



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 06/06/23

* = Mandatory, information must be provided

or Procurement Director Award:

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

Kone Inc. (headquarters: Moline, IL)

***Project Title/Description:**

Job Order Master Agreement: Elevator Modernization Design & Contracting Services

***Purpose:**

Award: Master Agreement No. MA-PO-23-194. This award of Master Agreement is recommended to the highest qualified contractor in an annual award amount not-to-exceed \$3,000,000.00 for an initial one (1) year agreement term from 06/06/23 to 06/05/24 which may be extended for up to four (4) additional one-year terms. Administering Department: Facilities Management.

This is an indefinite delivery/indefinite quantity job order master agreement. For projects estimated less than \$250,000.00, the department may select a contractor based on availability, specialty or other such basis as the department may determine in its sole discretion. For projects estimated at \$250,000.00 or more, all contractors will be given the opportunity to compete on the basis of cost or cost and schedule through a request for quotation. No individual job order may exceed \$1,500,000.00, including any change orders.

***Procurement Method:**

Solicitation for Qualifications No. SFQ-PO-2300010 was conducted in accordance with A.R.S. 34-604 and Pima County Board of Supervisors Policy D29.1. One (1) responsive Statement of Qualifications was received and evaluated by a five (5) member committee using qualifications and experience-based selection criteria. Based upon the evaluation of the respondent's written representation of their qualifications and necessary due diligence, the final list of the one (1) highest qualified contractor is recommended for award.

Attachments: Notice of Recommendation for Award and Master Agreement.

***Program Goals/Predicted Outcomes:**

Enables the Facilities Management Department to utilize Job Order Contractors to provide design, engineering, construction and maintenance on elevators in County buildings.

***Public Benefit:**

Provide a list of qualified contractors to quickly respond to the County's elevator needs and ensure current elevator safety codes are met.

***Metrics Available to Measure Performance:**

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

***Retroactive:**

No.

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 23-194
Commencement Date: 06/06/23 Termination Date: 06/05/24 Prior Contract Number (Synergen/CMS):
[X] Expense Amount \$ 3,000,000.00 * [] Revenue Amount: \$

*Funding Source(s) required: Various Funds

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 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: Procurement Officer: James Johnson Digitally signed by James Johnson Date: 2023.05.12 16:24:25 -0700 Division Manager: Scott Loomis Digitally signed by Scott Loomis Date: 2023.05.15 13:05:28 -0700

Department: Procurement Director: Terri Spencer Digitally signed by Terri Spencer Date: 2023.05.15 13:25:39 -0700 Telephone: 520-724-7465

Department Director Signature: Tony Cisneros Digitally signed by Tony Cisneros Date: 2023.05.15 13:44:31 -0700 Date:

Deputy County Administrator Signature: Date: 5-16-2023

County Administrator Signature: Date: 5/16/2023



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: April 21, 2023

The Procurement Department hereby issues formal notice to respondents to **Solicitation No. SFQ-PO-2300010 for Job Order Master Agreement: Elevator Modernization Design & Contracting Services** that the following listed respondent(s) will be recommended for award of a shared Master Agreement in the annual award amount of \$1,500,000.00. The award action is scheduled to be performed by the Board of Supervisors on or after June 6, 2023.

Award is recommended to the most qualified Respondent.

AWARDEE NAME

Kone, Inc.

NOTE: Pursuant to A.R.S. §34-604(H), only the names of the firms on the final list may be disclosed.

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).

Copy to: Pima County SBE via e-mail at SBE@pima.gov.

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT

PROJECT: Job Order Master Agreement:
Elevator Modernization Design & Contracting Services

CONTRACTORS: Kone Inc.
4639 South 36th Street
Phoenix, Arizona 85040

CONTRACT NO.: MA-PO-23-194

AMOUNT: \$3,000,000.00

FUNDING: VARIOUS FUNDS

JOB ORDER MASTER AGREEMENT

1. Parties, Background and Purpose.

- 1.1. Parties. This Agreement is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called County, and Kone Inc., hereinafter called Contractor in the singular, Contractors in the plural, and collectively referred to as the Parties.
- 1.2. Authority. County has a need to establish an Agreement with up to four (4) Job Order Contractors for Job Order Master Agreement: Elevator Modernization Design & Contracting Services.
- 1.3. Qualifications Based Solicitation. County conducted a competitive qualifications-based procurement pursuant to A.R.S. §34-604, for Job Order Contractors under SFQ-PO-2300010. Based on an evaluation of the respondents' representations of their qualifications and necessary due diligence, County selected the one (1) highest qualified Contractor as a Job Order Contractor. The Job Order Contractors have agreed to be bound by and adhere to the requirements of this Agreement.

2. Basic Terms, Renewals, Extensions and Revisions.

- 2.1. Initial Term. This Master Agreement (Agreement), as approved by the Board of Supervisors, commences on June 06, 2023, and terminates on June 05, 2024, unless sooner terminated or further extended pursuant to the provisions of this Agreement. This Agreement establishes the terms under which the Job Order Contractors will be assigned and perform tasks and projects under this Agreement.
- 2.2. Extension Options. County, at its sole discretion, may extend up to four (4) additional one-year terms or add funding to this Agreement at any time with the acknowledgment of the Contractors and the Board of Supervisors' or the Procurement Director's approval pursuant to Board of Supervisor Policy D29.4. Contract extensions, renewals, or revisions will occur through the issuance by County to Contractor of a revised Agreement document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms, conditions, scope modifications and/or specifications within 10 calendar days of issuance by County will signify acceptance of all such changes by Contractor and the revision will be binding upon the Parties.
- 2.3. Individual Job Orders. Individual job orders will be implemented by issuing a Delivery Order (DO) to the selected Job Order Contractor to perform the work. Each DO will be an independent contract that will incorporate and be subject to the terms of this Agreement. The terms "DO", "Job Order", and "Contract" are used interchangeably in this Agreement.

2.3.1. Competition Thresholds.

2.3.1.1. For projects less than \$250,000.00, and during emergency situations, County may select a Contractor based on availability, specialty, or such other basis as County may determine in its sole discretion. During emergency situations requiring immediate attention by County (i.e., Flooding or other disaster prevention) County reserves the right to select a Job Order Contractor on a non-competitive basis for the work. In addition, the requirement that a Job Order Contract be in place prior to the initiation of work is waived during such an event. During such an emergency, a Contractor may be contacted and given instructions by a County Project Manager to perform the work immediately without an approved Job Order. It is understood that County will prepare a Job Order as soon as practicable following said instructions.

2.3.1.2. For projects of \$250,000.00 or more, all Contractors will compete on the basis of cost or cost and schedule through a request for quotation. Price may be either a fixed cost or a guaranteed maximum price.

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

2.3.1.4. No individual Job Order may exceed \$1,500,000.00, including change orders.

2.3.2. Small Business Enterprise. These services are subject to the Pima County Code, Title 20, and Chapter 20.04, pertaining to participation of subcontractors. The Pima County SBE Program is a race and gender neutral program established to encourage contracting with all small businesses. Due to limited subcontracting opportunities, No Goal has been set for participation by Small Business Enterprises (SBEs). The current list of certified SBE firms can be located on the City of Tucson's Procurement Website, <http://www.tucsonprocurement.com/assets/SBEDirectory.pdf>.

2.3.2.1. Reserved.

2.3.2.2. For projects that are federally funded, a Disadvantaged Business Enterprise (DBE) goal pursuant to Pima County Code Title 20, must be established for the individual Job Order.

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

2.3.4. Subcontractors: Subcontractors will be selected in accordance with Contractor's Subcontractor Selection Plan, incorporated herein by reference.

3. **Scope of Services.** Contractor will provide County all labor, materials and equipment necessary to complete the project as described in Exhibit A – Scope of Work (3) Pages, incorporated into this Agreement. All work will be done per specifications called for in the bid documents as contained in Pima County Solicitation Number SFQ-PO-2300010, Exhibit B - General Conditions (11 Pages), Exhibit C - Special Conditions – Multiple Award Job Order Contract (10 Pages), and other documents incorporated into this Agreement.

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. The Contractor must cite the Delivery Order number on all invoices. Payments will be made in accordance with ARS § 34-609.

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

5. **Federal Funding.** County and Contractor understand the Job Orders under this Agreement may be funded partially or entirely through a federal grant or other source of federal funding.
 - 5.1. Federal Labor Standards. Federal Labor Standards are applicable for Job Orders identified as being federally funded.
 - 5.2. Additional Requirements. Federal forms will be attached to the Job Order, and Contractor agrees to be bound by all requirements.
 - 5.2.1. Exhibit D – Supplemental Provisions for Federal-Aid Construction Contracts (3 Pages).
 - 5.2.2. Davis Bacon (AZ. Wage Decision). Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions, and the Work Hour and Safety Standards Act related to overtime pay and safety.
 - 5.3. Subcontracting. Contractor will not subcontract on any federally-funded Job Order with any firm or person listed in the Federal Government’s System for Award Management (SAM) system (<https://www.sam.gov/portal/public/SAM>) with an active exclusion.
6. **Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
 - 6.1. Ratings. Contractor’s insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an “A.M. Best” rating of not less than A- VII. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
 - 6.2. Insurance Coverages and Limits.
 - 6.2.1. Minimum Scope and Limits of Insurance: Contractor will procure and maintain at its own expense insurance policies (the “Required Insurance”) satisfying the below requirements (the “Insurance Requirements”) until all of its obligations under this Agreement have been met. The below Insurance Requirements are minimum requirements for this Agreement and in no way limit Contractor’s indemnity obligations under this Agreement. County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Agreement. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.
 - 6.2.1.1. Commercial General Liability (CGL) – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, personal and advertising injury and products – completed operations.
 - 6.2.1.2. Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Agreement with a Combined Single Limit (CSL) of \$1,000,000 each accident.
 - 6.2.1.3. Workers’ Compensation and Employers’ Liability - Statutory requirements and benefits for Workers’ Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer’s Liability coverage- \$1,000,000 each accident and each person - disease.
 - 6.2.1.4. Builder’s Risk Insurance – Insurance applies to this Agreement, but need not be provided unless required for a particular job order. If Builders Risk Insurance applies to a particular job order, then Contractor is required to maintain throughout the course of construction Builder’s Risk Insurance in a dollar amount equal to the full insurable value under the job order, which shall include “All Risk” coverage. Pima County shall be named as a “Loss

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

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

6.3. Additional Insurance Requirements:

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

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

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

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

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

6.4 Notice of Cancellation:

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

6.5 Verification of Coverage:

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

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

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

6.6 Approval and Modifications:

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.

