

OFFER AGREEMENT

Solicitation # 162058

Title: Elevator Maintenance and Repair Services

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1. INTENT:

This document is intended to establish an "As Required" indefinite delivery/indefinite quantity (IDIQ) "Master" agreement contract to provide Pima County ("COUNTY") with elevator maintenance and repair services as the COUNTY may order from time to time by issue of Delivery Order (DO) or Delivery Order Maximo (DOM) pursuant to a resulting executed and effective agreement. As defined by the attached Pima County Standard terms and Conditions (STC) this agreement is non-exclusive and may be terminated for any reason without penalty or cost to Pima County.

This Agreement is established pursuant to Cooperative Agreement with US Communities Program under Contract # GENRL-201414653-00 between the City and County of Denver, State of Colorado, and KONE Inc. for elevator maintenance and repair services. The US Communities Contract is attached as EXHIBIT A.

All Goods and Services offered or provided pursuant to the resulting executed and effective agreement shall conform to the requirements defined by or referred to by the solicitation documents including Solicitation Addenda, Instructions to Bidders, Standard Terms and Conditions and this Offer Agreement all of which are incorporated herein.

It is the intent of all parties to this agreement that this document, including all attachments and documents incorporated by reference, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

2. AGREEMENT TERM EXTENSIONS-RENEWALS & REVISIONS:

The initial term of the agreement will be for a one-year period and include four (4) one-year renewals that may be exercised upon the written agreement of the parties as follows:

Proposed extension or renewals of the Contract if included in the Contract and revisions to the Contract shall be made through the issuance by COUNTY to CONTRACTOR of a revised Blanket Contract-Master Agreement, Purchase or Delivery Order document setting forth the requested changes. Failure by CONTRACTOR to object in writing to the proposed revisions, terms, conditions and/or specifications within ten (10) calendar days of issuance by COUNTY shall signify acceptance by CONTRACTOR and the amendment shall be binding upon the parties, effective on the date of issuance.

3. CONTRACTOR MINIMUM QUALIFICATIONS:

The CONTRACTOR certifies that they are competent, willing and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this Offer Agreement. The CONTRACTOR further stipulates that they possess licenses required by the laws and rules of the United States and the State of Arizona to perform the scope of services set forth in this Offer Agreement throughout the term of this agreement. The CONTRACTOR agrees to provide notification of any change in licensure status or sanctions taken against the CONTRACTOR during the contract period.

CERTIFY MINIMUM QUALIFICATIONS BY CHECKING THE RESPONSE BOX (YES OR NO) AND PROVIDING APPLICABLE INFORMATION OR DOCUMENTATION. A "NO" ANSWER WILL BE THE CAUSE OF YOUR OFFER TO BE REJECTED AS NON-RESPONSIVE.

MQ Line#	MINIMUM QUALIFICATIONS	CHECK <input checked="" type="checkbox"/> appropriate response certifying agreement with the requirement.
1	The CONTRACTOR certifies that they are competent, willing and responsible for performing the services and/or providing the products in accordance with all requirements of the solicitation and this Offer Agreement.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

4. PRODUCT OR SERVICE SPECIFICATIONS & SCOPE:

All goods and services shall conform to Exhibit A: US Communities Contract # GENRL-201414653-00 for elevator maintenance and repair services and as modified or added to by the following specifications:

Exhibit B: Pima County Special Requirements.

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SUSTAINABILITY: In accordance with BOS Resolution 2007-84, Pima County values and encourages sustainable practices. Please **CHECK** which of the following your business incorporates:

- Waste prevention/reduction or material recycling/reuse?
- Alternative energy/fuels (such as solar/wind energy, bio-diesel, alternative fuels, hybrid vehicles) in your program's preparation, transportation, and demonstration?
- Environmentally preferable materials (such as recycled materials; locally produced/manufactured products)?
- Sustainable practices that lessen impact on non-renewable resources and global climate change (such as reduction in water/energy/paper use; minimization of hazardous materials; use of compressed/flexible work schedules)?
- Other practices which coincide with the County's definition of sustainable practices (such as alternative modes of transportation; transportation minimization; life-cycle costs; product/packaging "take back" practices; preference to firms located within Pima County)?

5. OFFER ACCEPTANCE AND ORDER RELEASES:

Offer(s) will be accepted and executed by the COUNTY by issue of a Master Agreement (MA) and effective on the document's date of issue without further action by either party. Master Agreement (MA) and Contract documents will document the terms of the agreement.

Order(s) for products or services pursuant to an executed Master Agreement will be made by COUNTY by issue of Delivery Order (DO) or Delivery Order Maximo (DOM) documents. Order documents will be furnished to CONTRACTOR via facsimile, e-mail or telephone. If the order is given verbally, the County Department that issued the order will transmit a confirming order document to the CONTRACTOR within five workdays of the date the verbal order is given.

CONTRACTOR is prohibited from supplying materials or services pursuant to the resulting agreement that are not documented or authorized by a Delivery Order (DO) or Delivery Order Maximo (DOM) at the time of provision. The CONTRACTOR agrees that the COUNTY accepts no responsibility regarding this agreement for control or payment for materials or services not documented by a COUNTY Delivery Order (DO) or Delivery Order Maximo (DOM).

The CONTRACTOR agrees to establish, monitor, and manage an effective agreement administration process that assures compliance with all requirements of the agreement. In particular, the respondent agrees that they shall not provide goods or services in excess of the executed agreement items, item quantity, item amount, or agreement amount without prior written authorization by agreement revision properly executed and issued by the COUNTY. Any items provided in excess of that stated in the agreement shall be at the CONTRACTOR's own risk. CONTRACTOR shall decline verbal requests to deliver items in excess of the agreement and shall report all such requests in writing to the COUNTY Procurement Department within one (1) workday of the request. The report shall include the name of the requesting individual and the nature of the request.

6. ACCEPTANCE OF SERVICES AND PRODUCTS:

Acceptance of the goods and services shall be made by the County Department designated on the issued Order in accordance with this agreement. Acceptance is required prior to commencement of Payment terms.

7. COMPENSATION & PAYMENT:

All pricing shall satisfy and conform to Pima County's Living Wage ordinance if applicable including required annual adjustments of the wage.

CONTRACTOR shall submit Request(s) for Payment/Invoices to the location and entity defined by the County's Order document.

All Invoice documents shall reference the COUNTY's Purchase Order (PO) or Delivery Order (DO) or Delivery Order Maximo (DOM) or Contract number under which the services or products were ordered. **ALL** Invoice line items shall utilize the item description, precise unit price and unit of measure defined by the COUNTY's Order or Contract document. Invoices that include line items or unit prices that do not match those documented by the COUNTY's order or contract may be returned to the CONTRACTOR unprocessed for correction. **CONTRACTOR shall not accept orders, or provide services or products that cumulatively exceed the amount.**

Standard payment terms are net 30 from the date of valid invoice document and shall not commence until receipt of goods into payment system by the receiving Department and CONTRACTOR's Invoice is received and verified by COUNTY Financial Operations.

