



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

Requested Board Meeting Date: February 16, 2016

or Procurement Director Award ☐

**Contractor/Vendor Name (DBA):** The Ashton Company, Inc. (Headquarters: Tucson, AZ)

**Project Title/Description:**

Tangerine Landfill Final Closure Plan (2TANGC).

**Purpose:**

Award of Contract: Contract No. CT-DE-16-225 to the lowest, responsive, responsible bidder in an amount of \$1,229,595.00 for a contract term through September 16, 2016. Administering Department: Environmental Quality.

**Procurement Method:**

Invitation for Bid (IFB) No. 198029 was conducted in accordance with A.R.S. § 34-201 and Pima County Procurement Code 11.12.010. Six (6) responses were received. All bidders met the Small Business Enterprise goal of three percent (3%), except Universal Land Construction Company, Inc., which was deemed non-responsive.

Attachments: Notice of Recommendation for Award, Contract.

**Program Goals/Predicted Outcomes:**

This project will result in final closure of the Tangerine Landfill in compliance with environmental regulations. A final soil cap will be placed on the landfill and appropriate vegetation will be established. Stormwater controls will be installed.

**Public Benefit:**

Closure will result in environmental protection of groundwater and surface water. Ongoing monitoring will ensure compliance.

**Metrics Available to Measure Performance:**

The project will be completed in 180 days and within budget.

**Retroactive:**

No

PER 08/16/16 10:09:00 AM 10/09/16 10:09:00 AM

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To: CoB - 2-8-16 (11)  
Ver. - 1  
Pgs. - 39

Procure Dept 02/05/16 PM0442

**Original Information**

Document Type: CT Department Code: DE Contract Number (i.e., 15-123): 16-225  
Effective Date: 02/16/16 Termination Date: 09/16/16 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☒ Expense Amount: \$ 1,229,595.00 ☐ Revenue Amount: \$ \_\_\_\_\_  
Funding Source(s): 1997 General Obligation Bond

Cost to Pima County General Fund: \$0.00

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards  
Were Insurance or Indemnity clauses modified? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards  
Vendor is using a Social Security Number? ☐ Yes ☒ No ☐ Not Applicable to Grant Awards

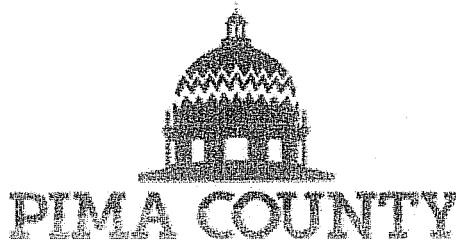
If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
☐ Expense ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ \_\_\_\_\_  
Funding Source(s): \_\_\_\_\_

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

Contact: Ana Wilber 2/3/16  
Department: Procurement 2/4/16 Telephone: (520) 724-8166  
Department Director Signature/Date: Theresa K. Nelson 2/4/16  
Deputy County Administrator Signature/Date: Mike M. Bundy 2/4/16  
County Administrator Signature/Date: C. R. D. [Signature] 2/4/16  
(Required for Board Agenda/Addendum Items)



FEBRUARY 2, 2016

NOTICE OF RECOMMENDATION FOR AWARD  
(REVISED)

The Pima County Procurement Department - Design & Construction Division hereby issues formal notice to respondents to **Solicitation No. 198029 Tangerine Landfill Final Closure Plan** that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after **February 16, 2016**.

Recommended Respondent:	Total Bid Amount	Award Amount
The Ashton Company, Inc.	\$1,229,595.00	\$1,229,595.00
Other Participating Respondents:		
(in ascending order)	Total Bid Amounts	
Arizona General Engineering Contracting, Inc.	\$1,347,072.74 <sup>1</sup>	
Buesing, Inc.	\$1,898,998.50	
Universal Land Construction Company, Inc. <sup>3</sup>	\$2,052,940.49 <sup>2</sup>	
Rummel Construction, Inc.	\$2,138,480.00	
Cost Estimate:	\$1,689,379.00	
<sup>1</sup> Math error on total bid amount submitted. Amount submitted \$1,348,849.79. Actual as shown.		
<sup>2</sup> Math error on total bid amount submitted. Amount submitted \$2,052,821.35. Actual as shown.		
<sup>3</sup> Deemed non-responsive for failure to meet the Small Business Enterprise goal of three percent (3%).		

