



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 05/05/20

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Borderland Construction Company, Inc. (Headquarters: Tucson, AZ)

**\*Project Title/Description:**

El Rio Preserve Bank Protection (5LKMNA)

**\*Purpose:**

Award: Contract No. CT-FC-20-300. This award of contract is recommended to the lowest, responsive, responsible bidder in the amount of \$1,887,163.80 for a contract term from 05/05/20 to 06/30/21 for the El Rio Preserve Bank Protection project. Administering Department: Regional Flood Control District.

**\*Procurement Method:**

Invitation for Bid (IFB) No. IFB-PO-2000080 was conducted in accordance with A.R.S. § 34-201 and Pima County Procurement Code 11.12.010. Four (4) responses were received. Due to the limited scope of work, no SBE goal was established for this project.

Attachments: Notice of Recommendation for Award and Contract.

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

Bank protection will protect the Preserve from erosion. The low-flow design of the bank protection allows for hydraulic connectivity to be preserved and for natural functions to still occur in a larger storm event.

**\*Public Benefit:**

The bank protection will protect the Preserve from frequent erosion allowing the Town of Marana to further invest in the Preserve as a unique habitat for over 200 species of birds located as a destination on the Chuck Huckelberry Loop.

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

Substantial completion of the bank protection project in FY 20/21.

**\*Retroactive:**

No.

TO: COB 4-29-2020 (1)  
Vers.: 1  
pgs.: 44  
ADDENDUM

04/30/2020 08:27:00 CLK (E) (H) 1371703412800002003 NAB

Procure Dept 04/28/20 PM0148

**Contract / Award Information**

Document Type: CT Department Code: FC Contract Number (i.e., 15-123): 20-300  
Effective Date: 05/05/20 Termination Date: 06/30/21 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☒ Expense Amount: \$\* 1,887,163.80 ☐ Revenue Amount: \$ \_\_\_\_\_

\*Funding Source(s) required: Flood Control Non-Bond Projects  
(Flood Control Tax Levy)

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

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

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

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

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

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
Prior Contract No. (Synergen/CMS): \_\_\_\_\_

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

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

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

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

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

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_  
Effective Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_  
☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

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

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

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

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

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

Contact: Keith E. Rogers, CPPB 4/17/20 4/17/2020  
Department: Procurement Telephone: 724-3542  
Department Director Signature/Date: \_\_\_\_\_ 4/21/20  
Deputy County Administrator Signature/Date: \_\_\_\_\_ 4/23/2020  
County Administrator Signature/Date: \_\_\_\_\_ 4/23/2020  
(Required for Board Agenda/Addendum Items)



## **NOTICE OF RECOMMENDATION FOR AWARD**

Date of Issue: April 16, 2020

The Pima County Procurement Department hereby issues formal notice to respondents to Solicitation No. IFB-PO-2000080 for El Rio Preserve Bank Protection (5LKMNA) 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 May 5, 2020.

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

<b><u>AWARDEE</u></b>	<b><u>TOTAL BID</u></b>	<b><u>AWARD AMOUNT</u></b>
Borderland Construction Company, Inc.	\$ 1,887,163.80	\$ 1,887,163.80
<b><u>Other Respondents</u></b>		
Granite Construction Company	\$ 2,608,895.00	
Meridian Engineering Company	\$ 2,718,880.00	
Rummel Construction, Inc.	\$ 3,057,115.25	

Engineer's Estimate (Total Bid): \$2,090,719.11

Issued by: Keith E. Rogers, CPPB; Procurement Officer

Telephone Number: (520) 724-3542

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

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

**PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT**

**PROJECT:** EL RIO PRESERVE BANK PROTECTION (5LKMNA)

**CONTRACTOR:** Borderland Construction Company, Inc.  
400 E 38<sup>th</sup> Street  
Tucson, AZ 85713

**CONTRACT NO.:** CT-FC-20-300

**AMOUNT:** \$1,887,163.80

**FUNDING:** Flood Control Non-Bond Projects  
(Flood Control Tax Levy)

**CONSTRUCTION SERVICES CONTRACT**

THIS Contract is entered into between Pima County Regional Flood Control District, a special taxing District under A.R.S. Title 48, hereinafter called DISTRICT, and Borderland Construction Company, Inc., hereinafter called CONTRACTOR, collectively referred to as the Parties.

**WITNESSETH**

WHEREAS, DISTRICT requires, consistent with the provisions of A.R.S. Title 34, the services of a CONTRACTOR to provide all equipment, labor, and materials required to construct the El Rio Preserve Bank Protection (5LKMNA) ("Project"); and,

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

WHEREAS, CONTRACTOR submitted the low responsive, responsible bid in response to Solicitation No. IFB-PO-2000080 for the DISTRICT for said work and is qualified and willing to provide such services; and

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable and good consideration the Parties hereto agree as follows:

**ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES**

This Contract as approved by the Board of Directors on 05/05/20 shall commence on 05/05/20, and shall terminate on 06/30/21, 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 will be **180 working days** after the date of Notice to Proceed. Liquidated damages will be assessed based upon the construction completion time and calculated per the Standard Specifications For Public Improvements Section 108-9.