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OPTIONAL EARLY PAYMENT DISCOUNT TERM: Pima County Administrative Procedure No. 22-35 section II.B.4 defines the County's practice regarding discounts for early payment. CONTRACTOR hereby offers the following discounts to those prices to be used for all orders issued pursuant to this agreement. County will utilize the existing payment code that best matches that offered and does not exceed the offered discount percentage. Payment days cannot be less than ten calendar days. CONTRACTOR shall submit valid invoice document consistent with the associated Purchase Order (PO), Delivery Order (DO) or Delivery Order Maximo (DOM) to County Finance Department at least seven (7) calendar days prior to the date on which the discounted payment is due. If desired, for any order issued pursuant with this agreement, the CONTRACTOR may offer early payment discounts that exceed this Standard Early Payment Discount.

Standard Early Payment Discount Percent: _____% if payment tendered within _____ Days as above

The Master Agreement (MA) or Purchase Order (PO) issued to accept CONTRACTOR's offer will define the not-to-exceed amount of the agreement.

Unit Pricing may be negotiated and established as per all requirements of the agreement for items included in the scope of the agreement and for which unit pricing has not been previously defined provided that the item and unit price are offered in writing by the CONTRACTOR.

Unless otherwise stipulated by this agreement or the COUNTY's order, all pricing shall be *F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination")*, delivered to and unloaded at the destination(s) defined by the Delivery article of this agreement or accepted *Order* for services or products and all freight cost shall be included in the offered Unit Price.

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

Price Warranty: CONTRACTOR shall give COUNTY benefit of any price reduction before actual time of shipment. CONTRACTOR agrees that all pricing given includes all costs required to conduct aggressive and active cost control and reduction activities.

Price Escalation: It is agreed that all Unit Prices include compensation for the CONTRACTOR to implement and actively conduct cost and price control activities. It is the intention of both parties that the regular preventative maintenance and upgrade services pricing in the attached **Exhibit C: Unit Prices** shall remain firm for the five (5) year contract period. The non-regular maintenance repair hourly rates contained in **Exhibit C** are subject to annual review with possible cost adjustment.

Price adjustment for non-regular maintenance, repair and upgrade services shall be no more frequently than once per year. Price adjustment shall be based on US Bureau of Labor Statistics, Consumer Price Increase (CPI), All Urban Consumers, West Urban Consumer Price Index (Series ID # CUURO400SAO, Not Seasonally Adjusted, All Items with Base Period 1982-1984=100). **The annual price adjustment shall be capped at 3%.**

CONTRACTOR shall submit a written request to COUNTY that includes supporting documents justifying requested increases at least ninety (90) calendar days prior to the desired implementation date. COUNTY will review proposed pricing and determine if it is in the best interest of COUNTY to accept the proposal. COUNTY reserves the right to continue, accept or reject the price proposal, or terminate and re-solicit the contract.

Quantities referred to are estimated quantities. COUNTY reserves the right to increase or decrease the quantities and amounts. No guarantee is made regarding actual orders issued for items or quantities during the term of the agreement. COUNTY shall not be responsible for CONTRACTOR inventory or order commitment.

Unit Prices offered shall include all incidentals and associated costs required to comply with and satisfy all requirements referred to or included in this solicitation which includes the *Instructions to Bidders, Standard Terms and Conditions* and Offer Agreement. No payments will be made for items not included in the agreement.

CONTRACTOR will provide detailed documentation in support of payment requests which shall document, be consistent with and not exceed the COUNTY's order. CONTRACTOR shall bill COUNTY within one month after the date on which CONTRACTOR's right to payment accrues ("Payment Accrual Date"), which, unless this agreement specifically provides otherwise, is the date goods are delivered, services are performed, or costs are incurred. Invoices must assign each amount billed to an appropriate line item of the COUNTY's order and document each Payment Accrual Date. COUNTY may refuse to pay any amount billed in manner or which is not conforming to the COUNTY's order. COUNTY will refuse to pay any amount billed as untimely more than six months after the Payment Accrual Date, pursuant to A.R.S. § 11-622(C).

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UNIT PRICES: see Exhibit C: UNIT PRICES.

For those items not specifically listed and priced above that may be provided within the defined scope of this agreement the CONTRACTOR shall submit Master Price List (MPL) documents, diskette or compact disc and file names or identify website address, identifying all other items offered pursuant to this agreement to include Description and Discounted Unit Price, or Unit Price and Discount % (Unit Price x Discount % = Discounted Unit Price). The resulting Unit Prices shall be of similar discount off List Prices as given for those items specifically defined above. Item Unit Prices above shall govern in case of conflict with the Master Price List.

List MPL Document by Title, MPL Media & Filenames or MPL Internet Address and Title(s)	Qty of Pages	Dated	Percentage Discount (Unit Price x Discount % = Discounted Unit Price)

8. DELIVERY:

As defined by the Standard Terms "On-Time" delivery is an essential part of the consideration to be given to the COUNTY under the agreement. Delivery will be made in accordance with the Instructions to Bidders, Standard Terms and Conditions and to the location(s) referenced on the Delivery Order (DO) or Delivery Order Maximo (DOM) or Contract.

Delivery locations: Pima County, Arizona

CONTRACTOR guarantees delivery of product or service is in compliance with this Agreement. If required to satisfy the guaranteed delivery interval CONTRACTOR will utilize premium freight method at no additional cost to the COUNTY.

9. TAXES, FEES, EXPENSES:

Articles sold to COUNTY are exempt from federal excise taxes. The COUNTY is subject to State and City sales tax. No separate charges for delivery, drayage, express, parcel post, packing, insurance, license fees, permits, costs of bonds, surcharges, or bid preparation, will be paid by COUNTY, unless expressly included and itemized by the solicitation documents.

10. OTHER DOCUMENTS

CONTRACTOR and COUNTY in entering into this Agreement have relied upon information provided or referenced by Pima County Solicitation No. 162058 including the Invitation For Bids, Instructions to Bidders, Standard Terms and Conditions, Solicitation Addenda, CONTRACTOR's Bid Offer, documents submitted by CONTRACTOR or References to satisfy CONTRACTOR Minimum Qualifications and on other information and documents submitted by the CONTRACTOR in its response to the COUNTY's Solicitation. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this contract.

11. INSURANCE:

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

- 1) **COMMERCIAL GENERAL LIABILITY – Occurrence Form**
 Policy shall include Bodily Injury, Property Damage and broad form contractual liability and XCU coverage:
 - General Aggregate \$10,000,000
 - Products – Completed Operations Aggregate \$10,000,000
 - Personal and Advertising Injury \$10,000,000
 - Each Occurrence \$10,000,000

The policy shall be endorsed to include the following additional insured language: "Pima County shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor."

If Pima County is not included as an additional insured on the CGL policy, CONTRACTOR will be required to provide an additional Owners and Contractors Protective Liability Coverage (OCP).