/s/ Ana Wilber  
Contracts / Commodities Officer

Date: February 2, 2016

This notice is in compliance with Pima County Procurement Code: Sec. 11.12.010, 11.12.020 and 11.20.010.C, procedure dated 10/25/02.

cc: Pima County SBE - 43646

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JANUARY 29, 2016

## NOTICE OF RECOMMENDATION FOR AWARD

The Pima County Procurement Department - Design & Construction Division hereby issues formal notice to respondents to **Solicitation No. 198029 Tangerine Landfill Final Closure Plan** that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after **March 1, 2016**.

Recommended Respondent:	Total Bid Amount	Award Amount
The Ashton Company, Inc.	\$1,229,595.00	\$1,229,595.00
<b>Other Participating Respondents:</b>		
<b>(in ascending order)</b>	<b>Total Bid Amounts</b>	
Arizona General Engineering Contracting, Inc.	\$1,347,072.74 <sup>1</sup>	
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<sup>2</sup> Math error on total bid amount submitted. Amount submitted \$2,052,821.35. Actual as shown.		

/s/ Ana Wilber  
Contracts / Commodities Officer

Date: January 29, 2016

This notice is in compliance with Pima County Procurement Code: Sec. 11.12.010, 11.12.020 and 11.20.010.C, procedure dated 10/25/02.

cc: Pima County SBE - 43646

<b>PIMA COUNTY DEPARTMENT OF ENVIRONMENTAL QUALITY</b>										
<b>PROJECT:</b>	<b>TANGERINE LANDFILL FINAL CLOSURE PLAN (2TANGC)</b>									
<b>CONTRACTOR:</b>	<b>The Ashton Company, Inc.</b> 2727 S. Country Club Road Tucson, AZ 85713	<table border="1"> <tr> <td colspan="2"><b>CONTRACT</b></td> </tr> <tr> <td>NO</td> <td><b>CT-DE-16-225</b></td> </tr> <tr> <td colspan="2"><b>AMENDMENT NO.</b> _____</td> </tr> <tr> <td colspan="2">This number must appear on all invoices, correspondence and documents pertaining to this contract.</td> </tr> </table>	<b>CONTRACT</b>		NO	<b>CT-DE-16-225</b>	<b>AMENDMENT NO.</b> _____		This number must appear on all invoices, correspondence and documents pertaining to this contract.	
<b>CONTRACT</b>										
NO	<b>CT-DE-16-225</b>									
<b>AMENDMENT NO.</b> _____										
This number must appear on all invoices, correspondence and documents pertaining to this contract.										
<b>AMOUNT:</b>	<b>\$1,229,595.00</b>									
<b>FUNDING:</b>	<b>1997 GO Bonds</b>									

### CONSTRUCTION SERVICES AGREEMENT

This CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY and The Ashton Company, Inc. hereinafter called CONTRACTOR, and collectively called the Parties.

#### WITNESSETH

WHEREAS, COUNTY requires the services of a CONTRACTOR for the above named project to provide all labor, tools and equipment necessary for TANGERINE LANDFILL FINAL CLOSURE PLAN located in Pima County, Arizona; and

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

WHEREAS, CONTRACTOR submitted the lowest responsive bid to COUNTY in response to Pima County Invitation to Bid No. 198029 for said work.

NOW, THEREFORE, the parties hereto agree as follows:

#### **ARTICLE 1 - TERM AND EXTENSION/RENEWAL/CHANGES**

This Contract, as approved by the Board of Supervisors shall commence on February 16, 2016 and shall terminate on September 16, 2016, unless sooner terminated or further extended for the purposes of project completion. Any modification or extension shall be by formal written amendment executed by the parties hereto.

Construction completion time for the work to be performed under this Contract shall be 180 calendar days from the date of Notice to Proceed. Liquidated damages will be assessed based upon the construction completion time.

COUNTY shall have the option to extend the Contract termination date for purposes of project completion. Any modification or extension of the contract termination date shall be by formal written amendment executed by the parties hereto. Change orders must be approved by the Procurement Director or the Board of Supervisors, as required by the Pima County Procurement Code, before the work under the change commences.

#### **ARTICLE 2 - SCOPE OF SERVICES**

CONTRACTOR shall provide for the COUNTY all labor, materials and equipment necessary to perform the work provided in **Exhibit "A" Scope of Services (1 page)**, **Exhibit "C" General Conditions (14 pages)**, Solicitation No. 198029 Bid Documents any issued Addenda, Details for Public Improvements 2014 Edition, and other documents incorporated into this Contract, all made a part hereof.