DISTRICT has the option to extend the Contract termination date for project completion. Any modification or extension of the Contract termination date will be by formal written amendment executed by the Parties. The Procurement Director or the DISTRICT Board of Directors, as required by the Pima County Procurement Code must approve change orders to the Contract or the Scope of Services before CONTRACTOR performs the work authorized by the change order.

**ARTICLE 2 – SCOPE OF SERVICES**

CONTRACTOR will provide for the DISTRICT all labor, materials and equipment necessary to complete the project as described in **Exhibit A – Bid Schedule (3 Pages)**, incorporated into this Contract. All work will be done per

specifications called for in the bid documents as contained in Pima County Solicitation Number IFB-PO-2000080, the specifications, the plans, the General Conditions to the Contract, the Special Provisions 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 DISTRICT agrees to pay CONTRACTOR in the manner hereinafter specified.

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

Payment for this Contract will be made based on **EXHIBIT A: Bid Schedule** (3 pages) submitted by Contractor in response to Solicitation No. IFB-PO-2000080, 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.

For the period of record retention required under Article 23, DISTRICT 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 DISTRICT. 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. DISTRICT 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. DISTRICT 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 \$2,000,000 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 - \$1,000,000.  
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 DISTRICT Sole Proprietor or Independent CONTRACTOR waiver form.

4.1.4 Builder's Risk Insurance ☒ does ☐ does not apply to this contract. If Builder's Risk Insurance applies to this contract, then the CONTRACTOR shall be required to maintain throughout the course of construction, Builder's Risk Insurance in a dollar amount equal to the full insurable

value of the work under contract, which shall include "All Risk" coverage. Pima County shall be named as a "Loss Payee". CONTRACTOR shall be responsible for equipment, materials, and supplies until completion of the project and acceptance by Pima County.

**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 DISTRICT, 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 DISTRICT, 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 DISTRICT 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 DISTRICT, 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 DISTRICT with certificates of insurance (valid ACORD form or equivalent approved by DISTRICT) 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 DISTRICT 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. DISTRICT project or contract number and project description will be noted on the certificate of insurance. DISTRICT reserves the right to require complete copies of all insurance policies required by this Contract at any time.

**4.5 Approval and Modifications:**

DISTRICT 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 indemnifies and holds harmless DISTRICT, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONTRACTOR, its agents, employees or

anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article do not extend to the negligence of DISTRICT, its agents, employees or indemnities.

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

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

#### **ARTICLE 6 – COMPLIANCE WITH LAWS**

CONTRACTOR will comply with all applicable 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 govern the rights of the Parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract will be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

#### **ARTICLE 7 – INDEPENDENT CONTRACTOR STATUS**

The status of CONTRACTOR is that of an independent contractor and CONTRACTOR is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONTRACTOR will be responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONTRACTOR from DISTRICT. CONTRACTOR will be responsible for program development and operation without supervision by DISTRICT.

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

CONTRACTOR will perform the work in accordance with the terms of the Contract and with the degree of care and skill which a licensed contractor in Arizona would exercise under similar conditions. CONTRACTOR will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel DISTRICT relied upon in making this Contract, CONTRACTOR will obtain the approval of DISTRICT.

CONTRACTOR is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by CONTRACTOR under this Agreement. Without additional compensation, CONTRACTOR will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONTRACTOR found during or after the course of the services performed by or for CONTRACTOR under this Agreement, regardless of DISTRICT having knowledge of or condoning or accepting the products or the services. Correction of such deficiencies will be at no cost to DISTRICT.

CONTRACTOR will ensure that all SUBCONTRACTORS have the appropriate and current license issued by the Arizona Registrar of Contractors for work they perform under this contract. CONTRACTOR will not permit any SUBCONTRACTOR to perform work that does not fall within the scope of the SUBCONTRACTOR'S license, except as may be permitted under the rules of the Registrar of Contractors.

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

CONTRACTOR must use the SUBCONTRACTORS named on Contractor's Subcontractor List submitted with the bid. No SUBCONTRACTOR may be added or changed without the prior written approval of the DISTRICT

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 DISTRICT for reasons including but not limited to, availability, insolvency or any other reason deemed to be in the best interest of the DISTRICT. 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 will not assign its rights to this Contract in whole or in part, without prior written approval of DISTRICT. DISTRICT may withhold assignment at its sole discretion.

#### **ARTICLE 10 – NON-DISCRIMINATION**

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any SUBCONTRACTORS**. 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**

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 DISTRICT, then CONTRACTOR shall maintain accessibility to the program to the same extent and degree that would be required of the DISTRICT 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 DISTRICT does not have authority to enter into this Contract, DISTRICT will not be liable to CONTRACTOR or any third party by reason of such determination or by reason of this Contract.