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OWNERS AND CONTRACTORS PROTECTIVE LIABILITY (OCP)

Policy shall include Bodily Injury, Property Damage and broad form contractual liability and XCU coverage:

Each Occurrence \$10,000,000

General Aggregate \$10,000,000

- a. Pima County, a governmental entity, its officers, officials, agents and employees shall be named insureds under the OCP policy.
- b. CONTRACTOR shall provide COUNTY with a certified copy of the policy.

2) COMMERCIAL OR BUSINESS AUTOMOBILE LIABILITY

Bodily Injury and Property Damage for any owned, hired and non-owned vehicles used in the performance of this contract.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "Pima County shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor.

3) WORKERS' COMPENSATION

Workers' Compensation insurance to cover obligations imposed by state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than: \$500,000 for each accident, \$500,000 disease for each employee, and; \$1,000,000 disease policy limit.

ADDITIONAL REQUIREMENTS:

On policies where Pima County is named as an additional insured, Pima County shall be an additional insured to the full limits of liability purchased by the CONTRACTOR even if those limits of liability are in excess of those required by the contract.

Coverage provided by the CONTRACTOR shall not be limited to the liability assumed under the indemnification provisions of this contract. CONTRACTOR's certificate(s) shall include all subcontractors as additional insureds under its policies or CONTRACTOR shall furnish, upon request by Pima County, separate certificates and endorsements for each subcontractor.

CONTRACTOR shall provide COUNTY with current executed certificates of insurance within two weeks from when the Notice of Award is issued by the County. All certificates of insurance shall guarantee the provision of thirty (30) days' prior written notice to the COUNTY of cancellation, non-renewal or material change. The additional insured shall be endorsed by the underwriter.

12. PERFORMANCE BOND: (Not Applicable)

13. ACKNOWLEDGEMENT of SOLICITATION ADDENDA: (Not Applicable)

14. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION:

Is your firm SBE certified as defined by the solicitation's 'Instruction To Bidders'? Yes No (Select one)

If 'Yes', have you included your certification document? Yes No (Select one) NOTE: If the SBE Certification document is not submitted with your bid the SBE Preference cannot be applied

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15. BID/OFFER CERTIFICATION:

CONTRACTOR LEGAL NAME: KONE INC

BUSINESS ALSO KNOWN AS: KONE INC

MAILING ADDRESS: 21410 N. 15TH LANE SUITE 100

CITY/STATE/ZIP: PHOENIX ARIZONA 85027

REMIT TO ADDRESS: KONE INC. #4156 PO BOX 894156

CITY/STATE/ZIP: LOS ANGELES, CA 90189-4156

CONTRACT CONTACT PERSON NAME/TITLE: MACKENZIE CORLEY, BUSINESS DEVELOPMENT REPRESENTATIVE

PHONE: 623-434-3599

FAX: 623-434-2701

CONTACT PERSON EMAIL ADDRESS: MACKENZIE.CORLEY@KONE.COM

EMAIL ADDRESS TO WHICH ORDERS & CONTRACTS SHALL BE TRANSMITTED:

MACKENZIE.CORLEY@KONE.COM

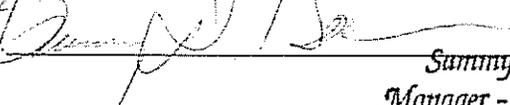
CORPORATE HEADQUARTERS LOCATION:

ADDRESS: 4225 NAPERVILLE ROAD, SUITE 400

CITY, STATE, ZIP: LISLE, IL 60532

By signing and submitting these Offer Agreement documents, the undersigned certifies that they are legally authorized to represent and bind the CONTRACTOR to legal agreements, that all information submitted is accurate and complete, that the firm has reviewed the Procurement website for solicitation addenda and incorporated to their offer, that the firm is qualified and willing to provide the items requested, and that the firm will comply with all requirements of the solicitation. The Unit Pricing includes all costs incidental to the provision of the items in compliance with the above documents; no additional payment will be made. Conditional offers that modify the solicitation requirements may be deemed not 'responsive' and may not be evaluated. CONTRACTOR's submission of a signed offer agreement shall constitute a firm offer and upon the issuance of a blanket contract or purchase order document signed by the Pima County Procurement Director or authorized designate a binding contract is formed that shall require CONTRACTOR to provide the services and materials described in this solicitation. The undersigned hereby offers to furnish the material or service in compliance with all terms, conditions, specifications, defined or referenced by the solicitation, which includes Pima County Standard Terms & Conditions, this Offer Agreement and other documents listed in this Offer Agreement's Other Documents article.

SIGNATURE



DATE: 12/02/2014

Sammy Goe

Manager - Arizona

PRINTED NAME & TITLE OF AUTHORIZED SUPPLIER REPRESENTATIVE EXECUTING OFFER

KONE Inc.

PHONE AND E-MAIL: 623-434-3599, SAMMY.GOE@KONE.COM

APPROVED AS TO FORM



Deputy County Attorney

Robin Rosen

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EXHIBIT B: PIMA COUNTY SPECIAL REQUIREMENTS

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1.01 SPECIFICATIONS INTENT

- A. Pro-Active Preventive Maintenance for the equipment covered by this Contract to facilitate the following:
 - 1. Consistent safe operation of equipment
 - 2. Maximum operational performance of equipment
 - 3. Maximum beneficial usage of equipment
 - 4. Maximum life cycle of equipment
- B. CONTRACTOR expressly acknowledges that COUNTY is relying on CONTRACTOR'S professional expertise in performance of Services to achieve and maintain Specifications intent.
- C. For clarification, elevators, escalators, moving walks, etc. may be referred to as "units" or "equipment" in this Specification.

1.02 SPECIFICATIONS TERM

- A. Ongoing construction, modernization and existing contractual agreements for existing equipment, dictates that certain equipment will be added or deleted, to this agreement. CONTRACTOR and COUNTY shall mutually agree upon and shall set forth the itemized maintenance cost per unit, per month in the appropriate location provided in Exhibit C.