7. **Indemnification.**

7.1. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and the 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.

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

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

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

8.1. Bonds will be submitted on an annual basis for the full value of all construction reasonably anticipated during the Agreement year or may be provided on a Job-Order by Job-Order basis; in the latter case, Contractor will anticipate additional Job Orders and provide bonds in reasonable increments.

8.1.1. If bonds are secured on a Job-Order by Job-Order basis, the Contracting Department will obtain the appropriate bonds from Contractor upon issuance of a Job Order and prior to release of the Delivery Order.

8.2. At no time will the cumulative value of the bonds be less than the total value of the construction performed by Contractor under this Agreement, including Job Orders awarded to CONTRACTOR but not yet completed.

9. **Laws and Regulations.**

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

9.2. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights 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.

- 9.3. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract licensed.
10. **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.
11. **Contractor/Subcontractor Performance**.
- 11.1. Performance. Contractor will perform the work with the degree of care and skill which a licensed contractor in Arizona would exercise under similar conditions. Contractor will employ suitably trained and skilled personnel to perform all required services under this Agreement. Prior to changing any key personnel, especially those key personnel County relied upon in making this Agreement, Contractor will obtain County's approval.
- 11.2. Responsibility. Contractor is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by Contractor under this Agreement. Without additional compensation, Contractor will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of Contractor found during or after the course of the services performed by or for Contractor under this Agreement, regardless of County having knowledge of or condoning or accepting the products or the services. Correction of such deficiencies will be at no cost to County.
- 11.3. Subcontractor License. Contractor will ensure that all Subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this Agreement. Contractor will not permit any Subcontractor to perform work that does not fall within the scope of the Subcontractor's license, except as may be permitted under the rules of the Registrar of Contractors.
- 11.4. Subcontractor Acts and Omissions. Contractor will be fully responsible for all acts and omissions of its Subcontractor(s) and of persons directly or indirectly employed by Subcontractor and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement creates any obligation on the part of County to pay any Subcontractor, except as may be required by law.
- 11.5. Subcontractor List. Contractor must use the Subcontractor's named on Contractor's Subcontractor List submitted with the bid. No Subcontractor may be added or changed without the prior written approval of County subsequent to review and approval by the Administering Department Director and Procurement Director. Substitution of non-SBE Subcontractors may be approved at the discretion of County for reasons including but not limited to, availability, insolvency or any other reason deemed to be in the best interest of County. Approval for substitution of SBE Subcontractors that are listed on the Bidders Statement of Proposed SBE Utilization submitted with the bid will only be granted if the provisions of Section 20.28.050 of the Pima County Code have been met.
12. **Assignment**. Contractor will not assign its rights or obligations under this Agreement in whole or in part, without County's prior written approval. County may withhold approval at its sole discretion.
13. **Non-Discrimination**. Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any Subcontractors. During the performance of this Agreement, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

14. **Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).
15. **Authority to Contract.** Contractor warrants its right and power to enter into this Agreement. If any court or administrative agency determines that County does not have authority to enter into this Agreement, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Agreement.
16. **Non-Waiver.** The failure of County to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Agreement or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
17. **Cancellation for Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
18. **Termination of Contract for Default.**
 - 18.1. Upon a failure by Contractor to cure a default under this Agreement within 10 days of receipt of notice from County of the default, County may, in its sole discretion, terminate this Agreement for default by written notice to Contractor. In this event, County may take over the work and complete it by Contract or otherwise. Contractor and its sureties, if any, will be liable for any damage to County resulting from Contractor's default, including any increased costs incurred by County in completing the work.
 - 18.2. Default Events. The following constitutes an event of default:
 - 18.2.1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Agreement, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
 - 18.2.2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;
 - 18.2.3. Failure to provide competent supervision at the site;
 - 18.2.4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or to remove any defective or deficient material;
 - 18.2.5. Failure to make prompt payment to Subcontractors or suppliers for material or labor;
 - 18.2.6. Loss of Contractor's business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude Contractor's performance of this Agreement;
 - 18.2.7. Disregard of laws, ordinances, or the instructions of County or its representatives, or any otherwise substantial violation of any provision of the Agreement; or
 - 18.2.8. If a voluntary or involuntary action for bankruptcy is commenced with respect to Contractor, or Contractor becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.
 - 18.3. Termination. In the event of a termination for default:
 - 18.3.1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic,

acquired or prepared by Contractor for this project become County's property and will be delivered to County not later than five business days after the effective date of the termination;

- 18.3.2. County may withhold payments to Contractor arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due County from Contractor is determined; and
- 18.3.3. Subject to the immediately preceding subparagraph 18.3.2, County's liability to Contractor will not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.
- 18.4. Non-Termination. County will not terminate the Agreement nor any Job Order issued under this Agreement for default or charge Contractor with damages under this Article if:
 - 18.4.1. Except for subparagraph 18.2.8 in subsection 18.2 above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include:
 - 18.4.1.1. Acts of God or of the public enemy,
 - 18.4.1.2. Acts of County in either its sovereign or contractual capacity,
 - 18.4.1.3. Acts of another Contractor in the performance of a contract with County,
 - 18.4.1.4. Fires,
 - 18.4.1.5. Floods,
 - 18.4.1.6. Epidemics,
 - 18.4.1.7. Quarantine restrictions,
 - 18.4.1.8. Strikes,
 - 18.4.1.9. Freight embargoes,
 - 18.4.1.10. Unusually severe weather, or
 - 18.4.1.11. Delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and the Subcontractor(s) or suppliers; and
 - 18.4.2. Contractor, within three days from the beginning of any event of default or delay (unless extended by County), notifies County in writing of the cause(s) therefor. In this circumstance, County will ascertain the facts and the extent of the resulting delay. If, in the judgment of County the findings warrant such action, the time for completing the work may be extended.
- 18.5. Receipt of Notice. For the purposes of subsection 18.1 above, "receipt of notice" includes receipt by hand by Contractor's onsite project manager, by facsimile transmission, or under the Notices clause of this Agreement.
- 18.6. Excusable. If, after termination of the Agreement for default, County determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if County had terminated the Contract for convenience as set forth in Article 17.
- 18.7. Rights and Remedies. The rights and remedies of County in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Agreement.

19. **Termination for Convenience of County.** County may terminate this Agreement at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least 15 days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of County, become its property. If County terminates the Agreement as provided herein, County will pay Contractor an amount based on the time and expenses incurred by Contractor prior to the termination date. However, County will make no payment for anticipated profit on unperformed services.
20. **Non-Appropriation of Funds.** Notwithstanding any other provision in this Agreement, County may terminate this Agreement if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such termination, County has no further obligation to Contractor, other than payment for services rendered prior to termination.
21. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and be served by delivery or by certified mail upon the other party as follows:

COUNTY:

Bobby Orta, Project Manager
Facilities Management Department
150 W. Congress St., 3rd Floor
Tucson, Arizona 85701
Tel: (520) 724-3107

Any Notice required or permitted to be given by County may be served by personal delivery or certified mail to Contractor's contact name in Contractor's electronic vendor record.

22. **Non-Exclusive Agreement.** Contractor understands that this Contract is Non-Exclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.
23. **Agreement Documents.**
- 23.1. Incorporation of Documents: Contractor and County in entering into this Agreement have relied upon information provided in Solicitation No. SFQ-PO-2300010 – JOMA: Elevator Modernization, Design & Contracting Services, Exhibit A – Scope of Work, Bonds (Bid, Payment, and Performance Bonds), Exhibit B – General Conditions to the Contract, Exhibit C - Special Conditions – Multiple Award Job Order Contract, 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 Agreement by reference as if set forth in full herein.
- 23.2. Order of Precedence: In the event of a conflict or inconsistency between or among the Agreement documents, the documents shall take precedence in the following order:
- 23.2.1. This Agreement
 - 23.2.2. Exhibit B – General Conditions
 - 23.2.3. Special Provisions, Technical Specifications, and Plans
 - 23.2.4. Contractor Response to the Solicitation
 - 23.2.5. Instructions to Bidders
 - 23.2.6. Invitation to Bid
- 23.3. Deviation: The parties may, by written mutual agreement, deviate from this order of precedence in resolving inconsistencies between or among contract documents. Any such agreement interpreting the documents shall be incorporated into the Agreement by amendment.
- 23.4. Conflict: In the event of any conflict between any provision in the Special Conditions, and any provision of the General Conditions, or any other incorporated document, the provision in the Special Conditions shall take precedence.