#### **ARTICLE 13 – NON-WAIVER**

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

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

This Contract is subject to the provisions of A.R.S. §38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."



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

- A. Upon a failure by CONTRACTOR to cure a default under this Contract within ten (10) days of receipt of notice from DISTRICT of the default, DISTRICT may, in its sole discretion, terminate this Contract for default by written notice to CONTRACTOR. In this event, DISTRICT may take over the work and complete it by Contract or otherwise. CONTRACTOR and its sureties, if any, will be liable for any damage to DISTRICT resulting from CONTRACTOR'S default, including any increased costs incurred by DISTRICT in completing the work.
- B. The occurrence of any of the following constitutes 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 workers 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 to remove any defective or deficient Material
  5. Failure to make prompt payment to SUBCONTRACTORS or suppliers for material or labor;
  6. Loss of CONTRACTOR'S business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONTRACTOR'S performance of this Contract;
  7. Disregard of laws, ordinances, or the instructions of DISTRICT 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 become DISTRICT'S property and will be delivered to DISTRICT not later than five (5) business days after the effective date of the termination;
  2. DISTRICT may withhold payments to CONTRACTOR arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due DISTRICT from CONTRACTOR is determined; and
  3. Subject to the immediately preceding subparagraph (2), DISTRICT'S liability to CONTRACTOR will 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 CONTRACTOR charged with damages under this Article, if—
1. Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. Examples of such causes include—
    - (i) Acts of God or of the public enemy,
    - (ii) Acts of the DISTRICT in either its sovereign or contractual capacity,
    - (iii) Acts of another contractor in the performance of a Contract with the DISTRICT,
    - (iv) Fires,
    - (v) Floods,
    - (vi) Epidemics,
    - (vii) Quarantine restrictions,
    - (viii) Strikes,
    - (ix) Freight embargoes,
    - (x) Unusually severe weather, or

- (xi) Delays of SUBCONTRACTORS or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and the SUBCONTRACTOR S or suppliers; and
2. CONTRACTOR, within three (3) days from the beginning of any event of default or delay (unless extended by DISTRICT), notifies DISTRICT in writing of the cause(s) therefor. In this circumstance, DISTRICT will ascertain the facts and the extent of the resulting delay. If, in the judgment of DISTRICT, the findings warrant such action, the time for completing the work may be extended.
- E. For the purposes of paragraph A above, "receipt of notice" includes 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 DISTRICT.
- G. The rights and remedies of DISTRICT in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

#### **ARTICLE 16 – TERMINATION FOR CONVENIENCE OF DISTRICT**

DISTRICT 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 will, at the option of DISTRICT, become its property. If DISTRICT terminates the Contract as provided herein, DISTRICT will pay CONTRACTOR an amount based on the time and expenses incurred by CONTRACTOR prior to the termination date. However, DISTRICT will make no payment for anticipated profit on unperformed services.

#### **ARTICLE 17 – NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision in this Contract, DISTRICT may terminate this Contract if for any reason the Pima County Board of Directors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, DISTRICT has no further obligation to CONTRACTOR, other than payment for services rendered prior to termination.

#### **ARTICLE 18 – NOTICES**

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

##### **DISTRICT:**

Suzanne Shields, PE, Director  
Regional Flood Control District  
Public Works Building  
201 North Stone Avenue, 9<sup>th</sup> Floor  
Tucson, AZ 85701  
Tel: (520) 724-4681

##### **CONTRACTOR:**

Andy North, Executive Vice President  
Borderland Construction Company, Inc.  
400 E 35<sup>th</sup> Street  
Tucson, AZ 85713  
Tel: (520) 623-0900  
Fax: (520) 623-0232

#### **ARTICLE 19 - NON-EXCLUSIVE CONTRACT**

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

## **ARTICLE 20 - CONTRACT DOCUMENTS**

- A. INCORPORATION OF DOCUMENTS: CONTRACTOR and DISTRICT in entering into this Contract have relied upon information provided in SOLICITATION NO. IFB-PO-2000080 - EL RIO PRESERVE BANK PROTECTION, EXHIBIT "A" - BID SCHEDULE, BONDS (BID, PAYMENT, AND PERFORMANCE BONDS), EXHIBIT "B" - 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 "B" - 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.

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

## **ARTICLE 21 - BONDING REQUIREMENTS**

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

## **ARTICLE 22 - 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 vest in and become the property of the DISTRICT and will be delivered to DISTRICT upon completion or termination of the services, but CONTRACTOR may retain record copies thereof.

## **ARTICLE 23 - BOOKS AND RECORDS**

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

CONTRACTOR will retain all records relating to this Contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONTRACTOR may, at its option, deliver such records to DISTRICT for retention.