1.03 CONTRACTOR SERVICES

- A. Services shall include, all labor, transportation, supplies, materials, parts, tools, scaffolding, machinery, hoists, employee safety equipment, equipment, lubricants, supervision, applicable taxes, and all other work and materials expressly required under this Specification or reasonably inferred whether or not expressly stated herein.
- B. Coordinate and follow the directives of COUNTY with respect to scheduling Services and any deliveries hereunder or at time or times further specified in other provisions of these Specifications.
- C. Services shall be performed as follows:
 - 1. In conformance with all provisions of these Specifications.
 - 2. In conformance with all legal statutes and Code requirements.
 - 3. In conformance with all applicable original equipment manufacturer's specifications.
 - 4. In conformance with COUNTY'S rules, policies, regulations, and requirements for work at the Property, as modified and supplemented during term of these Specifications.
 - 5. In conformance with COUNTY'S requirements for cleanup using containers supplied by CONTRACTOR.
 - 6. To COUNTY'S satisfaction.
 - 7. By qualified, careful and efficient employees in conformity with best industry practices.
 - 8. Diligently and in a first class, complete and workmanlike manner, free of defect or deficiency.
 - 9. In such manner as to minimize any annoyance, interference, or disruption to occupants of Property and their invitees.
- D. Materials: The term "materials" shall include all tangible property, whether designated as materials, goods, parts, or otherwise. All such materials shall be;
 - 1. New.
 - 2. Best quality and suitable for their intended uses.
 - 3. Obtained from or recommended by original manufacturer(s) of equipment for replacement or repair, including parts redesigned by and recommended as replacement parts by the original equipment manufacturer(s). Equivalent parts may be used if approved by COUNTY in writing.
 - 4. Parts requiring repair shall be rebuilt to "like new" condition. In the event, parts are obsolete and cannot be secured or made to a "like new" condition, CONTRACTOR will provide a cost proposal to the COUNTY to upgrade the equipment.
 - 5. All lubricants shall be suitable for purpose intended and shall meet or exceed minimum requirements specified by original equipment manufacturer of equipment to which the lubricant is applied.
 - 6. All materials delivered and stored at the COUNTY Property which are intended to become part of the completed Services shall pass to COUNTY upon installation.
 - 7. Provide metal cabinets of suitable size for storage of materials in each machine room. No open storage of materials shall be permitted. CONTRACTOR shall stock cabinets with adequate renewal parts and lubricants to maximize beneficial usage of equipment covered by this Specification.
 - 8. Lubricants, cleaning fluids and all combustible liquids shall be stored in a metal cabinet in machine room and shall be disposed of in accordance with Federal or local jurisdiction guidelines. A metal can with lid shall be provided in each machine room for temporary storage of oily rags.
 - 9. Proration of equipment or materials shall not be allowed.
 - 10. Consideration shall be given in regard to obsolescence of systems, materials or parts only when

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both the original equipment manufacturer(s) and after-market elevator industry suppliers no longer manufacture required materials or parts.

- E. No parts or equipment required by Services may be removed from the COUNTY Property without written approval of COUNTY. This does not include renewal parts stocked on site by CONTRACTOR, which shall remain CONTRACTOR'S sole property until installed on the equipment. Expediently replenish parts/materials as utilized.
- F. Initiate, maintain, and supervise all safety precautions and programs in connection with Services and comply with all applicable safety laws. Take all reasonable precautions for safety of COUNTY, COUNTY'S tenants, COUNTY'S employees, CONTRACTOR'S employees, and other persons on or about Property.
- G. Repair, to satisfaction of COUNTY, any damage to the Property and adjacent areas caused by performance of Services.

1.04 CONTRACTOR'S EMPLOYEES

- A. This Agreement is not one of agency, partnership, master-servant, or joint employer, but instead with CONTRACTOR engaged in the business of providing Services hereunder as an independent CONTRACTOR. CONTRACTOR shall have sole responsibility for means, methods, techniques, procedures, and safety precautions in connection with performance of Services.
- B. CONTRACTOR shall be responsible for the supervision and execution of Services by its employees.
- C. CONTRACTOR shall employ a sufficient number of trained and capable employees to properly, adequately, safely, and promptly provide Services. All matters pertaining to employment, training, supervision, compensation, promotion and discharge of CONTRACTOR'S employees are the responsibility of the CONTRACTOR, who is in all respects the employer, and COUNTY shall have no liability with respect thereto.
- D. CONTRACTOR agrees each of its employees is properly qualified and will use reasonable care in the performance of Services. If COUNTY, in COUNTY'S sole opinion, determines, for any reason, that the qualifications, actions or conduct of any particular CONTRACTOR employee has violated this Specification by performing unsatisfactory Services, interfering with operation of COUNTY Property, bothering or annoying any occupants, other contractors or sub-contractors then at COUNTY Property, or that such actions or conduct is otherwise detrimental to COUNTY, then upon receipt of COUNTY'S written notice, CONTRACTOR shall immediately provide qualified replacement person(s).
- E. CONTRACTOR shall not engage any sub-contractors or other parties to perform Services unless first approved in writing by COUNTY. COUNTY'S acceptance of sub-contractors or other parties shall not relieve, release or affect in any manner any of CONTRACTOR'S duties, liabilities or obligations hereunder, and CONTRACTOR shall at all times be and remain fully liable hereunder.

1.05 CONTRACTOR'S HOURS AND MANNER OF WORK

- A. Services, except as otherwise noted under this Specification, including unlimited emergency callback service, shall be performed during regular hours of regular working days of the Elevator Trade Monday through Friday. Provide overtime callback service (after hours, weekends, and holidays) at no additional cost under the following conditions:
 - 1. Passenger entrapments.
 - 2. Elevator group control system malfunctions.
 - 3. Two (2) or more elevators out of service in any elevator group.
- B. Response time for callback service:
 - 1. During the hours identified in Item 1.05, A., CONTRACTOR shall arrive at COUNTY Property within sixty (60) minutes from time of notification of equipment problem or failure by COUNTY.
 - 2. During the hours identified in Item 1.05, A., CONTRACTOR shall arrive at COUNTY Property in response to passenger entrapment calls within thirty (30) minutes from time of notification by COUNTY.
 - 3. After hours, CONTRACTOR shall respond to callback service within sixty (60) minutes from the time of notification by COUNTY.
 - 4. COUNTY, at its sole discretion, may reduce monthly payment amount by \$300 per occurrence for CONTRACTOR'S repeated failure to meet callback response time.
- C. Callback is defined as any request for service or assistance by COUNTY or COUNTY'S representative when any unit is not available for beneficial usage due to equipment shutdown or malfunction.
- D. If a unit is shut down due to equipment failure for more than seventy-two (72) continuous hours, maintenance billing for that unit shall be suspended until unit is restored to beneficial usage, excluding scheduled equipment repairs. Billing is to be adjusted on a daily basis without hourly pro-rata for partial day out-of service.
- E. Removal of units from beneficial usage to facilitate services shall be coordinated with and approved by the COUNTY, unless removal is necessitated for emergency repair or adjustment. COUNTY agrees to permit CONTRACTOR to remove units from service for a reasonable time during hours identified in Item 1.05, A., to perform Services.
- F. Due to the nature of some COUNTY facilities operating on a seven/twenty-four schedule, CONTRACTOR shall

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make available to COUNTY maintenance, minor adjustment callback, and repair services 365 days per year, 24 hours per day at no additional cost to COUNTY. Those facilities are: Sheriff's Main Jail and Superior Court.