### **ARTICLE 3 - COMPENSATION AND PAYMENT**

In consideration of the services specified in this Contract, the COUNTY agrees to pay CONTRACTOR in the manner hereinafter specified.

CONTRACTOR shall provide detailed documentation in support of requested payment. Payments will be made in accordance with A.R.S. § 34-221.

Payment for this Contract will be made based on **EXHIBIT "B" Bid Schedule (1 page)** submitted by Contractor in response to Solicitation No. 198029, attached hereto and made part of this Contract. Line items for which the "Unit" is defined as L.S. will be paid as "Lump Sum". Other line items for which the "unit" is defined as a unit of measure (i.e., "each", "L.F.", etc.) and for which there is a Unit Price, will be measured and paid at the unit price for the actual quantity of work performed in accordance with the Standard Specifications. The quantities of unit-priced items stated in the bid schedule are estimates only and the actual quantities may be either less or more than stated in the Bid Schedule.

Total payment for this Contract shall not exceed One Million Two Hundred Twenty-Nine Thousand Five Hundred Ninety-Five Dollars (\$1,229,595.00).

For the period of record retention required under Article 22, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the contract or law.

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

### **ARTICLE 4 - INSURANCE**

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

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

#### **4.1 Minimum Scope and Limits of Insurance:**

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

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

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

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

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

4.2 Additional Insurance Requirements:

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

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

4.3 Notice of Cancellation:

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

4.4 Verification of Coverage:

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

- 4.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 4.4.2 All certificates required by this Contract will be sent directly to Pima County Procurement. COUNTY project or contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

4.5 Approval and Modifications:

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

**ARTICLE 5 - INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall 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 the 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 agents, employees 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 A.R.S. § 34-226, as amended by Laws, 51st Legislature (2013), 1st Regular Session, Ch. 0238, shall, in all cases, not be void, but shall be interpreted and applied as if it were consistent with A.R.S. § 34-226.

#### **ARTICLE 6 - COMPLIANCE WITH LAWS**

CONTRACTOR shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of

Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the terms of this Contract shall apply, but do not require an amendment.

#### **ARTICLE 7 - INDEPENDENT CONTRACTOR STATUS**

The status of CONTRACTOR shall be that of an independent contractor. Neither CONTRACTOR, nor CONTRACTOR's officers, agents or employees shall be considered an employee of Pima County or be entitled to receive any employment-related fringe benefits under the Pima County Merit System. CONTRACTOR shall be responsible for payment of all federal, state, and local taxes associated with compensation received pursuant to this 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 will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, and subcontractors during the performance of this Contract.

#### **ARTICLE 8 - CONTRACTOR/SUBCONTRACTOR PERFORMANCE**

CONTRACTOR shall perform the work with the degree of care and skill which a licensed contractor in Arizona would exercise under similar conditions. CONTRACTOR shall employ suitably trained and skilled personnel to perform all services under this Contract.

CONTRACTOR shall ensure that all Subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this contract. CONTRACTOR shall not permit any subcontractor to perform work that does not fall within the scope of the Subcontractor's license, except as may be permitted under the rules of the Registrar of Contractors. CONTRACTOR shall not subcontract with any subcontractor appearing on the Excluded Parties List System to perform work under this Contract at any tier.

CONTRACTOR will be fully responsible for all acts and omissions of its Subcontractor(s) and of persons directly or indirectly employed by Subcontractor and of persons for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract 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.

CONTRACTOR will perform the work under this Contract using the subcontractors named on the List of Subcontractors submitted by CONTRACTOR unless the change in subcontractors has been justified to and approved by the COUNTY. No subcontractor may be added or changed without the prior written approval of the 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 the County for reasons including but not limited to, availability, insolvency or any other reason deemed to be in the best interest of the 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 Title 20.28.050 of the Pima County Code have been met.

#### **ARTICLE 9 - ASSIGNMENT**

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

#### **ARTICLE 10 - 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](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.

#### **ARTICLE 11 - AMERICANS WITH DISABILITIES ACT (ADA)**

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

#### **ARTICLE 12 - AUTHORITY TO CONTRACT**

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

#### **ARTICLE 13 - FULL AND COMPLETE PERFORMANCE**

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

#### **ARTICLE 14 - CANCELLATION FOR CONFLICT OF INTEREST**

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

#### **ARTICLE 15 - TERMINATION OF CONTRACT FOR DEFAULT**

- A. Upon a failure by CONTRACTOR to cure a default under this Contract within 10 days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, COUNTY may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, or plant on the work site necessary for completing the work. The CONTRACTOR and its sureties shall be liable for any damage to the COUNTY resulting from CONTRACTOR's default, including any increased costs incurred by COUNTY in completing the work.