## **ARTICLE 24 - REMEDIES**

Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in ARTICLE 27 are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

#### **ARTICLE 25 – SEVERABILITY**

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

#### **ARTICLE 26 – 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 27 – DISPUTES**

In the event of a dispute between DISTRICT 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 28 – 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 DISTRICT and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a public record and should 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., DISTRICT will 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 (10) 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 is not counted in the time calculation. CONTRACTOR will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

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

#### **ARTICLE 29 – 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 will further ensure that each

SUBCONTRACTOR who performs any work for CONTRACTOR under this Contract likewise complies with the State and Federal Immigration Laws.

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

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

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

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that DISTRICT may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is 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 are the responsibility of CONTRACTOR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONTRACTOR'S approved construction or critical milestones schedule, such period of delay will be excusable delay for which CONTRACTOR is entitled to an extension of time, but not costs.

#### **ARTICLE 30 – ISRAEL BOYCOTT CERTIFICATION**

Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

#### **ARTICLE 31 – 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.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

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

APPROVED:

\_\_\_\_\_  
Chair, Board of Directors

\_\_\_\_\_  
Date

CONTRACTOR:

  
\_\_\_\_\_  
Signature

Andy North, Executive Vice President  
\_\_\_\_\_  
Name and Title (Please Print)

04-14-20  
\_\_\_\_\_  
Date

ATTEST:

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

APPROVED AS TO FORM:

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

KELL OLSON  
\_\_\_\_\_  
Name (Please Print)

4/23/2020  
\_\_\_\_\_  
Date

**EXHIBIT "A" – BID SCHEDULE – REVISED 03/27/20 (3 pages)**

**IFB-PO-2000080**

**EL RIO PRESERVE BANK PROTECTION (5LKMNA)**

The undersigned Bidder hereby acknowledges receipt of the complete Bid Documents for this project and has examined and is familiar with all documents, including those incorporated by reference, which are applicable to this project. BIDDER hereby proposes and agrees to furnish any and all required labor, material, construction equipment, transportation and services for the project in strict conformity with the Bid Documents, at the unit prices set in this Exhibit "A".

**El Rio Preserve Bank Protection, Page 1**

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
2010001	Clearing and Grubbing	ACRE	13	\$2,918.66	\$37,942.58
2010003	Clearing and Grubbing (Noxious and Invasive Species Control)	FA	10,000	\$1.00	\$10,000.00
2010004	Preservation Fencing	LF	9,325	\$1.91	\$17,810.75
2020001	Removal of Structures and Obstructions	LS	1	\$1,885.31	\$1,885.31
2030307	Debris Excavation and Removal	FA	5,000	\$1.00	\$5,000.00
2030401	Drainage Excavation	CY	36,262	\$2.51	\$91,017.62
2030902	Borrow	CY	184	\$1.02	\$187.68
5150001	Utility Impacts	FA	2,500	\$1.00	\$2,500.00
6016090	Concrete Inlet Structure (Special) (Per Details on Sheets CD3 and CD4)	EACH	1	\$36,727.35	\$36,727.35
6080001	Traffic Control / Warning Sign - Multi-Use Path (Contractor Provided)	EACH	6	\$375.42	\$2,252.52
7010005	Traffic Control	LS	1	\$5,541.31	\$5,541.31
8100001	AZPDES/NPDES (Original)	LS	1	\$12,675.75	\$12,675.75
8100006	Sediment Wattle (Discretionary)	LF	80	\$2.15	\$172.00
<b><u>PAGE 1 SUBTOTAL</u></b>					<b><u>\$223,712.87</u></b>

Legal Company name Borderland Construction Company, Inc.

Initials AN

**El Rio Preserve Bank Protection, Page 2**

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
8100011	AZPDES/NPDES (Modified)	FA	10,000	\$1.00	\$10,000.00
8050004	Seeding (1st Application)	AC	29.7	\$1,924.86	\$57,168.34
8050005	Seeding (2nd Application)	AC	15.0	\$1,924.86	\$28,872.90
9010001	Mobilization	LS	1	\$156,887.26	\$156,887.26
9130001	Riprap (Dumped)	CY	578	\$74.70	\$43,176.60
9200401	Soil Cement Bank Protection	CY	25,003	\$24.52	\$613,073.56
9200402	Soil Cement Trimming	LS	1	\$10,548.25	\$10,548.25
9200451	Cementitious Material for Soil Cement (8%)	TON	3,645	\$133.94	\$488,211.30
9250001	Construction Survey and Layout	LS	1	\$16,074.66	\$16,074.66
9250110	Survey, Additional Staking and Layout	FA	4,000	\$1.00	\$4,000.00
93000100	Incidental Items Allowance	FA	100,000	\$1.00	\$100,000.00
9330001	Barricade Railing (PC/COT Std. Dtl. 105)	LF	3,365	\$23.04	\$77,529.60
9330005	Post and Cable Fencing	LF	3,138	\$15.10	\$47,383.80
9330006	Access Gate (16')	EACH	2	\$1,762.33	\$3,524.66
9330007	Dewatering Allowance	FA	5,000	\$1.00	\$5,000.00
8061700	Hourly Pruning of Landscape Vegetation	FA	2,000	\$1.00	\$2,000.00
PAGE 2 SUBTOTAL					\$1,663,450.93
PAGE 1 SUBTOTAL					\$223,712.87
GRAND TOTAL BID, PAGES 1 & 2					\$1,887,163.80
One Million Eight Hundred Eighty Seven Thousand One Hundred Sixty Three Dollars and Eighty Cents DOLLARS					
(Written Grand Total Bid Amount)					

Legal Company name Borderland Construction Company, Inc.