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

25. **Books and Records.**

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

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

26. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Agreement, provided, however, that the procedures in Article 29 are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Agreement.

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

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

29. **Disputes.**

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

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

30. **Public Records.**

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

30.2. Records Marked Confidential.

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

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

31. Legal Arizona Workers Act Compliance.

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

31.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any Subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

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

31.4. Subcontractors. Contractor will advise each Subcontractor of County's rights, and the Subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

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

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

32. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
33. **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.
34. **Cooperative Use of Resulting Agreement.** Reserved.
35. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Facsimile or other electronically delivered copies of signature pages to this Agreement shall be treated between the Parties as original signatures for all purposes.
36. **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.
37. **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.
38. **Effectiveness and Date.** This Agreement will become effective when all Parties have signed it. The date of this Agreement will be the date the Agreement is signed by the last Party to sign it (as indicated by the date associated with that Party's signature).

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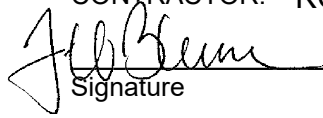
Each Party is signing this Contract on the date below that Party's signature.

PIMA COUNTY:

Chair, Board of Supervisors

Date

CONTRACTOR: KONE, Inc.


Signature

Jeff Blum Senior Vice President
Name and Title (Please Print)

May 18, 2023
Date

ATTEST:

Clerk of the Board

Date

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

EXHIBIT A SCOPE OF SERVICES (3 pages)

1. GENERAL:

The scope of work for each project cannot be precisely defined at this time, but the range of services may include, but are not limited to work typically provided by Elevator Modernization Design and Construction Services: design, engineering, labor, materials, updating supporting machinery and controls including but not limited to: fire, life safety, building codes, facility condition assessment, permits and full service maintenance agreements through warranty period.

Contractors performing work under this Job Order Master Agreement must hold a valid, current and proper license issued by the State of Arizona Registrar of Contractors for these services.

Pima County will contact the Contractor with a specific scope of service required, and identify the location of the project, and the start and ending dates desired. Unless specified otherwise, the Contractor will provide all required materials, labor and equipment necessary to do the job. This will be determined by the County on a project by project basis. Contractor shall procure necessary materials and equipment in the most cost effective manner possible. County shall be invoiced for the actual quantity of materials and equipment used on the job.

The Contractor shall prepare a written estimate of the full cost of the proposed work (including labor, materials, taxes, insurance and bonds) to be done for each project, and shall present same to the County Project Manager for approval and acceptance prior to beginning any work. The format used to prepare these estimates must be detailed as required by the County Project Manager. The County Project Manager will evaluate the response(s) and select award based on the procedures outlined in Exhibit C - Special Conditions - Multiple Award Job Order Contract. Upon acceptance, the Project Manager shall issue a written Notice to Proceed to the Contractor, after which, the Contractor shall begin work on the project within five (5) days, unless otherwise agreed to by the Project Manager.

Contractor shall provide detailed documentation in support of requested payments in an invoice format as required by the Pima County Project Manager. No payment requests will be accepted until after the notice to proceed has been issued.

All work performed by the Contractor under this Master Agreement shall be performed in a thorough and workmanlike manner, and in conformance with accepted industry standards. Contractor shall adhere to a fully implemented, industry mandated safety program while performing all work under this Master Agreement.

The Contractor shall coordinate the work activities so as to minimize interference with the normal work activities of County staff. Some work issued under this Master Agreement will need to be scheduled after normal business hours and on weekends.

During the progress of the work, the Contractor shall keep the premises free from any unnecessary accumulation of tools, equipment, surplus materials and debris. Work areas shall be cleaned up daily. Upon completion of the project, the premises are to be left neat and clean, to the satisfaction of County. Damage to building parts, existing items, or items being delivered, that are attributable to the Contractor shall be immediately reported to the County Project Manager and repaired or replaced by the Contractor at no cost to County.

2. SERVICES TO BE PROVIDED BY THE COUNTY:

Pima County shall provide, when possible, the following items and services in support of the Contractor's work:

1. Pre-Proposal meeting and tour of the proposed site and existing conditions for each project.
2. Any as-built drawings and specifications that may exist for the facility.
3. Cost of any materials testing necessary to accomplish the Project.
4. Construction Documents prepared in support of the specific Project.
5. A PCFM Project Manager will be assigned to work with the Contractor throughout the term of the Project. All project communications must flow through the Project Manager.
6. Any information available regarding building utilities and services as required. This does not limit or negate the requirement of the Contractor to verify the field conditions.
7. Any reports and/or mitigation regarding asbestos-containing materials in County buildings. Pima County will contract directly with asbestos abatement contractors, should that be necessary, per the General Conditions.
8. Any building Materials and Finishes Standards.
9. Consultation with Risk Management Safety Officers and Hazardous Material Offices.

3. ADDITIONAL REQUIREMENTS:

3.1 ORDERING AND SCHEDULING:

All work performed under this Master Agreement shall be scheduled with the County Project Manager. The Contractor will not be paid for any work undertaken for another department which has not been directed by or approved by the County Project Manager prior to its commencement.

3.2 COMPLETION AND ACCEPTANCE:

Each project issued under this Master Agreement shall commence and be completed as agreed upon in each Notice to Proceed. Acceptance of the work shall be upon approval of the Director, or his designated appointee.

3.3 PAYMENT:

Pay requests for projects issued under this Master Agreement, shall conform to the provisions of Article III of the Master Agreement. No shop time, travel time or portal-to-portal charges shall be invoiced without the prior approval of the county project manager.

3.4 WARRANTIES:

The Contractor shall warrant that all items provided, and workmanship performed pursuant to this Master Agreement, complied with the specifications issued for the specific project, and conform to generally accepted procedures, practices and methods that are appropriate for the services provided.

Any defective workmanship or materials discovered prior to or within two (2) years of acceptance of each project, shall be corrected by the Contractor at no further expense to, and to the satisfaction of the County. Ordinary wear and tear, and abnormal abuse or neglect, are expected. In the event that the Contractor shall fail to make such required repairs, adjustments, or other work that may become necessary by such defects, the County may affect those repairs, adjustments, or other work, and back charge the Contractor for costs incurred.

The Contractor shall provide the manufacturer's Warranty to the County prior to final payment by the County.

All warranties call for in this section shall be in addition to, and not in limitation of, all warranties, guaranties or other remedies required by law. Contractor's obligations under this Article shall survive termination or expiration of the Agreement.

INSPECTION:

Third Party Inspectors hired by the County may be assigned to monitor work issued under this Master Agreement. These Inspectors will report their findings to the County Project Manager, to include but not limited to the progress and quality of the work performed by the Contractor. Inspectors may call deficiencies to the attention of the Contractor, but shall not relieve the Contractor from any obligation to provide complete and accurate service that is satisfactory to the County in every way.

In the case of any dispute arising between the Inspector and the Contractor, as to the deficiencies identified by the Inspector, the Inspector shall have the authority to suspend the work until the issue can be resolved by the County Project Manager.

Inspectors shall in no case act as Foreman, or perform any other duties for the Contractor, or interfere with the management of the work by the Contractor. Inspection and Supervision by the County shall not be considered as direct control of individual workmen and his work. Such direct control shall remain solely the responsibility of the Contractor's Foreman or Superintendent.

3.5 SUPERVISION BY THE CONTRACTOR:

The Contractor shall supervise and direct all work and equipment, scheduled, extra or emergency. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures for construction. The Contractor shall maintain and employ, at the work site, a qualified Foreman or Supervisor, who shall have been designated in writing by the Contractor as his site representative. This Foreman or Supervisor shall have the full authority to act on behalf of the Contractor and all communications given to the Contractor. The Foreman or Supervisor shall be present at the site as required to adequately perform his duties of supervision and coordination of the work.

3.6 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK:

The Contractor shall properly guard and protect all finished and partially finished work, and shall remain responsible for same until the work is completed or accepted. Release of partial payment for work partially completed shall not relieve the Contractor from such responsibility. The Contractor shall turn over fully completed work prior to receiving final payment.

3.7 DUST PREVENTION:

The Contractor shall take whatever steps, procedures, and methods are necessary, and provide whatever equipment and materials are necessary to prevent dust conditions to exist as a result of his work until that work is fully completed and accepted. He shall comply with the requirements of all applicable air quality standards, regulations and ordinances, during the entire course of the project. THIS IS NOT AN EXTRA PAY ITEM.

3.8 UTILITY LOCATION:

The Contractor shall be responsible to locate all utilities prior to commencing his work. THIS IS NOT AN EXTRA PAY ITEM.

END EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B GENERAL CONDITIONS (11 pages)

ARTICLE 1 – DEFINITIONS

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

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

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

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

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

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

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

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

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

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

Department: The Pima County Facilities Management Department.

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

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

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

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

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

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

Standard Specifications: The directions, provisions, and requirements contained in the current edition of the Pima Association of Governments Standard Specifications for Public Improvements, 2014 Edition with Amendments, as adopted by Pima County, supplemented by such special provisions as may be necessary, pertaining to the method and manner of performing the work, quality and quantity of material to be furnished and measurement of payment of same.