1.06 CONTRACTOR'S EXECUTION OF SERVICES

- A. Regularly and systematically examine, clean, lubricate, adjust, and as conditions warrant, repair or replace all vertical transportation equipment covered under these Specifications. Consistently maintain machine room(s), hoistway(s), pit(s), car top(s) and equipment in or on these areas in a clean condition.
- B. Check and adjust individual and/or elevator group operational system(s), make adjustments and/or repairs, at planned intervals to ensure all control circuits and time settings are properly adjusted to minimize system response time to registered car and hall calls and maximize car and/or group operational performance.
- C. Lubricate equipment at intervals recommended by original equipment Manufacturer, or as dictated by equipment use or adverse environmental conditions.
- D. Paint equipment at intervals to maintain a consistent professional appearance, prevent rusting, and preserve the equipment. Floors in machine room(s), machinery space(s), and pit(s) shall be painted "deck gray." All paint shall be suitable for the purpose intended, of high quality, and shall not emit noxious odors while curing. Schedule all painting procedures with COUNTY.
- E. Provide replacement lamps to maintain adequate lighting in elevator machine room, secondary sheave level(s), overhead sheave space(s), and pit(s).
- F. Repair damage to car and hoistway door finish when caused by improper adjustment or maintenance of associated door equipment.
- G. When, as a result of examination or testing of the equipment, CONTRACTOR identifies corrective action is required, CONTRACTOR shall proceed expeditiously to make required repairs, replacements, and adjustments. If CONTRACTOR believes such work is not CONTRACTOR'S responsibility, a written report signed by CONTRACTOR shall be delivered to COUNTY for further action. In the event of a safety or potential safety situation, CONTRACTOR shall shut down the equipment and expeditiously present the situation to the COUNTY for approval to proceed with repairs.
- H. Services shall be all inclusive with the following COUNTY installed exclusions only:
 1. Installation of new attachments or performance of newly mandated tests recommended or directed by inspecting entities; insurance companies; and federal, state or municipal governmental authorities subsequent to the date of this Specifications. In the event of new or retroactive requirements, required by such Authorities, CONTRACTOR shall provide written notice and proposal to COUNTY within ten (10) working days of effective date.
 2. Callbacks, repairs, modifications, adjustments or replacements required due to negligence, vandalism, accident or misuse of the equipment by anyone other than the CONTRACTOR, its employees, SUB-CONTRACTORS, servants or agents, or other causes beyond the CONTRACTOR'S control except ordinary wear.
 3. Repair or replacement of Property items, such as hoistway or machine room walls, floors, car interior finishes, car finish floor material, hoistway entrance frames, car and hoistway door panels, car and hoistway door sills, signal fixture faceplates, and fire alarm initiating devices. Exception; see Item 1.06, F.
 4. Mainline and auxiliary disconnecting means, fuses and electrical feeders to equipment control panel(s) in machine rooms.
 5. Lamps for normal car illumination.
 6. Failure or fluctuations of property electric power, air conditioning or humidity control.
 7. Ingress by water or other material into machine room, hoistway, car enclosure, or pit.
 8. COUNTY loading unit in excess of its rated car capacity or load classification.
 9. Audio and visual devices not directly related to the elevator equipment.
 10. Shrinkage, settlement or movement of building.
 11. Underground hydraulic piping and cylinders.

Above exclusions shall apply except to the extent that they arise out of or are caused by the negligence, breach of contract, or breach of statutory duty of the CONTRACTOR, its employees, agents, sub-contractors, or others for whom CONTRACTOR is responsible.

1.07 CONTRACTOR COMPLIANCE WITH LAWS

- A. CONTRACTOR agrees to comply with all existing laws, codes, rules and regulations set forth by appropriate authorities having jurisdiction in location where Services are performed. In the event of differing testing requirements between Specifications requirements and local codes or ordinances, the more stringent requirement shall prevail.
- B. Schedule, coordinate and complete statutory and other equipment tests including, but not limited to;
 1. Annual no load slow speed test of car and counterweight safeties, governors and buffers.
 2. 5-year, full load, full speed test of car and counterweight safeties, governors and buffers.

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3. Monthly Firefighters' service operational tests.
 4. Annual pressure relief tests on hydraulic elevators.
 5. Monthly operational tests: battery pack car emergency lighting, monthly car emergency communication device and battery pack car lowering devices.
- C. Provide COUNTY with a minimum of five (5) working days prior notification of tests so that a representative of the COUNTY may witness all tests. Submit written reports to COUNTY within ten (10) working days of completion of tests, confirming findings including corrective action(s) required and taken. Affix and maintain governmental jurisdiction number designation(s) on all unit equipment in the machine room(s) and pit(s) including hoist machine, pump unit, controller, car crosshead, electrical disconnect switch(es), buffer(s), and similar equipment.
- D. Affix metal tags to the tested devices and provide COUNTY with written documentation clearly indicating the type of test, date of test, CONTRACTOR performing test, and applicable Code provision.
- E. CONTRACTOR'S failure to execute statutory tests mandated by either national codes or local jurisdictions or regulations within thirty (30) calendar days of required time constraint shall subject CONTRACTOR to a \$100.00 per calendar day price reduction on each unit for each infraction beginning on the thirtieth (30th) day subsequent to the required date and continuing until COUNTY receives written notification from CONTRACTOR of completion of required test. Statutory tests include, but are not limited to, Items 1.07, B., 1-5. CONTRACTOR shall schedule said tests in the presence of local enforcing authority and/or persons designated by COUNTY. Scheduling difficulties shall not exempt CONTRACTOR from performing tests in compliance with applicable Code or regulatory requirements.

1.08 SPECIAL CONDITIONS

- A. Upon arrival and departure from COUNTY property, all CONTRACTOR employees shall report to designated property personnel (location) and manually sign a log book indicating name of person, time of arrival, purpose of visit, i.e. callback, preventive maintenance, scheduled repair, Supervisor's inspection, etc., a brief description of work accomplished, including car and/or group designation, and time of departure. Manual log to be provided by COUNTY.
- B. Conspicuously post Preventive Maintenance Schedule and work log in each machine room. Alternately, collect preventive maintenance history and testing logs electronically within unit computer control system. Data shall be accessible by COUNTY via manual log or web access and hard copy printout at all times.
- C. Maintain COUNTY'S complete set of straight line wiring diagrams in good condition. Drawings shall be consistently updated and properly noted with "as built" conditions with any changes or modifications to circuits resulting from control modifications, parts replacement or equipment upgrades made by CONTRACTOR during this Agreement's term. COUNTY shall be allowed to reproduce these "as built" drawings and retain sole possession of these drawings in event this Agreement is cancelled. If this Agreement is cancelled, COUNTY will withhold final payment due CONTRACTOR until all as built/as modified set(s) of wiring diagrams are delivered to COUNTY.
- D. Equipment manufacturer's electronic diagnostic devices required to facilitate services, including fixed and hand held devices, shall be maintained and upgraded by CONTRACTOR during the term of this Agreement.
- E. Local or National inspection fees in regard to operation of equipment covered by these Specifications, shall be paid by the COUNTY. Fees for re-inspection due to CONTRACTOR'S failure to expeditiously eliminate deficiencies covered by Services shall be paid by CONTRACTOR.
- F. COUNTY may provide information to enable CONTRACTOR to render Services hereunder, or CONTRACTOR may learn information about Property or develop such information from COUNTY. CONTRACTOR agrees:
1. To treat, and to obligate CONTRACTOR'S employees, SUB-CONTRACTORS and suppliers to treat as confidential all such information whether or not identified by COUNTY as confidential.
 2. Not to disclose any such information or make available any reports, recommendations and/or conclusions which CONTRACTOR may make on behalf of COUNTY to any person, firm or corporation or use the same in any manner, whatsoever, without first obtaining COUNTY'S written approval, except to the extent necessary in connection with performing Services or when required by law.
 3. CONTRACTOR shall not, in the course of performance of this Agreement, or thereafter, use or permit the use of COUNTY'S name or the name of any affiliate of COUNTY, or the name, address or any picture or likeness of or reference to the Property in any advertising, promotional or other materials prepared by or on behalf of CONTRACTOR without the prior written approval of COUNTY.