Initials AN



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

Amendment #	By (Bidder Initials)	Date	Amendment #	By (Bidder Initials)	Date
01	AN	3-16-20	03	AN	03-26-20
02	AN	3-20-20	04 and 05	AN	03-27-20

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

SIGNATURE:  DATE: 04-14-20

PRINTED NAME & TITLE: Andy North, Executive Vice President

LEGAL COMPANY NAME: Borderland Construction Company, Inc.

ADDRESS: 400 E. 38th Street

CITY, STATE, ZIP CODE: Tucson, Arizona 85713

CORPORATE HEADQUARTERS (CITY, STATE) Tucson, Arizona

TELEPHONE NO.: (520) 623-0900 FAX NO.: (520) 623-0232

EMAIL ADDRESS: anorth75@borderland-inc.com

ARIZONA CONTRACTOR'S LICENSE NUMBER: 070868 CLASS: A

ARIZONA CONTRACTOR'S LICENSE NUMBER: 045027 CLASS: B4

END OF EXHIBIT A – BID SCHEDULE – REVISED 03/20/20

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**EXHIBIT "B" GENERAL CONDITIONS  
(13 Pages)**

**ARTICLE 1 – DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

District: The Pima County Regional Flood Control District.

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

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

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

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

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

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

Standard Specifications: The directions, provisions, and requirements contained in the current edition of the Pima Association of Governments Standard Specifications for Public Improvements, 2014 Edition with Amendments, as adopted by Pima County, supplemented by such special provisions as may be necessary, pertaining to the method

and manner of performing the work, quality and quantity of material to be furnished and measurement of payment of same.

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

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

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

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

## **ARTICLE 2 – RESPONSIBILITY REGARDING EXISTING UTILITIES AND STRUCTURES**

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

## **ARTICLE 3 – LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

- a. Laws to be Observed -- Contractor is presumed to be familiar with and at all times will observe and comply with all Federal and State laws and local ordinances, worker's compensation, occupational disease, and unemployment compensation laws together with the payment of all premiums and taxes therefor, also all laws, ordinances, and regulations in any manner affecting the conduct of the work and will indemnify and hold harmless DISTRICT and its representatives against any claim arising from the violations of such laws, bylaws, ordinances or regulations, whether by Contractor or by Contractor's employees.
- b. Permits and Licenses -- DISTRICT will procure all County building permits, and sewer connection fees. Contractor will post required permits on site and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor will procure and pay for all other permits, fees, and applications for water, gas, electric and other utilities.
- c. Sanitary Provisions -- Contractor will provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements and regulations of the Arizona Department of Health Services or other authorities having jurisdiction therein.
- d. Public Convenience and Safety -- Contractor will have due regard for the public health and will conduct the work in such a manner as to provide and insure the safety and convenience of the public.

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

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

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

f. Use of Explosives -- Prohibited

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

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

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

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

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

#### **ARTICLE 4 – ACCIDENTS**

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

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

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

#### **ARTICLE 5 – RESERVED**

#### **ARTICLE 6 – DELAY**

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

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

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

(1) A delay in the work attributable to DISTRICT is an excusable delay for which an adjustment may be made to the schedule. In any such case the schedule of the affected task or activity may be extended one day for each day of DISTRICT-caused delay; provided, however, that if the DISTRICT-caused delay overlaps a period of delay attributable to any other cause, the extension for DISTRICT-caused delay is limited to the number of non-overlapped days of DISTRICT-caused delay.

(2) There is no adjustment for any CONTRACTOR-caused delay in the work, including time to repair or replace defective work. In the event of a significant CONTRACTOR-caused delay exceeding three (3) workdays, CONTRACTOR will provide a recovery plan to DISTRICT within five (5) days of DISTRICT's request.

(3) A delay in the work attributable to any other cause, including strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the control of DISTRICT or CONTRACTOR and that arises without the fault or negligence of either, is an excusable delay for which DISTRICT and CONTRACTOR agree to negotiate an appropriate schedule adjustment. If the period of delay attributable to any cause under this paragraph overlaps a period of delay attributable to any other cause, the adjustment under this paragraph will be made first and the delay attributed to such other cause will be limited to that occurring outside of the overlap.