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

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

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

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

ARTICLE 2 – RESPONSIBILITY REGARDING EXISTING UTILITIES AND STRUCTURES

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

County does not guarantee the existence and locations of underground utilities indicated on the plans and Contractor will investigate and verify the location of underground utilities in the field before starting work. Contractor will carefully perform excavations in the vicinity of existing structures and utilities. Contractor is responsible for any damage to, and for maintenance and protection of, existing utilities and structures. At least two full working days prior to commencing excavation, contractor must call blue Stake Center, 1-800-STAKE-IT, between the hours of 7:00 a.m. and 4:30 p.m., Monday through Friday for information relative to the location of buried utilities.

Contractor is fully responsible for costs incurred due to damage to utilities as a result of grading or excavation operations. Utility locations shown on the Plans are approximate, and not all utilities may be shown. The possibility of conflicts with existing utilities –in-place exists. If conflicting utilities interfere with Contractor's normal progress toward completion of this project, County may, at its option, authorize Contractor to relocate said conflicting utilities by Force Account.

It is the responsibility of Contractor to contact the utility companies in order for them to determine if there is a need for any bracing or shoring of power to telephone poles during the construction of this project. If bracing or shoring is necessary, Contractor will effect this work to the satisfaction of the utility company. County will make no measurement or direct payment for bracing or shoring.

ARTICLE 3 – LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

A. Laws to be Observed -- Contractor is presumed to be familiar with and at all times will observe and comply with all Federal and State laws and local ordinances, worker's compensation, occupational disease, and unemployment compensation laws together with the payment of all premiums and taxes therefor, also all laws, ordinances, and regulations in any manner affecting the conduct of the work and will indemnify and hold harmless County and its representatives against any claim arising from the violations of such laws, bylaws, ordinances or regulations, whether by Contractor or by Contractor's employees.

- B. Permits and Licenses -- County will procure all County building permits, and sewer connection fees. Contractor will post required permits on site and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor will procure and pay for all other permits, fees, and applications for water, gas, electric and other utilities.
- C. Sanitary Provisions -- Contractor will provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the Arizona Department of Health Services or other authorities having jurisdiction therein.
- D. Public Convenience and Safety -- Contractor will have due regard for the public health and will conduct the work in such a manner as to provide and insure the safety and convenience of the public.

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

- E. Barricades, Danger, Warning, and Detour Signs -- Contractor will at its expense and without further order provide, erect, and maintain at all times during the progress or temporary suspension of the work such barricades, fences, warning lights, danger signals, reflectors, signs, or other protective devices as are required to insure the safety of the public, those engaged in connection with the work and the work itself.

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

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

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

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

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

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

or any right to damage herein provided. A waiver of any breach of the Contract is not a waiver of any other subsequent breach.

ARTICLE 4 – ACCIDENTS

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

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

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

ARTICLE 5 – RESERVED

ARTICLE 6 – DELAY

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

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

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

1. A delay in the work attributable to County is an excusable delay for which an adjustment may be made to the schedule. In any such case the schedule of the affected task or activity may be extended one day for each day of County-caused delay; provided, however, that if the County-caused delay overlaps a period of delay attributable to any other cause, the extension for County-caused delay is limited to the number of non-overlapped days of County-caused delay.
2. There is no adjustment for any Contractor-caused delay in the work, including time to repair or replace defective work. In the event of a significant Contractor-caused delay exceeding three (3) workdays, Contractor will provide a recovery plan to County within five (5) days of County's request.
3. A delay in the work attributable to any other cause, including strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the control of County or Contractor and that arises without the fault or negligence of either, is an excusable delay for which County and Contractor agree to negotiate an appropriate schedule adjustment. If the period of delay attributable to any cause under this paragraph overlaps a period of delay attributable to any other cause, the adjustment under this paragraph will be made first and the delay attributed to such other cause will be limited to that occurring outside of the overlap.
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 7 – EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

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

ARTICLE 8 – DETAIL DRAWINGS AND INSTRUCTIONS

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

ARTICLE 9 – COPIES OF DRAWINGS FURNISHED

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

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

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

ARTICLE 10 – ORDER OF COMPLETION

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

ARTICLE 11 – CONSTRUCTION DOCUMENTS ON THE JOB SITE

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

ARTICLE 12 – OWNERSHIP OF DRAWINGS

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

ARTICLE 13 – CONTRACTOR'S UNDERSTANDING

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

ARTICLE 14 – MATERIALS, APPLIANCES, EMPLOYEES

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

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

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

ARTICLE 15 – ROYALTIES AND PATENTS

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

ARTICLE 16 – SURVEYS, PERMITS, AND REGULATIONS

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

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

ARTICLE 17 – PROTECTION OF WORK AND PROPERTY

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

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

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

ARTICLE 18 – INSPECTION OF WORK

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

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

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

ARTICLE 19 – SUPERINTENDENCE - SUPERVISION

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

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

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

ARTICLE 20 – CHANGES IN THE WORK

In giving instructions, County will 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 will be made unless in pursuance of a written order by County and no claim for an addition to the Contract sum will be valid unless so ordered.

The value of any such extra work or change will be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum, itemized and detailed with sufficient substantiating data, as requested by County, to permit evaluation.
2. By unit prices named in the Contract or subsequently agreed upon.
3. By cost and fixed fee.

If none of the above methods is agreed upon, Contractor, provided it receives an order as above, will proceed with the work. In such case and also under case (c), it will keep and present in such form as County may direct, a correct

account of the net cost of labor and materials, together with vouchers. In any case, County will certify to the amount, including allowance for overhead and profit, due to Contractor. Pending final determination of cost, payments on account of changes will be made on County's estimate.

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

- Overhead Limit: ten percent (10%) of direct cost;
- Profit Limit: five percent (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 Subcontractor, Contractor's combined overhead and profit limits allowed will not exceed five percent (5%) of the actual direct cost of the work.

Contractor's cost for additional work or changes requested by County which result in an approved extension of time to the contract will 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 will be prorated to the actual amount of extra time approved and will 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 compensation, and unemployment taxes and benefits.

ARTICLE 21 – CLAIMS FOR EXTRA COST FOR ADDITIONAL WORK

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

ARTICLE 22 – DEDUCTIONS FOR UNCORRECTED WORK

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

Contractor will promptly remove from the premises all materials condemned by County as failing to conform to the Contract, whether incorporated in the work or not, and Contractor will promptly replace and re-execute its own work in accordance with the Contract and without expense to County and will bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement. If Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, County may remove them and may store the material at the expense of Contractor. If Contractor does not pay the expense of such removal within ten days' time thereafter, County may, upon ten day's written notice, sell such materials at auction or at private sale and will account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by Contractor.

ARTICLE 23 – SUSPENSION OF WORK

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

ARTICLE 24 –COUNTY'S RIGHT TO DO WORK

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

ARTICLE 25 – COUNTY'S RIGHT TO TERMINATE CONTRACT

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

ARTICLE 26 – REMOVAL OF EQUIPMENT

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

ARTICLE 27 – USE OF COMPLETED PORTIONS

County has the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired, but such taking possession and use is not an acceptance of any work not completed in accordance with the Bid documents. If such prior use increases the cost of or delays the work, Contractor will be entitled to such extra compensation, or extension of time, or both, as County may determine.

ARTICLE 28 – PAYMENTS WITHHELD

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

1. Defective work not remedied.
2. Third party claims filed or reasonable evidence indicating probable filing of such claims.
3. Failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment.
4. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract sum.
5. Damage to another Contractor.

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

ARTICLE 29 – WARRANTY

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

ARTICLE 30 – LIENS

Neither the final payment nor any part of the retained percentage will become due until Contractor delivers to County a complete release of all liens arising out of this Contract, or receipts in full or in lieu thereof, and if required in either case, an affidavit that so far as it has knowledge or information, the release and receipts include all the labor for which a lien could be filed; but Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a

bond satisfactory to County, to indemnify County against any lien. If any lien remains unsatisfied after all payments are made, Contractor will pay to County all monies that County may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

ARTICLE 31 – RIGHTS OF VARIOUS INTERESTS

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

ARTICLE 32 – SEPARATE CONTRACTS

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

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

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

ARTICLE 33 – COUNTY'S STATUS

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

ARTICLE 34 – CLAIMS AND DISPUTES

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

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

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

ARTICLE 35 – CLEANING UP

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

ARTICLE 36 – RESERVED

ARTICLE 37 – ARCHAEOLOGICAL FEATURES

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

ARTICLE 38 – RESERVED

ARTICLE 39 – RESERVED

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

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

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

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

ARTICLE 41 – WASTE DISPOSAL FACILITIES

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

ARTICLE 42 – AS-BUILT DRAWINGS

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

ARTICLE 43 – RESERVED

END EXHIBIT B - GENERAL CONDITIONS

EXHIBIT C (10 pages) SPECIAL CONDITIONS – MULTIPLE AWARD JOB ORDER CONTRACT

ARTICLE 1 – OVERVIEW AND DEFINITIONS

- A. Overview of Job Order Contracting Arrangement – This Agreement establishes a Multiple-Award, indefinite quantity, job order contracting Arrangement for such construction services within the scope of this Agreement as County may request from time to time by issuance of an individual Job Order Contract for each Project.

The Contract Price for each Job Order shall not exceed \$1,500,000.00, including any Change Orders.

There is no limit on the number of Job Orders County may issue to any Contractor during any twelve (12) month term of this Contract or during the entire period this Contract is in effect.

Generally, a Contractor may not refuse to quote any Job Order under this Agreement properly issued by County, unless Contractor can legitimately claim the scope of work is poorly defined, hazardous to health or safety, outside the bounds of the intended use of this Agreement, or the Contractor does not have the capacity to accept the Job Order and begin work in a timely manner.