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1.09 EQUIPMENT PERFORMANCE REQUIREMENTS

- A. Equipment listing, type, and individual car performance requirements are covered under Exhibit C of this Agreement. Equipment performance requirements indicated are the minimum standard, and are not the sole criteria for judging CONTRACTOR'S performance. Consistent failure to meet performance requirements shall be grounds for cancellation of this Agreement.
- B. CONTRACTOR shall maintain a quiet and comfortable car ride with smooth acceleration, deceleration and accurate stop. Door operation shall be smooth and quiet.

1.10 EQUIPMENT USAGE CRITERIA

- A. Mean Time Between Callbacks (MTBCB) Price Reduction for NEW AND MODERNIZED EQUIPMENT. AVERAGE MTBCB SHALL NOT BE LESS THAN SIXTY (60) DAYS FOR ALL UNITS COVERED BY THIS AGREEMENT. IF AVERAGE MTBCB ON ALL COVERED UNITS FALLS BELOW SIXTY (60) DAYS, A LUMP SUM PRICE REDUCTION OF \$75/UNIT SHALL BE DEDUCTED FROM THE CONTRACT AMOUNT DUE CONTRACTOR AND FOR EACH SUBSEQUENT MONTH IN WHICH MTBCB IS NOT ACHIEVED.
 - 1. The minimum allowable MTBCB rate shall be thirty-six (36) days for any individual unit within a property. Price reduction for units less than thirty-six (36) days: \$400.00 per occurrence.
 - 2. MTBCB applies immediately to units CONTRACTOR had under contract prior to the effective date of this Agreement and after one hundred eighty (180) days for those units not under contract prior to this Agreement.
- B. CONTRACTOR'S failure to meet MTBCB for a specific group of elevators or individual unit availability provision for two (2) consecutive three-month periods, shall trigger an automatic maintenance audit by COUNTY'S Elevator Consultant on the non-qualifying elevator group. CONTRACTOR agrees to expeditiously take corrective action in regard to identified deficiencies. CONTRACTOR acknowledges COUNTY'S right to deduct the cost of said audit from amounts due CONTRACTOR.
- C. If this Agreement is renewed beyond its initial term, the price reduction provisions shall continue as specified.

1.11 COUNTY'S RIGHT TO AUDIT SERVICES

- A. COUNTY reserves the right to make, or cause to be made, such audits and tests whenever necessary to ascertain that Services are being provided. Deficiencies noted shall be submitted, in writing, to CONTRACTOR. CONTRACTOR shall expeditiously correct deficiencies within thirty (30) working days at its expense.
- B. A qualified vertical transportation consultant acceptable to both parties may be retained by COUNTY to perform audit of Services and mediate disputes.

1.12 CONTRACTOR'S PREVENTATIVE MAINTENANCE AND PROCEDURE

- A. CONTRACTOR shall use and maintain COUNTY's standard maintenance machine room check chart or log for preventative maintenance on equipment. It shall include, but is not limited to, the following information:
 Building Name
 Address
 Elevator number
 Type
 Use
 Unit performance data
 Date
 Task: i.e.: Inspect machine; change gear case oil; record tank oil level; service door locks; monthly fire recall; emergency light test; annual safety test; annual pressure test; etc.
 Date task completed
 Initial of Tech completing task
 Repair log
 Callback log
- B. ELEVATOR PERFORMANCE REQUIREMENTS

Elevator	Rated Car Speeds % of Contract speed	Door Open Dwell Time (Seconds)	Hall Call Door Open Dwell Time (Seconds)	Stopping Accuracy (Inch)
Hydraulic	10%	>3.0 Sec.	>5.0 Sec.	±1/4"

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Electric Traction	open loop – 5% Closed loop – 3%	>3.0 sec.	>5.0 Sec.	±1/4"
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- Door open dwell time is measured from full open of door(s) until door(s) starts to close - A.D.A. minimum.
- Hall call door open dwell time is measured from full open of door(s) close until door(s) start to close -A.D.A. minimum.
- Door closing force shall be no more than 30 lbf. Door closing force is measured with door(s) at rest and between 1/3 and 2/3 closed.
- Car stopping accuracy shall be measured under all load conditions.
- Rated car speed, regardless of load, shall not vary more than ± % as listed in aforementioned table.

END OF EXHIBIT B

EXHIBIT C: UNIT PRICES

See Attached Excel Spreadsheet

END OF EXHIBIT C

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PIMA COUNTY STANDARD TERMS AND CONDITIONS (06/26/14)

1. OPENING: (Not Applicable)

Responses will be publicly opened and respondent's name, and if a Bid the amount, will be read on the date and at the location defined in the *Invitation for Bid (IFB)* or *Request For Proposals (RFP)*. Proposals shall be opened so as to avoid disclosure of the contents of any proposal to competing Offerors during the process of negotiation. All interested parties are invited to attend.

2. EVALUATION:

Responses shall be evaluated to determine which are most advantageous to Pima County (County) considering evaluation criteria, conformity to the specifications and other factors.

If an award is made, the County will enter into an agreement with the one or multiple respondent(s) that submitted the lowest responsive bid(s) that were determined responsible for supplying the required goods or services. Unless otherwise specified on the Bid/Offer document determination of the low/lowest bids will be made considering the total bid amount.

The County, at its sole discretion, reserves the following rights: 1) to waive informalities in the bid or bid procedure; 2) to reject the response of any persons or corporations that have previously defaulted on any contract with COUNTY or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in COUNTY Code section 11.32; 3) to reject any and all responses; 4) to re-advertise for bids previously rejected; 5) to otherwise provide for the purchase of such equipment, supplies materials and services as may be required herein; 6) to award on the basis of price and other factors, including but not limited to such factors as delivery time, quality, uniformity of product, suitability for the intended task, and bidder's ability to supply; 7) to increase or decrease the item quantity or eliminate any item of this solicitation prior to the award. Pricing evaluations will be based on pre-tax pricing offered by vendor.

3. AWARD NOTICE:

A *Notice of Recommendation for Award* for IFB or RFP will be posted on the Procurement website and available for review by interested parties. A tabulation of responses will be maintained at the Procurement Department.

4. AWARD:

Awards shall be made by either the Procurement Director or the Board of Supervisors in accordance with the Pima County Procurement Code. COUNTY reserves the right to reject any or all offers, bids or proposals or to waive irregularities and informalities if it is deemed in the best interest of the COUNTY. Unless expressly agreed otherwise, resulting agreements are not exclusive, are for the sole convenience of COUNTY, and COUNTY reserves the right to obtain like goods or services from other sources.