(4) If any of the causes of delay in Paragraphs 1 or 3 above affects a task or activity on the critical path, then the schedule adjustment may include adjustment to the completion date. If the cause does not affect a task or activity on the critical path, then the adjustment will be made from Float and the completion date shall not be changed.

(5) If any of the causes of delay in Paragraphs 1 or 3 above results in material provable additional costs to the affected task or tasks as a result of disruption of the schedule, then the parties will negotiate an equitable adjustment therefor.

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

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

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

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

#### **ARTICLE 7 – EXECUTION, CORRELATION AND INTENT OF DOCUMENTS**

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

#### **ARTICLE 8 – DETAIL DRAWINGS AND INSTRUCTIONS**

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

#### **ARTICLE 9 – COPIES OF DRAWINGS FURNISHED**

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

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

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

#### **ARTICLE 10 – ORDER OF COMPLETION**

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

#### **ARTICLE 11 – CONSTRUCTION DOCUMENTS ON THE JOB SITE**

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

#### **ARTICLE 12 – OWNERSHIP OF DRAWINGS**

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

#### **ARTICLE 13 – CONTRACTOR'S UNDERSTANDING**

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

#### **ARTICLE 14 – MATERIALS, APPLIANCES, EMPLOYEES**

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

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

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

#### **ARTICLE 15 – ROYALTIES AND PATENTS**

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

#### **ARTICLE 16 – SURVEYS, PERMITS, AND REGULATIONS**

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

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

#### **ARTICLE 17 – PROTECTION OF WORK AND PROPERTY**

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

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

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

#### **ARTICLE 18 – INSPECTION OF WORK**

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

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

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

#### **ARTICLE 19 – SUPERINTENDENCE - SUPERVISION**

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

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

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

#### **ARTICLE 20 – CHANGES IN THE WORK**

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

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

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

If none of the above methods is agreed upon, Contractor, provided it receives an order as above, will proceed with the work. In such case and also under case (c), it will keep and present in such form as DISTRICT may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, DISTRICT will certify to the amount, including allowance for overhead and profit, due to Contractor. Pending final determination of cost, payments on account of changes will be made on DISTRICT's estimate.

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

Overhead Limit: ten percent (10%) of direct cost;

Profit Limit: five percent (5%) of the sum of direct cost and overhead cost.

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

Contractor's cost for additional work or changes requested by DISTRICT which result in an approved extension of time to the contract will be limited to the cost of the extra work determined in one or more of the three ways described previously in this Article, and the actual wage or salary paid for the on-site job superintendent in direct employ of contractor in performance of the work. This amount will be prorated to the actual amount of extra time approved



and will only include the direct amount paid to the superintendent plus actual cost of all overhead items applicable to payroll for that position, such as insurance, taxes, FICA, worker's compensation, and unemployment taxes and benefits.

#### **ARTICLE 21 – CLAIMS FOR EXTRA COST FOR ADDITIONAL WORK**

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

#### **ARTICLE 22 – DEDUCTIONS FOR UNCORRECTED WORK**

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

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

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

#### **ARTICLE 23 – SUSPENSION OF WORK**

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

#### **ARTICLE 24 – DISTRICT'S RIGHT TO DO WORK**

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

#### **ARTICLE 25 – DISTRICT'S RIGHT TO TERMINATE CONTRACT**

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

#### **ARTICLE 26 – REMOVAL OF EQUIPMENT**

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

#### **ARTICLE 27 – USE OF COMPLETED PORTIONS**

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

#### **ARTICLE 28 – PAYMENTS WITHHELD**

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

- a. Defective work not remedied.
- b. Third party claims filed or reasonable evidence indicating probable filing of such claims.
- c. Failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment.
- d. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract sum.
- e. Damage to another Contractor.

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

#### **ARTICLE 29 – WARRANTY**

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

#### **ARTICLE 30 – LIENS**

Neither the final payment nor any part of the retained percentage will become due until Contractor delivers to DISTRICT a complete release of all liens arising out of this Contract, or receipts in full or in lieu thereof, and if required in either case, an affidavit that so far as it has knowledge or information, the release and receipts include all the labor for which a lien could be filed; but Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to DISTRICT, to indemnify DISTRICT against any lien. If any lien remains unsatisfied after all payments are made, Contractor will pay to DISTRICT all monies that DISTRICT may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

#### **ARTICLE 31 – RIGHTS OF VARIOUS INTERESTS**

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

### **ARTICLE 32 – SEPARATE CONTRACTS**

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

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

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

### **ARTICLE 33 – DISTRICT'S STATUS**

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

### **ARTICLE 34 – CLAIMS AND DISPUTES**

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

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

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

### **ARTICLE 35 – CLEANING UP**

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

### **ARTICLE 36 – FIRE PREVENTION AND PROTECTION REQUIREMENTS FOR CONSTRUCTION PROJECT**

#### **(a) PURPOSE:**

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

#### **(b) SCOPE:**

Subject requirements will be applicable to new construction, facilities remodeling, additions, and improvements projects work conducted for Pima DISTRICT. Contractor will also comply with all applicable ordinances, laws, rules, and regulations of public authority having jurisdiction for fire prevention and protection.