County shall have the right to perform work of the types included in this Agreement itself or to have other contractors perform such work.

- B. Definitions – The following terms will have the following meanings when used in the Agreement. Other terms may be defined elsewhere in the Documents. Terms not defined in the Agreement shall have their ordinary meaning within the usage of the trade. The presence or absence of initial capitals does not indicate a change in meaning.

“Alternatives Analysis” means assessment of alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets County requirements.

“Contract Price” means the price to be paid for the Work (and for Pre-Construction Services, if any) as specified in the Job Order. The Contract Price shall be a fixed, lump sum price, or a Not-to-Exceed Guaranteed Maximum Price, based on the Contractor’s accepted quotation.

“Contract Time” means the time for performance of the Work under a Job Order as specified in the Job Order commencing with the Start Date and ending with Final Completion Date set forth in the Job Order, as modified.

“Critical Path Method (CPM)” is a scheduling technique which identifies the logical sequence of the activities occurring in a construction project, the anticipated time required to complete each activity in the project, and the activities that must be completed on schedule to finish the project within the anticipated time. Typically, activities are arrayed in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified.

“Critical Path” means that sequence of dependent activities in a project that will take the longest time to complete. Any delay in the completion of any of these activities may extend the Substantial Completion date.

“Day” means calendar day unless specifically provided otherwise or required by law.

“Design Professional (DP)” means, as to a Job Order, the person, if any, who will perform Design Services relating to the Work under the Job Order and who is designated as the Design Professional in the Job Order.

“Drawings and Specifications” means, as to a Job Order, the drawings and specifications, if any, attached to the Job Order and specifications included in the Job Order Contract Documents. The Drawings and Specifications set forth the requirements for construction of the Project. Where there are no drawings and specifications for the Work prepared by a Design Professional, County will deliver to the Contractor line drawings and/or a written description of the Work and, in each such case, the line drawings and/or the written description shall be deemed the drawings for the Work for that Job Order for all purposes.

“Final Completion Date” means, as to a Job Order, the date by which Contractor shall have completed all Work under a Job Order, including, without limitation, all deficiency, correction and incomplete items (Punch List).

“Job Order” means the Contract for a Project executed by County under this Agreement, as it may be modified by Change Orders, if any, relating to the Project under the Job Order.

“Minor Change” means a change in the Work having no impact on cost or time or the County’s approved design intent, as determined by County.

“Notice to Proceed” means written notice given by County to the Contractor fixing the date on which the Contractor will start to perform the Work under that Job Order. The start date will be the Start Date stated in the Job Order.

“Plans and Specifications” means the plans and specifications upon which the Job Order’s price proposal is based.

“Pre-Construction Services” means the performance under a Job Order requiring such services of alternatives analysis, cost or schedule estimating, value engineering, constructability or other design reviews or consultation in the review of a County or third-party design prepared by a County-provided design professional.

“Project” means each project of County as to which some or all of the work is to be performed under a Job Order.

“Qualifications/Proposals Documents” means the Solicitation for Qualifications issued by County for this Job Order Contract, all Addenda thereto, and all information and documents submitted by Contractor relating thereto including, without limitation, Contractor’s submission of formal sealed qualifications, and also including, without limitation, the subcontractor management plan submitted by the Contractor. It also includes all other qualifications/proposals documents: that is all documents and materials delivered by County to Contractor in connection with Contractor’s submission of qualifications and submission of a proposal for the contract.

“Sales Taxes” - Sales taxes are deemed to include all sales, use, excise, consumer, franchise, and other taxes which are legally enacted when negotiations of a Job Order Contract Price are concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

“Schedule of Values (SOV)” A spreadsheet with estimated costs organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the Contractor’s construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable. The SOV may be output from the Project Schedule if the Project Schedule is cost-loaded.

“Start Date” means, as to a Job Order, the date specified in the Notice to Proceed for that Job Order for Contractor to begin the Work.

“Subcontractor” means a subcontractor of the Contractor for any of the Work included in a Job Order or any subcontractor at any tier of such a subcontractor.

“Substantial Completion” means when the Work, or an agreed upon portion of the Work, is sufficiently complete so that County can occupy and use the Project or a portion thereof for its intended purposes. The conditions of Substantial Completion that apply to a specific Job Order will be listed in the Notice to Proceed Letter for that Job Order.

“Supplier” means a person providing materials, supplies or equipment to be included in the Work to Contractor or any Subcontractor.

“Technical Specifications” means the general provisions and the detailed specifications prescribed by County describing the materials and performance required for each individual Job Order.

“Work” and **“Work (Construction)”** mean all labor, materials, supplies, tools, equipment, transportation, site cleanup, storage and disposal of construction debris, supervision, management, overhead and profit, bonds, insurance, licenses and permits, taxes, intellectual property royalty and license fees, all other activities and items required to perform the Work under a Job Order as described in the Scope of Work in the Job Order. Work does not include Pre-Construction Services in connection with a Job Order.

ARTICLE 2 – JOB ORDER DEVELOPMENT

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

- A. For Projects estimated under \$250,000, and during emergency situations County will notify the selected Contractor of a new Project and may or may not schedule a site visit to explain and discuss the project. Design documents, if any, will be provided to the Contractor by the time of the site visit. Once the parties agree on the scope of the project, County will memorialize the agreement in a Job Order and deliver it to Contractor who shall have five (5) working days, unless a shorter period is specified in the Job Order, to commence construction. Unless otherwise specified by County, issuance of the Job Order shall constitute Notice to Proceed. In the event of an emergency, the requirement that a Job Order Contract be in place prior to the initiation of work is waived. During such an emergency, a Contractor may be contacted and given instructions by a County Project Manager to perform the work immediately without an approved Job Order. It is understood that the County will prepare a Job Order as soon as practicable following said instructions.
- B. For Projects estimated at \$250,000 or greater, the County will notify all Job Order Contractors under contract to County. The request shall advise all Contractors of the nature of the Work to be done and include the selection criteria and methodologies County will use to make the "best value" decision. Criteria could include lowest bid, lowest bid meeting schedule, best cost alternative(s), etc. The request letter may also include an estimate of the total dollars the County has budgeted for the Job. Contractor shall be provided an opportunity to ask questions, seek clarification and/or inspect the site, if requested. Alternatively, the County may identify in the request the date and time for a meeting or site visit to explain and discuss the Work and further refine the scope of the project. Design documents, if any, may be provided in advance or at the meeting or site visit.
- C. Upon establishment of the scope of the needed Project, each Contractor interested in performing the Job Order shall prepare its proposal for accomplishment of the Project utilizing the Contractor's best estimating practices to develop a fixed, lump sum or not-to-exceed Guaranteed Maximum Contract Price to complete the Work, including any additional Pre-Construction Services (if necessary). See Article 3 for a description of required proposal items. Quotes will be in letter format including an attached table listing major construction components (ie. Mobilization, grade control structures, soil cement bank protection, excavation, clearing/grubbing, subgrade prep., etc.) with quantities, unit cost, total cost as columns in the table. The time for submittal of proposals for individual Projects shall not exceed seven (7) working days unless approved by the County.
- D. County shall review each Contractor's proposal and may either accept the proposals or negotiate modifications to the proposals until such time the County is satisfied with each of the proposals. Such negotiations shall be limited to value alternatives of costs less than 20% of the original quotation price. Scope modifications or value alternatives that are equal to or greater than 20% shall require County to modify the original request and rebid to the benefit of all interested Contractors under this Contract.

- E. The Job Order will then be issued by County to the Job Order Contractor that submitted the best quotation (including schedule and/or value engineering alternatives), as measured by the criteria in the request for quotation. Past performance on earlier Job Orders, including past performance on cost or price control, may be used to determine award of future Job Orders. Quotations must be reasonably prepare, accurately describing the work including the types of materials used, quantities and other cost elements. In the instance the quotation is deemed to be unreasonable or inaccurate, the Project Manager can exercise the option to reject the bid (even if it is the lower bid) or request a revised quotation. An alternative Contractor will be chosen for the work.
- F. Upon issuance of each Job Order by County, the Job Order Contract will be binding upon the Contractor and County. A Job Order is considered "issued" when delivered to the Contractor or sent by facsimile copy, in which case the Job Order will be "issued" when sent to Contractor's fax number and County's fax machine prints an acknowledgement of receipt or County.

ARTICLE 3 – JOB ORDER PROPOSAL CONTENT

Although specific Job Orders will vary, the content of Job Order proposals provided by each Contractor under this contract will generally include the following:

- A. The description of the Scope of the Work;
- B. The duration of the work, including CPM schedule (if required);
- C. The Contract Price for Work (Construction), including prices for various proposed alternatives;
- D. The Contract Price of Pre-Construction Services by Contractor (if any);
- E. The name of the Contractor Representative for the Project;
- F. The Drawings and Specifications (if any) used to prepare the quotation;
- G. Any assumptions or exclusions that qualify the Contractor's price, including how many days the proposal is valid for;
- H. A risk analysis of the project that identifies potential risks to the cost or schedule, or other items which the Owner may need to be informed of that will impact a successful outcome;
- I. If any Shop Drawings, Product Data and/or Samples are required for the Job Order, the date for delivery of each required item;
- J. A statement of which, if any, of the following are required: Preconstruction Conference, Weekly Progress Meetings, Field Office, Storage Enclosure, Materials and Equipment Handling Facility, Submittals, Shop Drawings, Product Data, Equipment List, Samples, Project Manual, Schedule of Values, Construction Progress Schedule, Narrative Reports, Progress Report, Progress Charts, Progress Photographs, Materials Status Report, Construction Diagram, Construction Status Report, Operation and Maintenance Data, Operating Maintenance Instructions and Parts List, and As-Built Drawings.