B. The occurrence of any of the following shall constitute an event of default:

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

C. In the event of a termination for default:

1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONTRACTOR for this project shall become COUNTY's property and shall be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
2. COUNTY may withhold payments to CONTRACTOR arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONTRACTOR is determined; and
3. Subject to the immediately preceding subparagraph (2), COUNTY's liability to CONTRACTOR shall not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.

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

1. Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include—
  - (i) Acts of God or of the public enemy,
  - (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
  - (iii) Acts of another Contractor in the performance of a contract with the COUNTY,
  - (iv) Fires,
  - (v) Floods,
  - (vi) Epidemics,
  - (vii) Quarantine restrictions,
  - (viii) Strikes,
  - (ix) Freight embargoes,
  - (x) Unusually severe weather, or
  - (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the CONTRACTOR and the subcontractors or suppliers; and
2. The CONTRACTOR, within three (3) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies the COUNTY in writing of the cause(s) therefor. In this circumstance, the COUNTY shall ascertain the facts and the extent of the resulting delay. If, in the judgment of COUNTY, the findings warrant such action, the time for completing the work may be extended.

- E. For the purposes of paragraph A above, "receipt of notice" shall include receipt by hand by CONTRACTOR's onsite project manager, facsimile transmission, or under the Notices clause of this Contract.
- F. If, after termination of the Contract for default, it is determined that the CONTRACTOR was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the COUNTY.
- G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this contract.

#### **ARTICLE 16 - TERMINATION FOR CONVENIENCE OF COUNTY**

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

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

#### **ARTICLE 17 - NOTICES**

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

**COUNTY:**

Ursula Nelson, Director  
Pima County Department of Environmental Quality  
Public Works Building  
33 N Stone Avenue, #700  
Tucson, Arizona 85701  
Tel: (520) 724-7454

**CONTRACTOR:**

William R. Vail, President  
The Ashton Company, Inc.  
2727 S County Club Road  
Tucson, AZ, 85713  
Tel: (520) 624-5500  
Fax: (520) 791-9059

#### **ARTICLE 18 - NON-EXCLUSIVE CONTRACT**

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

#### **ARTICLE 19 - CONTRACT DOCUMENTS**

**A. INCORPORATION OF DOCUMENTS:** CONTRACTOR and COUNTY in entering into this Contract have relied upon information provided in IFB No. 198029 TANGERINE LANDFILL FINAL CLOSURE PLAN to include **EXHIBIT "A" SCOPE OF SERVICES (1 PAGE), EXHIBIT "B" BID SCHEDULE, BONDS (BID, PAYMENT, AND PERFORMANCE BONDS), EXHIBIT "C" - GENERAL CONDITIONS, SPECIAL PROVISIONS, PLANS, CONSTRUCTION DOCUMENTS, DRAWINGS AND SPECIFICATIONS, ADDENDA**, and on information provided in the CONTRACTOR response to this Solicitation. These documents are hereby incorporated into and made a part of this Contract by reference as if set forth in full herein.

**B. ORDER OF PRECEDENCE:** In the event of a conflict or inconsistency between or among the documents incorporated into this contract, the Contract Documents shall take precedence in the following order:

- a) This Contract

- b) EXHIBIT "C" - General Conditions
- c) Special Provisions, Technical Specifications, and Plans
- d) Contractor Response to the Solicitation
- e) Instructions to Bidders
- f) Invitation to Bid

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 Contract shall be incorporated into the Contract by Amendment.

#### **ARTICLE 20 - BONDING REQUIREMENTS**

In accordance with A.R.S. § 34-221, et. seq., the CONTRACTOR shall provide Payment and Performance bonds for not less than one hundred percent (100%) of the contract amount. Copies of said bonds shall be attached to and become a part of this contract.

#### **ARTICLE 21 - OWNERSHIP OF DOCUMENTS**

All original drawings, boring logs, field data, estimates, field notes, plans, specifications, documents, reports, calculations, maps and models, and other information developed by CONTRACTOR under this Contract shall vest in and become the property of the COUNTY and shall be delivered to COUNTY upon completion or termination of the services, but CONTRACTOR may retain record copies thereof.