(c) CONTRACTOR REQUIREMENTS:

1. Make a survey of the suitability and effectiveness of existing fire control facilities, measures and devices.
2. Arrange for, provide and install a sufficient number of portable fire extinguishers suitable for work operations in accordance with the requirements of the National Fire Protection Association and local agencies having jurisdiction.
3. Fire extinguisher and devices will be inspected, serviced and maintained in accordance with manufacturer's instructions.
4. Fire Fighting and control equipment will be readily visible and unobstructed at all times; will not be made inoperative or used for other purposes.
5. Installation of fire protection piping and hydrants (as specified in bid documents) will be as prompt as possible so hose stream protection will be available when combustible materials arrive on site and potential fire causing operations begin.
6. Provide ready access for public fire department.
7. Provide safe temporary lighting and power services; properly insulate, ground, and substantially support strung wires; overloading of conductors and overfusing of circuits is prohibited; poor contacts and defective terminals, switches, wire and outlets will not be installed. Temporary electrical installations will be in accordance with National Electric Code and other applicable ordinances, regulations, specifications.
8. Bulk storage of lumber, gasoline, fuel oil, paint, solvents, gases will be kept outside of buildings under construction; one day's working supply of such items may be inside at any time. Flammable fluids will be in approved containers only; open containers are prohibited.
9. Only flame resistant tarpaulins or coverings will be used for protecting stored supplies and equipment.
10. Smoking is prohibited in all areas where flammable or combustible materials are stored and in other hazardous areas, as well as on any DISTRICT-owned property. "No Smoking" signs will be posted accordingly.
11. Fires, welding, flame cutting, melting, and similar operations in combustible areas will not be left unattended.
12. Accumulations of flammable liquids on floors, walls, etc. are prohibited; spills will be cleaned up promptly.
13. All rags, waste, etc. soiled by combustible or flammable materials will be placed in tightly closed metal containers and disposed of daily.
14. Tar kettles will be located outside of and as far away as possible from building.
15. All portable cylinders of compressed gases will be constructed, maintained and marked in accordance with Interstate Commerce Commission regulations; will be properly secured against tipping or accidental upset, handled with care, protected against excessive heat and cold; valve protection caps will be in place when cylinders are not in use.
16. Welding and cutting operations will be performed only by competently proven personnel.
17. Construction debris will be removed from buildings and site daily. Reasonably good housekeeping will be maintained at all times.
18. All machines using cutting oil will have metal drip pans under them to catch oil drippings, oil turnings and shavings.

19. No solvent with flash point below one hundred degrees Fahrenheit (100 degree F). will be used for cleaning equipment or parts.
20. No smoking or open fire of any kind will be permitted in areas where spray guns are in operation.
21. Wood sawdust and shavings and wood rubbish will not be allowed to accumulate on project site.
22. Adequate precautions will be taken to protect extensive formwork and scaffolding from exposure to and spread of fire.
23. Moveable heating devices, when used, will have safe clearances at bottom, top, and sides from combustible materials. Use of salamanders is generally prohibited; exceptions may be granted when use is considered essential.
24. Regularly scheduled inspections will be made by Contractor's authorized personnel to assure compliance with these and other jurisdictional requirements. Contractor's supervisory personnel will be instructed in their duties concerning safe fire protection practices.

#### **ARTICLE 37 – ARCHAEOLOGICAL FEATURES**

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

#### **ARTICLE 38 – RESERVED**

#### **ARTICLE 39 – RESERVED**

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

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

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

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

**ARTICLE 41 – WASTE DISPOSAL FACILITIES**

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

**ARTICLE 42 – AS-BUILT DRAWINGS**

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

**ARTICLE 43 – RESERVED**

**END OF EXHIBIT "B" - GENERAL CONDITIONS**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/20/2020

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

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

<b>PRODUCER</b> Carstin Insurance Partners, LLC 20 E. White Mountain Blvd #A5 301 Lakeside AZ 85929	<b>CONTACT NAME:</b> Steve Carvajal	<b>FAX (A/C, No):</b> 480-659-4315	
	<b>PHONE (A/C, No, Ext):</b> 480-659-4927	<b>E-MAIL ADDRESS:</b> SteveC@carstin.com	
<b>INSURED</b> Borderland Construction Company, Inc. 400 E. 38th St. Tucson AZ	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A: Allied World National Assurance Company		10690
	INSURER B: Hartford Fire Insurance Co		19682
	INSURER C: Allied World Assurance Company		19489
	INSURER D: Hartford Underwriters Insurance Co.		30104
	INSURER E: Westchester Surplus Lines Insurance Company		10172
INSURER F: Travelers Property Casualty Co. of America		25674	