Each Job Order will be interpreted to include all items reasonably necessary to complete the Project as described in the Scope of the Work of the Job Order. All Work shall be performed in a professional manner and all materials used shall be new, of the highest quality and of the type best adapted to their purpose, unless otherwise specified.

ARTICLE 4 – JOB ORDER NEGOTIATION

- A. Job Order Pricing – The Contract Price shall include all costs, including overhead, pre-construction, mobilization, indirect costs, etc., incidental to performing the work and completing the job order and with the exception of any changes in the scope of work as directed by the Owner as defined by ARTICLE 6, no additional payments will be made.
- B. Pre-Construction Services (if any) – If Contractor is providing Pre-Construction Services, the proposal must be supported by documentation to establish that adequate involvement by Contractor in the planning, engineering and design work will be performed to satisfy the requirements of the project. Required services may include (but are not limited to) constructability reviews, materials recommendations, alternatives analysis, development of cost and schedule estimates and tradeoffs, and similar services.

ARTICLE 5 – JOB ORDER MANAGEMENT

- A. Planning, Scheduling, Monitoring – Planning, scheduling and progress monitoring are essential functions of Contractor. If required by the Job Order, after the issuance of the Job Order Contractor shall prepare and submit to County a Schedule of Values allocating the Contract Price among the various portions of the Work for purposes of progress payments. The format of the Schedule of Values shall be as specified by County. In addition, if required by the Job Order, Contractor shall submit a CPM-based Construction Schedule that shall be maintained and updated for the duration of the project.

- 1. Project Management

- Contractor shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work under each Job Order with such diligence as to maintain a steady rate of progress or, if there is a Construction Progress Schedule, the rate of progress indicated on the Construction Progress Schedule, to prevent work stoppage, and to ensure completion of the Project under each Job Order within the Contract Time.

- 2. Daily Log

- Contractor shall maintain a Daily Log of construction activities using a form approved by County. Contractor shall include in the log all significant issues or problems affecting progress and completion of any Job Order.

- If required in a Job Order, Contractor shall provide copies of the entries in the Daily Log to County no later than the morning of the next business day. The Daily Log does not constitute written notice to the County when such notice is required by the Contract.

- 3. Progress Schedule and Float

- If Contractor submits an original or updated schedule which shows the Work under a Job Order and/or individual milestone(s) completing earlier than required by the adjusted Final Completion Date in the Job Order, the differences between the forecasted early completion and the required Final Completion Date shall be considered Project-owned float available for use by both County and Contractor.

- B. Reporting

- 1. Monthly Reporting

- If required by the Job Order, on the last business day of each calendar month, Contractor will deliver to the County a Monthly Narrative Report. The Report shall include a description of all current, issued, and in process Job Orders, the status of each and anticipated problem areas, delaying factors and their impact, and an explanation of corrective action(s) taken or proposed.

The Report shall include for each job order the Start Date, the Final Completion Date, and, for Job Orders with more than sixty (60) days between such dates, either (A) the current Progress Schedule for the Project, or (B) the date by which Contractor is to submit a proposed Progress Schedule for approval by County.

If the Project under any Job Order is behind schedule in any month, Contractor's Narrative Report shall indicate precisely what measures it will take in the next thirty days to put the Work back on schedule.

If requested by County, Contractor shall meet with County to review the monthly Update Report and to discuss any issues.

2. Contractor Responsibility

To the extent required in the Job Order for the Project, Contractor shall be responsible to prepare, submit and maintain the daily log, CPM schedules and Narrative Reports indicated above; failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain logs, schedules reports shall be solely Contractor's responsibility and shall not be charged to County.

ARTICLE 6 – CHANGES AND CHANGED CONDITIONS

- A. Owner Directed Changes in the Scope of Work – By written directive at any time, County may make any changes within the general scope of the Work under a Job Order or issue additional instructions, require additional or modified Work or direct deletion of Work. Contractor shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the County in the form of a completed and executed Change Order. If Contractor proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this article, Contractor waives all rights or claims Contractor may have as a result of the change. The County's right to make changes shall not invalidate the Agreement or Job Order Contract Documents or relieve Contractor of any liability. Any requirement of notice of change to the Surety shall be the responsibility of Contractor.

ARTICLE 7 – DELAYS AND TIME EXTENSIONS

- A. Demonstration of Delay – It is agreed that no time extensions shall be granted nor delay damages paid by County unless the delay can be clearly demonstrated by Contractor on the basis of the updated Critical Path Schedule, cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of the Work or other reasonable means.
- B. Application of Float – Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the adjusted Final Completion Date. Since float time within the construction schedule is jointly owned, it is acknowledged that County-caused delays on the Project may be offset by County-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.).
- C. In such an event, Contractor shall not be entitled to receive a time extension or delay damages until all County-caused time savings are exceeded and the Final Completion Date or milestone date is also exceeded

ARTICLE 8 – PERFORMANCE MEASUREMENT

- A. Performance Assessment – Promptly after final completion of the Work under each Job Order, County will complete a written evaluation of Contractor's performance of the Work. The evaluation shall consist of completion by County of the Performance Quality Evaluation Form attached as **Attachment 1** to these **SPECIAL CONDITIONS**.

- B. Feedback – The completed Performance Evaluation will be shared with Contractor as a means of providing feedback regarding Contractor's cost, schedule and quality performance. Contractor may submit additional information, comment, recommendations or rebuttal for association with the Performance Evaluation.
- C. Comparative Assessment – Contractor's cost, schedule and quality performance of Job Orders under this Contract will be compared periodically to the performance of other like-situated Contractors. The results of these comparisons will be provided to Contractor. Contractor understands that these assessments will necessarily involve significant subjectivity. Contractor agrees to this process and agrees further that the application of subjectivity in these assessments shall not form the basis for any claim or cause of action of any form whatsoever.
- D. Consideration of Renewal – Contractor's record of cost, schedule and quality performance and comparative assessments shall be significant considerations in the County's determination whether to renew Contractor's participation in the Agreement. Contractor agrees that any determination by County not to renew its participation based on performance will be at the sole discretion of County.

ARTICLE 9 – SUBCONTRACTORS

- A. Subcontractor Selection – Contractor will select Subcontractors in accordance with the Subcontractor Selection Plan incorporated into this Contract by reference.
- B. Subcontracts
 - 1. Contractor agrees to deliver to each Subcontractor and to cause each Subcontractor to deliver to each sub-subcontractor a copy of this Agreement and the Job Order Contract Documents relating to the Work of the Subcontractor or sub-subcontractor. Contractor agrees to include in its contract with each Subcontractor all provisions of the Agreement and Job Order documents required to be included in those contracts and to cause its Subcontractors to include the same provisions in their contracts with their sub-subcontractors at all tiers.
 - 2. Each Subcontract, or other Agreement, with any subcontractor for any job order shall include the address or location of the work.
- C. Assignment Upon Termination – Contractor hereby assigns to County (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work under each Job Order, which assignment will be effective upon termination of the Contract by the County and only as to those subcontracts and purchase orders which the County assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by Contractor to the County and its assigns. Such assignment is part of the consideration to County for entering into the Contract with Contractor and may not be withdrawn prior to final completion of the Work under each Job Order.

ARTICLE 10 – TERMINATION FOR CAUSE

Anything in the Contract Documents to the contrary notwithstanding, any termination of this Agreement shall automatically terminate all Job Orders as to which the Work is not complete, except that upon any termination of this Contract, County may elect by written notification to Contractor to continue in effect any or all then uncompleted Job Orders in which event this Agreement shall continue in effect as to each continued Job Order and shall terminate upon completion of the last such Job Order.

Anything in the Agreement to the contrary notwithstanding, (i) all indemnification provisions, reimbursement provisions and payment provisions shall survive termination of this Agreement under this Article and shall continue in effect indefinitely without termination, and (ii) all guarantee and warranty provisions and all provisions in the Agreement Documents requiring Contractor to correct any Work not in accordance with the relevant Job Order Documents shall not terminate upon termination of this Agreement and shall continue in effect thereafter in accordance with the terms of each such provision.