#### **ARTICLE 22 - 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 five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

#### **ARTICLE 23 - REMEDIES**

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

#### **ARTICLE 24 - SEVERABILITY**

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

#### **ARTICLE 25 - DELAYS**

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

#### **ARTICLE 26 - DISPUTES**

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

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

#### **ARTICLE 27 - PUBLIC INFORMATION**

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

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

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

#### **ARTICLE 28 - LEGAL ARIZONA WORKER'S 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, (subject to COUNTY approval if MWBE preferences apply) 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.

**ARTICLE 29 - ENTIRE AGREEMENT**

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

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

**PIMA COUNTY**

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

\_\_\_\_\_  
Date

ATTEST:

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

APPROVED AS TO FORM:

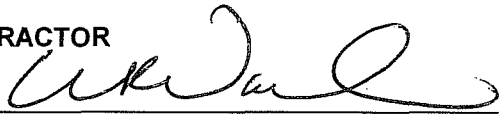
\_\_\_\_\_  
Deputy County Attorney

**TOBIN ROSEN**

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Date

**CONTRACTOR**

  
\_\_\_\_\_  
Signature

William R. Vail - President  
Name and Title (Please Print)

February 5, 2016  
Date

### **EXHIBIT "A" SCOPE OF SERVICES (1 Page)**

This Project includes all work necessary to establish the final landfill cover at the Tangerine Landfill. This includes relocation of waste in accordance with the plans, subgrade preparation, construction of the final landfill cover to meet minimum thickness requirements, dust control, including use of a street sweeper at the exit to Tangerine Road, construction of storm water management controls, extension of the leachate collection system risers, re-vegetation of the final cover and development of as-builts. All work is to be completed pursuant to the Plans and Specifications dated December 2015 prepared by Cornerstone Environmental, which are attached herein.

**END OF EXHIBIT "A"**

# EXHIBIT "B" BID SCHEDULE (1 Page)

## EXHIBIT "B" BID SCHEDULE (1 Page)

### INVITATION FOR BID No. 198029 - TANGERINE LANDFILL FINAL CLOSURE PLAN

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE
1	Mobilization/Demobilization	LS		5,000 <sup>00</sup>	5,000 <sup>00</sup>
2	Surveying	LS	1	15,000 <sup>00</sup>	15,000 <sup>00</sup>
3	ASPHES	LS	1	9,500 <sup>00</sup>	9,500 <sup>00</sup>
4	Waste Relocation	CY	13990	4 <sup>00</sup>	55,960 <sup>00</sup>
5	Stalling Rods	EA	241	25 <sup>00</sup>	6,025 <sup>00</sup>
6	Final Cover Soil	CY	261000	3 <sup>00</sup>	783,000 <sup>00</sup>
7	Engineered Fill	CY	8030	28 <sup>00</sup>	224,840 <sup>00</sup>
8	General Fill	CY	5250	15 <sup>00</sup>	78,750 <sup>00</sup>
9	Downchute	LF	1770	80 <sup>00</sup>	141,600 <sup>00</sup>
10	Excavation/Stockpiling	CY	1750	8 <sup>00</sup>	14,000 <sup>00</sup>
11	Pipe Culverts	LF	128	50 <sup>00</sup>	6,400 <sup>00</sup>
12	6" Riprap	SY	40	40 <sup>00</sup>	1,600 <sup>00</sup>
13	3" Riprap	SY	45	35 <sup>00</sup>	1,575 <sup>00</sup>
14	Downchute Road Crossings	EA	7	9,000 <sup>00</sup>	63,000 <sup>00</sup>
15	Concrete Dip Crossings	LS	1	12,000 <sup>00</sup>	12,000 <sup>00</sup>
16	Extend Leachate Risers	LS	1	500 <sup>00</sup>	500 <sup>00</sup>
17	ADOT Half-Barrier Walls	LF	325	70 <sup>00</sup>	22,750 <sup>00</sup>
18	Re-vegetation	SY	271000	0.25 <sup>00</sup>	67,750 <sup>00</sup>
TOTAL BID AMOUNT					1,229,575 <sup>00</sup>

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

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

Addendum #	By (Bidder Initials)	Date	Addendum#	By (Bidder Initials)	Date
One	<i>WRV</i>	01/15/16	Three	<i>WRV</i>	01/22/16
Two	<i>WRV</i>	01/21/16			

#### BIDS MUST BE SIGNED BY AN AUTHORIZED CONTRACTOR REPRESENTATIVE

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

Signature of Bidder: *William R. Vail*

Printed Name: William R. Vail Date: January 28, 2016

Firm Name: The Ashton Company, Inc.

End of Exhibit "B"