5. WAIVER:

Each respondent, by submission of an offer, bid or proposal proclaims and agrees and does waive any and all claims for damages against COUNTY or its officers or employees when any of the rights reserved by COUNTY may be exercised.

6. ACKNOWLEDGEMENT AND ACCEPTANCE:

If Contractor's terms of sale are inconsistent with the terms of the resultant agreement, the terms herein shall govern, unless Contractor's terms are accepted in writing by COUNTY. No oral agreement or understanding shall in any way modify this order or the terms and conditions herein. Contractor's acceptance, delivery or performance called for herein shall constitute unqualified acceptance of the terms and conditions of the resultant agreement.

7. INTERPRETATION and APPLICABLE LAW:

The contract shall be interpreted, construed and given effect in all respects according to the laws of the State of Arizona. If any of Contractor's terms or conditions is not in agreement with County's terms and conditions as set forth herein, COUNTY's shall govern. This Agreement incorporates the complete agreement of the parties with respect to the subject matter of this Agreement. No oral agreement or other understanding shall in any way modify these terms and conditions.

8. WARRANTY:

Contractor warrants goods or services to be satisfactory and free from defects.

9. QUANTITY:

The quantity of goods ordered shall not be exceeded or reduced without written permission in the form of a properly executed Master Agreement (MA), Purchase Order (PO) Delivery Order (DO) or Delivery Order Maximo (DOM) revision or amendment as required by COUNTY Procurement Code. All quantities are estimates and no guarantee regarding actual usage is provided.

10. PACKING:

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No extra charges shall be made for packaging or packing material. Contractor shall be responsible for safe packaging conforming to carrier's requirements.

11. DELIVERY:

On-time delivery of goods and services is an essential part of the consideration to be received by COUNTY.

A guaranteed delivery date, or interval period from order release date to delivery, must be given if requested by the Price offer document. Upon receipt of notification of delivery delay, COUNTY at its sole option and at no cost to the COUNTY may cancel the order or extend delivery times. Such extension of delivery times will not be valid unless extended in writing by an authorized representative of the COUNTY.

To mitigate or prevent damages caused by delayed delivery, COUNTY may require Contractor to deliver additional quantity utilizing express modes of transport, and or overtime, all costs to be Contractor responsibility. COUNTY reserves the right to cancel any delinquent order, procure from alternate source, and/or refuse receipt of or return delayed deliveries, at no cost to COUNTY. COUNTY reserves the right to cancel any order and/or refuse delivery upon default by Contractor concerning time, cost, or manner of delivery.

Contractor will not be held responsible for unforeseen delays caused by fires, strikes, acts of God, or other causes beyond Contractor's control, provided that Contractor provide immediate notice of delay.

12. SPECIFICATION CHANGES:

COUNTY shall have the right to make changes in the specifications, services, or terms and conditions of an order. If such changes cause an increase or decrease in the amount due under an order or in time required for performance, an acceptable adjustment shall be made and the order shall be modified in writing. Any agreement for adjustment must be made in writing. Nothing in this clause shall reduce Contractor's' responsibility to proceed without delay in the delivery or performance of an order.

13. INSPECTION:

All goods and services are subject to inspection and testing at place of manufacture, the destination, or both, by COUNTY. Goods failing to meet specifications of the order or contract shall be held at Contractor's risk and may be returned to Contractor with costs for transportation, unpacking, inspection, repacking, reshipping, restocking or other like expenses to be the responsibility of Contractor. In lieu of return of nonconforming supplies, COUNTY, at its sole discretion and without prejudice to COUNTY's rights, may waive any nonconformity, receive the delivery, and treat the defect(s) as a warranty item, but waiver of any condition shall not be considered a waiver of that condition for subsequent shipments or deliveries.

14. SHIPPING TERMS:

Unless stated otherwise by the agreement documents, delivery terms are to be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination") are to be included in the Unit Price offered by Contractor and accepted by the COUNTY.

15. PAYMENT TERMS:

Payment terms are net 30, unless otherwise specified by the agreement documents.

16. ACCEPTANCE OF MATERIALS AND SERVICES:

COUNTY will not execute an acceptance or authorize payment for any service, equipment or component prior to delivery and verification that all specification requirements have been met.

17. RIGHTS AND REMEDIES OF PIMA COUNTY FOR DEFAULT:

In the event any item furnished by the Contractor in the performance of the agreement should fail to conform to the specifications thereof, or to the sample submitted by the Contractor, COUNTY may reject same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same, without expense to COUNTY, and immediately replace all such rejected items with others conforming to the specifications or samples. Should the Contractor fail, neglect, or refuse immediately to do so, COUNTY, shall have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any monies due or that may become due to the Contractor the difference between the price named in the Master Agreement or Purchase Order and actual cost to COUNTY.

In the event the Contractor shall fail to make prompt delivery as specified of any item, the same conditions as to the rights of COUNTY to purchase in the open market and invoke the reimbursement condition above shall apply, except when delivery is delayed by fire, strike, freight embargo, or acts of god or of the government. In the event of cancellation of the Master Agreement, Purchase Order or associated orders, either in whole or in part, by reason of the default or breach by the Contractor, any loss or damage sustained by COUNTY in procuring any items which the Contractor agreed to supply

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shall be borne and paid for by the Contractor. The rights and remedies of COUNTY provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

18. FRAUD AND COLLUSION:

Each Contractor, by submission of a bid, proclaims and agrees that no officer or employee of COUNTY or of any subdivision thereof has: 1) aided or assisted the Contractor in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other Contractor; 2) favored one Contractor over another by giving or withholding information or by willfully misleading the offeror in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done; 3) will knowingly accept materials or supplies of a quality inferior to those called for by any contract; 4) any direct or indirect financial interest in the offer or resulting agreement. Additionally, during the conduct of business with COUNTY, the Contractor will not knowingly certify, or induce others to certify, to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies that has been actually received. If at any time it shall be found that the awardee(s) has in presenting any offer(s) colluded with any other party or parties for the purpose of preventing any other offer being made, then any agreement so awarded shall be terminated and that person or entity shall be liable for all damages sustained by COUNTY.

19. COOPERATIVE USE OF RESULTING AGREEMENT:

As allowed by law, the COUNTY has entered into cooperative procurement agreements that enable other Public Agencies to utilize procurement agreements developed by the COUNTY. The Contractor may be contacted by participating agencies and requested to provide services and products pursuant to the pricing, terms and conditions defined by the COUNTY Master Agreement, or Purchase Order. Minor adjustments are allowed subject to agreement by both Contractor and Requesting Party to accommodate additional cost or other factors not present in the COUNTY agreement and required to satisfy particular Public Agency code or functional requirements and are within the intended scope of the solicitation and resulting agreement. Any such usage shall be in accordance with State, COUNTY and other Public Agency procurement rules, regulations and requirements and shall be transacted between the requesting party and Contractor. Contractor shall hold harmless COUNTY, its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. A list of agencies that are authorized to use COUNTY agreements can be viewed at the Procurement Department Internet home page: <http://www.pima.gov/procure> by selecting the link titled *Authorized Use of COUNTY Agreements*.