- A. Cause for Termination – In addition to the termination rights of the County in **ARTICLE 18 – TERMINATION OF CONTRACT FOR DEFAULT** of the Agreement between County and Contractor, the County may terminate any or all Job Orders and/or the overall Job Order Agreement at the election of County, upon the occurrence of any one or more of the following events:
1. If Contractor refuses or fails to prosecute the Work under any Job Order with such diligence as will ensure its completion within the Contract Time for that Job Order; or if the Contractor fails to complete the Work under any Job Order within the Contract Time for that Job Order;
 2. If Contractor or any of its key Subcontractors under any Job Order is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if Contractor or any of its key Subcontractors under any Job Order or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning Contractor or any of its key Subcontractors under any Job Order, or if a trustee or receiver is appointed for Contractor or any of its key Subcontractors under any Job Order or for any of Contractor's property on account of Contractor or a key Subcontractor under any Job Order, and, in each case, Contractor or its successor in interest or its respective key Subcontractor under any Job Order does not provide reasonably adequate assurance of future performance in accordance with the Contract Documents within 10 days after receipt of a request for assurance from the County;
 3. If Contractor persistently fails to supply sufficient skilled workmen or suitable materials or equipment for the Work under any Job Order;
 4. If, as to any Job Order, Contractor fails to make prompt payments to Subcontractors or Suppliers at any tier, or for labor, materials or equipment;
 5. If Contractor fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;
 6. If, as to any Job Order, Contractor fails to follow any reasonable instructions by the County, which are consistent with the Construction Documents;
 7. If, as to any Job Order, Contractor performs Work which deviates from the Job Order Documents and neglects or refuses to correct rejected Work; or
 8. If, as to any Job Order, Contractor otherwise violates in any material way any provisions or requirements of this Agreement or any Job Order Contract Documents.
- B. Notice and Cure Period – If County determines that one or more events of default described in **Article 10(A)** has occurred, the County may elect to terminate any or all Job Orders and/or terminate Contractor's participation in the overall Agreement. To do this, the County must first give Contractor and its Surety written notice of the events of default ("**Notice of Default**") and allow Contractor and its Surety ten (10) calendar days to cure the events of default. If the events of default are not cured within the ten (10) calendar days, County may terminate any or all Job Orders and/or terminate Contractor's participation in the overall Agreement by written notice to Contractor and its Surety.
- C. Completion of Terminated Work
1. If any Job Order or participation in the Agreement is terminated, County may take over the Work under terminated Job Orders and prosecute them to completion, by contract or otherwise, and may exclude Contractor from the sites. The County may take possession of the Work under the terminated Job Orders and of all of Contractor's tools, appliances, construction equipment, machinery, supplies and plant which may be on the site of the Work for each terminated Job Order, and use the same to the full extent they could be used by Contractor, all without liability to Contractor.

In exercising the County's right to prosecute the completion of the Work, the County may also take possession of all materials and equipment stored at the site or for which the County has paid Contractor but which are stored elsewhere. The County may use the foregoing items to finish the Work as the County deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

2. If any Job Order is terminated, the County may demand that Contractor's surety take over and complete the Work under the Job Order. The County may require that in so doing, the Contractor's surety not utilize Contractor in performing the Work. Upon the failure or refusal of Contractor's surety to take over and begin completion of the Work within 20 days after the demand, the County may take over the Work and prosecute it to completion as provided above.
3. As to any terminated Job Order, County shall have the option of requiring any, all or none of the Subcontractors and Sub-subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.
4. If County takes over the Work under any terminated Job Order, unexecuted orders entered into by Contractor for performance of any part of the Work will be effective upon acceptance by County in writing and only as to those subcontracts and purchase orders which the County designates in writing.

D. Payment for Terminated Work

1. If, as to any terminated Job Order, the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work and all County damages including, without limitation, liquidated damages and compensation for additional professional and Contractor services ("**County's Termination Costs**"), such excess shall be used to pay Contractor for the Work it performed and for which Contractor has not been paid previously and the amount shall be determined using the Tasks, Unit Prices, Coefficients, and Other Tasks and Other Prices included in the Job Order. If, as to any terminated Job Order, the County's Termination Costs exceed the unpaid balance of the Contract Price, Contractor shall immediately upon demand pay the difference to the County or the County may set off the amount against any other amounts owing to Contractor for any cause whatsoever, whether current or future.
2. In exercising the County's right to prosecute the completion of the Work under any terminated Job Order, the County shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs to be incurred in completing the Work, and the County shall not be required to obtain the lowest figure for Work performed in completing the Project. If the County holds a competitive procurement for remedial Work or completion of the Work under a terminated Job Order, Contractor shall not be eligible for the award of such contracts.
2. Contractor shall be liable for any damage to the County resulting from the termination or from Contractor's refusal or failure to complete the Work under any terminated Job Order and for all costs necessary for repair and completion of the Project under each terminated Job Order over and beyond the Contract Price. Contractor shall be liable for all legal fees and costs required to enforce the provisions of the Agreement and/or Job Order Documents.

- E. Nonexclusive Remedies – In the event any Job Order or Contractor's participation in the Agreement is terminated, the termination shall not affect any other rights of the County against Contractor. The rights and remedies of County under this **Article 10** are in addition to any other rights and remedies provided by law or under the Agreement or Job Order Contract Documents. Any retention or payment of monies to Contractor by County will not release Contractor from liability.

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

ARTICLE 11 – TERMINATION FOR CONVENIENCE OF THE COUNTY

The County, by written notice to Contractor, may terminate any Job Order or the overall Agreement in whole or in part if sufficient appropriated or other funds are not available or the County determines, in the sole discretion of the County, that such termination is in the County's best interest. In such case, Contractor shall be paid for all Work under each Job Order for which Contractor has not been paid previously. Contractor shall also be paid reasonable termination expenses. In no event shall such payments as to any Job Order, exclusive of termination expenses, exceed the total Contract Price for the Job Order as reduced by payments previously made to Contractor and as further reduced by the value of the Work as yet not completed. Since profit and overhead are built into the Contract Price for each Job Order, Contractor shall not be entitled any additional profit or overhead on Work performed and in addition, Contractor shall not be entitled to any profit or overhead on Work not performed.

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ATTACHMENT 1 TO EXHIBIT C (2 pages) PERFORMANCE EVALUATION FORM

FOR OFFICIAL USE ONLY (WHEN COMPLETED)

PERFORMANCE EVALUATION (CONSTRUCTION)		1. CONTRACT NUMBER		
		2. CEC NUMBER		
IMPORTANT: Be sure to complete Part III - Evaluation of Performance Elements on reverse.				
PART I - GENERAL CONTRACT DATA				
3. TYPE OF EVALUATION (X one)		4. TERMINATED FOR DEFAULT		
<input type="checkbox"/> INTERIM (List percentage _____ %) <input type="checkbox"/> FINAL <input type="checkbox"/> AMENDED		<input type="checkbox"/>		
5. CONTRACTOR (Name, Address, and ZIP Code)		6.a. PROCUREMENT METHOD (X one)		
		<input type="checkbox"/> SEALED BID <input type="checkbox"/> NEGOTIATED		
		b. TYPE OF CONTRACT (X one) <input type="checkbox"/> FIRM FIXED PRICE <input type="checkbox"/> COST REIMBURSEMENT <input type="checkbox"/> OTHER (Specify)		
7. DESCRIPTION AND LOCATION OF WORK				
8. TYPE AND PERCENT OF SUBCONTRACTING				
9. FISCAL DATA	▶ a. AMOUNT OF BASIC CONTRACT \$	b. TOTAL AMOUNT OF MODIFICATIONS \$	c. LIQUIDATED DAMAGES ASSESSED \$	d. NET AMOUNT PAID CONTRACTOR \$
10. SIGNIFICANT DATES	▶ a. DATE OF AWARD	b. ORIGINAL CONTRACT COMPLETION DATE	c. REVISED CONTRACT COMPLETION DATE	d. DATE WORK ACCEPTED
PART II - PERFORMANCE EVALUATION OF CONTRACTOR				
11. OVERALL RATING (X appropriate block)				
<input type="checkbox"/> OUTSTANDING <input type="checkbox"/> ABOVE AVERAGE <input type="checkbox"/> SATISFACTORY <input type="checkbox"/> MARGINAL <input type="checkbox"/> UNSATISFACTORY (Explain in Item 20 on reverse)				
12. EVALUATED BY				
a. ORGANIZATION (Name and Address (Include ZIP Code))		b. TELEPHONE NUMBER (include Area Code)		
c. NAME AND TITLE		d. SIGNATURE	e. DATE	
13. EVALUATION REVIEWED BY				
a. ORGANIZATION (Name and Address (Include ZIP Code))		b. TELEPHONE NUMBER (include Area Code)		
c. NAME AND TITLE		d. SIGNATURE	e. DATE	
14. AGENCY USE (Distribution, etc.)				

FOR OFFICIAL USE ONLY (WHEN COMPLETED)

PART III - EVALUATION OF PERFORMANCE ELEMENTS													
N/A = NOT APPLICABLE O = OUTSTANDING A = ABOVE AVERAGE S = SATISFACTORY M = MARGINAL U = UNSATISFACTORY													
15. QUALITY CONTROL	N/A	O	A	S	M	U	16. EFFECTIVENESS OF MANAGEMENT	N/A	O	A	S	M	U
a. QUALITY OF WORKMANSHIP							a. COOPERATION AND RESPONSIVENESS						
b. ADEQUACY OF THE CQC PLAN							b. MANAGEMENT OF RESOURCES/ PERSONNEL						
c. IMPLEMENTATION OF THE CQC PLAN							c. COORDINATION AND CONTROL OF SUBCONTRACTOR(S)						
d. QUALITY OF QC DOCUMENTATION							d. ADEQUACY OF SITE CLEAN-UP						
e. STORAGE OF MATERIALS							e. EFFECTIVENESS OF JOB-SITE SUPERVISION						
f. ADEQUACY OF MATERIALS							f. COMPLIANCE WITH LAWS AND REGULATIONS						
g. ADEQUACY OF SUBMITTALS							g. PROFESSIONAL CONDUCT						
h. ADEQUACY OF QC TESTING							h. REVIEW/RESOLUTION OF SUBCONTRACTOR'S ISSUES						
i. ADEQUACY OF AS-BUILTS							i. IMPLEMENTATION OF SUBCONTRACTING PLAN						
j. USE OF SPECIFIED MATERIALS													
k. IDENTIFICATION/CORRECTION OF DEFICIENT WORK IN A TIMELY MANNER													
17. TIMELY PERFORMANCE							18. COMPLIANCE WITH LABOR STANDARDS						
a. ADEQUACY OF INITIAL PROGRESS SCHEDULE							a. CORRECTION OF NOTED DEFICIENCIES						
b. ADHERENCE TO APPROVED SCHEDULE							b. PAYROLLS PROPERLY COMPLETED AND SUBMITTED						
c. RESOLUTION OF DELAYS							c. COMPLIANCE WITH LABOR LAWS AND REGULATIONS WITH SPECIFIC ATTENTION TO THE DAVIS-BACON ACT AND EEO REQUIREMENTS						
d. SUBMISSION OF REQUIRED DOCUMENTATION													
e. COMPLETION OF PUNCHLIST ITEMS							19. COMPLIANCE WITH SAFETY STANDARDS						
f. SUBMISSION OF UPDATED AND REVISED PROGRESS SCHEDULES							a. ADEQUACY OF SAFETY PLAN						
g. WARRANTY RESPONSE							b. IMPLEMENTATION OF SAFETY PLAN						
							c. CORRECTION OF NOTED DEFICIENCIES						
20. REMARKS (Explanation of unsatisfactory evaluation is required. Other comments are optional. Provide facts concerning specific events or actions to justify the evaluation. These data must be in sufficient detail to assist contracting officers in determining the contractor's responsibility. Continue on separate sheet(s), if needed.)													

