA 85701-1317  
TELEPHONE (520) 724-3727 • FAX (520) 724-3646

INSURANCE CARRIER VERIFIES PIMA COUNTY IS NAMED AS ADDITIONAL INSURED TO THE COMPREHENSIVE COMMERCIAL GENERAL LIABILITY POLICY AND THE COMPREHENSIVE AUTOMOBILE LIABILITY POLICY REFERENCED BELOW, THE COUNTY BEING ADDED BY ENDORSEMENT TO THE POLICIES.

**Kapp-Con Incorporated**

\_\_\_\_\_  
Insured Firm

GL Policy # RKA0400065 Auto Policy #CKA04000083  
Policy Number

RLI/Contractors Bonding and Insurance Company  
Insurance Carrier

DocuSigned by:  
Elizabeth Mascolino  
BF4CCAC9AA3140D  
\_\_\_\_\_  
Authorized Carrier Signature

Elizabeth Mascolino  
Printed Name

11/16/2022  
Date of Signature

NOTE: This document must be included with Insurance Certificates at time of signing contract or renewing contract.