20. PATENT INDEMNITY:

Contractor shall hold COUNTY, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Master Agreement, Purchase Order, and associated orders. Contractor may be required to furnish a bond or other indemnification to COUNTY against any and all loss, damage, costs, expenses, claims and liability for patent or copyright infringement.

21. INDEMNIFICATION:

Contractor shall indemnify, defend, 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, arising out of any act, omission, fault or negligence by the Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of the Master Agreement, Purchase Order or associated orders. Contractor warrants that all products and services provided under this contract are non-infringing. Contractor will indemnify, defend and hold COUNTY harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

22. UNFAIR COMPETITION AND OTHER LAWS:

Responses shall be in accordance with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable COUNTY, State, and Federal laws and regulations.

23. COMPLIANCE WITH LAWS:

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

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

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24. ASSIGNMENT:

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

25. CONFLICT OF INTEREST:

All agreements are subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of all resultant Master Agreement or Purchase Orders as if set forth in full herein.

26. NON-DISCRIMINATION:

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors**. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

27. NON-APPROPRIATION OF FUNDS:

Pursuant to the provisions of A.R.S. § 11-251, sub-section 42, this agreement may be canceled if for any reason the COUNTY Board of Supervisors does not appropriate funds for the stated purpose of maintaining any agreement. In the event of such cancellation, COUNTY shall have no further obligation, other than payment for services or goods that have already been received.

28. PUBLIC INFORMATION:

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

Any records submitted in response to this solicitation that Contractor reasonably believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by Contractor prior to the close of the solicitation.

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

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.

29. CUSTOM TOOLING, DOCUMENTATION AND TRANSITIONAL SUPPORT:

Costs to develop all tooling and documentation, such as and not limited to dies, molds, jigs, fixtures, artwork, film, patterns, digital files, work instructions, drawings, etc. necessary to provide the contracted services or products and are unique to the services or products supplied to COUNTY are included in the agreed upon Unit Price unless specifically stated otherwise in the agreement. It is agreed that such tools and documentation are the property of COUNTY and shall be marked, as is practical, as the "Property of Pima County" and if requested by COUNTY a copy of the tooling and documentation shall be delivered to COUNTY within twenty days of acceptance by the COUNTY of the first article sample, or not later than ten days of termination of the agreement associated with their development, without additional cost to COUNTY. The Contractor also agrees to act in good faith to facilitate the transition of work to a subsequent Contractor if and as reasonably requested by COUNTY at no additional cost. Should exceptional circumstances be present that may justify an additional charge, the Contractor may submit said justification and proposed cost and negotiate an agreement acceptable to both Contractor and COUNTY, but Contractor may not withhold any requested tooling, document or support as defined above that would delay the orderly, efficient and prompt transition of work. Should conduct by the Contractor result in additional costs to the COUNTY the Contractor agrees to reimburse the COUNTY for

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said actual and incremental costs provided that the COUNTY had given the Contractor reasonable time to respond to the COUNTY's requests for support.

30. AMERICANS WITH DISABILITIES ACT:

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (public law 101-336, 42 USC 12101-12213) and all applicable federal regulations under the act, including 28 CFR parts 35 and 36.

31. NON-EXCLUSIVE:

Agreements resulting from this solicitation are non-exclusive and are for the sole convenience of Pima County which reserves the right to obtain like goods and services from other sources for any reason.

32. PROTESTS:

An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award. Protests must be filed in accordance with the Pima County Procurement Code, Section 11.20.010.

33. TERMINATION:

COUNTY reserves the right to terminate any Master Agreement, Purchase Order, Delivery Order, Delivery Order Maximo or award, in whole or in part, at any time, without penalty or recourse when in the best interests of the COUNTY. Upon receipt of written notice, Contractor shall immediately cease all work as directed by the notice, notify all sub-Contractor of the effective date of termination and take appropriate actions to minimize further costs to the COUNTY. In the event of termination under this paragraph, all documents, data, and reports prepared by Contractor under the contract shall become the property of and shall be promptly delivered to COUNTY. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures defined by A.A.C. R2-7-701 shall apply.

34. ORDER OF PRECEDENCE-CONFLICTING DOCUMENTS:

In the event that there are inconsistencies between agreement documents, following is the order of precedence, superior to subordinate, that shall be applied to resolve the inconsistency: Master Agreement, Delivery Order or Delivery Order Maximo, Purchase Order, offer agreement or contract attached to a Master Agreement, Purchase Order, Delivery Order or Delivery Order Maximo; standard terms and conditions; other solicitation documents.

35. INDEPENDENT CONTRACTOR:

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

36. BOOKS AND RECORDS:

Contractor shall keep and maintain proper and complete books, records and accounts, which shall be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY. In addition, Contractor shall retain all records relating to this contract at least 5 years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

37. COUNTERPARTS:

The Master Agreement or Purchase Order awarded pursuant to this solicitation may be executed in any number of counterparts and each counterpart shall be deemed an original, and together such counterparts shall constitute one and the same instrument. For the purposes of the Master Agreement and Purchase Order, the signed offer of Contractor and the signed acceptance of COUNTY shall each be deemed an original and together shall constitute a binding Master Agreement, if all other requirements for execution have been met.

38. AUTHORITY TO CONTRACT:

Contractor warrants its right and power to enter into the Master Agreement or Purchase Order. If any court or administrative agency determines that COUNTY does not have authority to enter into the Master Agreement or Purchase Order, COUNTY shall not be liable to Contractor or any third party by reason of such determination or by reason of the Master Agreement or Purchase order.

39. FULL AND COMPLETE PERFORMANCE:

The failure of either party to insist on one or more instances upon the full and complete performance of any of the terms or conditions of the Master Agreement, Purchase Order, Delivery Order or Delivery Order Maximo to be performed on the

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

40. SUBCONTRACTOR:

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

41. SEVERABILITY:

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

42. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

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

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

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

CONTRACTOR shall advise each subcontractor of 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 insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

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

43. CONTROL OF DATA PROVIDED BY PIMA COUNTY:

For those projects and contracts where Pima County has provided data to enable the Contractor to provide contracted services or products, unless otherwise specified and agreed to in writing by Pima County, Contractor shall treat, control and limit access to said information as confidential and under no circumstances release any data provided by County during the term of this agreement and thereafter, including but not limited to personal identifying information as defined by A.R.S. § 44-1373, and is further prohibited from selling such data directly or through a third party. Upon termination of the associated agreement or completion of the required contractual intent whichever occurs sooner, Contractor shall either return all data to County or shall destroy such data and confirm destruction in writing in a timely manner not to exceed 60 calendar days.

END OF PIMA COUNTY STANDARD TERMS AND CONDITIONS