DD FORM 2626 (BACK), JUN 94

END ATTACHMENT 1 TO EXHIBIT C – PERFORMANCE EVALUATION FORM

END EXHIBIT C – SPECIAL CONDITIONS- MULTIPLE AWARD JOB ORDER CONTRACTS

EXHIBIT D (3 pages)
SUPPLEMENTAL PROVISIONS FOR FEDERAL AID
CONSTRUCTION CONTRACTS

These provisions apply only to work subject to Federal-Aid. A copy of this Exhibit "D" and a current Wage Determination shall be attached to the Job Order for any federally funded project. Current wage determinations may be found at <http://www.wdol.gov/dba.aspx>

ARTICLE 1 – DAVIS BACON ACT WAGE DETERMINATION

Contractor shall pay wages in accordance with the most current Davis Bacon rates in effect in Pima County, Arizona at the time the Job Order is negotiated. Contractor shall provide to County at the time of Job Order negotiation, an adjustment to each of the unit prices for the line items that require payment Davis-Bacon wages. Contractor shall include a copy of the most recent Davis-Bacon Wage Determination in their proposal for incorporation into the Job Order's terms and conditions. The most current Davis-Bacon Act Wage Determinations may be found online at <http://www.wdol.gov/dba.aspx>

ARTICLE 2 – SUBCONTRACTORS

In addition to the requirements set forth in Article 10 of the Master Agreement, Contractor shall ensure that no subcontracts are awarded at any tier, to any individual, firm, partnership, joint venture, or any other entity regardless of the form of business organization, listed in the Federal Government's System for Award Management (SAM) system (<https://www.sam.gov/portal/public/SAM>) with an active exclusion.

ARTICLE 3 – INDEMNIFICATION

To the fullest extent permitted by law, Contractor will indemnify and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of Contractor, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article shall not extend to the negligence of County, its officers, employees, agents or indemnitees.

All warranty and indemnification obligations under this contract shall survive expiration or termination of the contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with State statute will be interpreted and applied as if it were consistent with State statute.

Upon request, Contractor may fully indemnify and hold harmless any private property owner granting a right of entry to Contractor for the purpose of completing the project. The obligations under this Article do not extend to the negligence of County, their agents, employees or indemnitees.

ARTICLE 4 – OWNERSHIP OF DOCUMENTS

In addition to the requirements set forth in Article 24 of the Master Agreement, The Granting Agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this Agreement or any subcontract; and (b) Any rights of copyright to which Contractor or County acquires ownership under this Agreement.

ARTICLE 5 – BOOKS AND RECORDS

In addition to the requirements set forth in Article 25 of the Master Agreement, Contractor shall also keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by the Granting Agency and the Comptroller General of the United States.

ARTICLE 6 – CHANGED CONDITIONS

(1) Differing site conditions.

- (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- (ii) Upon written notification, County will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. County will notify Contractor of the determination whether or not an adjustment of the contract is warranted.
- (iii) No contract adjustment which results in a benefit to Contractor will be allowed unless Contractor has provided the required written notice.
- (iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

(2) Suspensions of work ordered by County.

- (i) If the performance of all or any portion of the work is suspended or delayed by County in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, Contractor shall submit to County in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- (ii) Upon receipt, County will evaluate Contractor's request. If County agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, County will make an adjustment (excluding profit) and modify the contract in writing accordingly. Contractor will be notified of County's determination whether or not an adjustment of the Contract is warranted.
- (iii) No contract adjustment will be allowed unless Contractor has submitted the request for adjustment within the time prescribed.
- (iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this Contract.

(3) Significant changes in the character of work.

- (i) County reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and Contractor agrees to perform the work as altered.

- (ii) If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against Contractor in such amount as County may determine to be fair and equitable.
- (iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract.
- (iv) The term "significant change" shall be construed to apply only to the following circumstances:
 - (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - (B) When a major item of work, as defined elsewhere in the Contract, is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original Contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

END EXHIBIT D - SUPPLEMENTAL PROVISIONS FOR FEDERAL AID CONSTRUCTION CONTRACTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/22/2022

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).

PRODUCER Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago, IL 60601	CONTACT NAME: Aon Client Services PHONE (A/C, No. Ext): 866-283-7122 E-MAIL ADDRESS: Acs.chicago@aon.com	FAX (A/C, No): 800-363-0105	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED KONE Inc. Attn: insurancerequests@kone.com One KONE Court Moline IL 61265	INSURER A: Old Republic Insurance Company		24147
	INSURER B:		
	INSURER C: AXIS Surplus Insurance Company		26620
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER: 72087377

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"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MWZY 57732	1/1/2023	1/1/2024	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$2,000,000
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MWTB 20018	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N		MWC 115397 15 (AOS) MWXS 822 15 (OH)	1/1/2023 1/1/2023	1/1/2024 1/1/2024	<input checked="" type="checkbox"/> PER STATUTE	OTH-ER
A		N	N/A				E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000
C	Excess Auto & Employer's Liability Other Policies			P-001-001065181-01			\$5M Ea. Occurrence / \$5M Aggregate See Schedule of Other Policies	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Contract No. Master Pima County - Project/Location: Locations under terms of agreement between County of Pima and KONE
 As respects Excess Liability, if evidenced above, Aon Risk Solutions U.S. is generating & distributing this COI in an administrative capacity.
 Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees are listed as additional insured for general liability and auto liability. Additional Insured entities are also granted a waiver of subrogation for the policies indicated.
 Coverage is Primary and Non-Contributory to any other insurance held by Additional Insureds.

CERTIFICATE HOLDER

Pima County, State of Arizona
 150 W. Congress, 3rd Floor
 Tucson AZ 85701

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Central, Inc.

Aon Risk Services Central, Inc.

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ACORD 25 (2016/03)

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Name of Person(s) or Organization(s):

All Persons or Organizations as Required by Written Contract.

With respect to **COVERED AUTOS LIABILITY COVERAGE, Who Is An Insured** is changed with the addition of the following:

Each person or organization shown in the Schedule for whom you are doing work is an "insured". But only for "bodily injury" or "property damage" that results from the ownership, maintenance or use of a covered "auto" by:

1. You;
2. an "employee" of yours; or
3. anyone who drives a covered "auto" with your permission or with the permission of one of your "employees".

However, the insurance afforded to the person or organization shown in the Schedule shall not exceed the scope of coverage and/or limits of this policy. Notwithstanding the foregoing sentence, in no event shall the insurance provided by this policy exceed the scope of coverage and/or limits required by the contract or agreement.

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IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED AND PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Designated Person(s) or Organization(s):

All Persons or Organizations where Required by Written Contract.

- A. SECTION II – COVERED AUTOS LIABILITY COVERAGE**, paragraph **1. Who Is An Insured** is amended to include the person(s) or organization(s) shown in the above Schedule as an additional “insured”, but only with respect to “accidents” arising out of your work while being performed for such person(s) or organization(s).
- B.** The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This policy's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to the “insured” person(s) or organization(s) shown in the above Schedule provided that:

1. Such “insured” is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such “insured”.

KONE Holdings, Inc.
MWTB 20018
01/01/2023 — 01/01/2024

IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Name of Person or Organization:

All Persons or Organizations as Required by Contract or Agreement.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The **Transfer Of Rights Of Recovery Against Others To Us** Condition is changed by adding the following:

We waive any right of recovery we may have against the person(s) or organization(s) shown in the Schedule because of payments we make for injury or damage. This waiver applies only to the person or organization shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
As Required by Written Contract unless specifically endorsed on another endorsement attached to this Policy.	On File With Company

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- ELECTRONIC DATA LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
- POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

<p>Name Of Person(s) Or Organization(s):</p> <p>All Persons or Organizations as required by Written Contract or Agreement.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

POLICY NUMBER: MWC 115397 15 (AOS)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

SCHEDULE

ALL PERSONS OR ORGANIZATIONS AS REQUIRED BY CONTRACT OR AGREEMENT.

THIS FORM DOES NOT APPLY IN THE FOLLOWING STATES: CA, KY, NJ, TX, UT

KONE INC.
MWC 115397 15 (AOS)
01/01/2023 — 01/01/2024

DATE OF ISSUE: 01/01/2023