License#: 8590477

BORDCON-01

**COVERAGES****CERTIFICATE NUMBER:** 390652224**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	AWAC 6004-0078	11/1/2019	11/1/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 Emp. Benefits \$1,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Uninsured <input checked="" type="checkbox"/> Underinsured	Y	Y	59 CSE QU1021	11/1/2019	11/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	AWAC 0309-8309	11/1/2019	11/1/2020	EACH OCCURRENCE \$25,000,000 AGGREGATE \$ \$
D	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	59 WN QU1020	11/1/2019	11/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B E F	Equipment Floater Pollution Liability Builders Risk	Y	Y Y Y	59 UUM AM4514 G71193317 001 QT-660-5P455982-TIL-20	11/1/2019 12/22/2019 05/05/2020	11/1/2020 11/1/2021 11/05/2020	As per Schedule \$3,000,000/\$6,000,000 \$1,887,163.80

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

Pima County its departments, districts, boards, commissions, officers, officials, agents, and employees, the Regional Flood Control District, and any/all others as their interest may appear, as regards the General, Automobile, and Umbrella liability policies are added as additional insureds when required by written contract. See notes for additional information regarding specific endorsements. Waiver of subrogation in favor of Pima County its departments, districts, boards, commissions, officers, officials, agents, and employees, the Regional Flood Control District, and any/all others as their interest may appear applies as regards the General, Automobile, Umbrella liability and Workers Compensation when required by written contract. 30 Day notice of Cancellation with notice mailed to certificate holder applies in accordance with State law.

Contract Number: CT-FC-20-300,L RIO PRESERVE BANK PROTECTION (5LKMNA)

**CERTIFICATE HOLDER****CANCELLATION**

Pima County Regional Flood Control District  
Suzanne Shields, PE, Director  
Public Works Building  
201 North Stone Avenue  
9th Floor  
Tucson AZ 85701

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.



**PROCUREMENT DEPARTMENT**  
DESIGN & CONSTRUCTION DIVISION • 130 W. CONGRESS STREET, 3RD FLOOR • TUCSON, ARIZONA 85701-1317  
TELEPHONE (520) 724-8221 • FAX (520) 724-4434

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

**Borderland Construction Company, Inc.**

Insured Firm

AWAC 6004-0078

Policy Number

Allied World National Assurance Company

Insurance Carrier

Lindsay Plotkin  
Authorized Carrier Signature

Lindsay Plotkin  
Printed Name

3/23/20  
Date of Signature

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



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

## COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### 1. BROAD FORM INSURED

##### A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership or joint venture,
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:

- (1) The agreement requires you to provide direct primary insurance for the lessor and

- (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### D. Additional Insured if Required by Contract

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - OF SECTION IV - BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**E. Primary and Non-Contributory If Required by Contract**

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

**2. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

**3. AMENDED FELLOW EMPLOYEE EXCLUSION**

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

**4. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

**5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

**6. LOAN/LEASE GAP COVERAGE**

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

**7. AIRBAG COVERAGE**

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

**8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

- a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III - Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

**9. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

**10. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

**11. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

**12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

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

**13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

**14. HIRED AUTO - COVERAGE TERRITORY**

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

**15. WAIVER OF SUBROGATION**

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

#### **16. RESULTANT MENTAL ANGUISH COVERAGE**

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

#### **17. EXTENDED CANCELLATION CONDITION**

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

#### **18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE**

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less.

b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss."

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

#### **19. VEHICLE WRAP COVERAGE**

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

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

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<b>Where Required by Written Contract</b> Pima County and its officers, officials and employees are named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor	Any and all projects performed by, or on behalf of, the insured for the certificate holder.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

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

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

However:

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

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

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

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

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

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

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

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

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Where Required by Written Contract	
Pima County and its officers, officials and employees are named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor	Any and all projects performed by, or on behalf of, the insured for the certificate holder.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

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

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

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

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

whichever is less.

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



## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

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

### SCHEDULE

<p><b>Name Of Person Or Organization:</b> Any person or organization against whom you have agreed to waive your right of recovery in a written contract, proved such contract was executed prior to the date of loss. Pima County and its officers, officials and employees are named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor</p>
--

<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>
---

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

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

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

**ADDITIONAL INSURED – WHERE REQUIRED UNDER  
CONTRACT OR AGREEMENT  
(PRIMARY AND NON-CONTRIBUTORY WHERE  
REQUIRED UNDER CONTRACT)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**Section II – Who Is An Insured** is amended to include any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy. However, the insurance provided will not exceed the lesser of:

- a. The coverage and/or limits of this policy; or
- b. The coverage and/or limits required by said contract or agreement.

Coverage afforded to these additional insured parties will be primary to, and non-contributory with, any other insurance available to that person or organization where required of you by written contract or agreement.

Including Pima County and its officers, officials and employees are named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor



**PROCUREMENT DEPARTMENT**

DESIGN & CONSTRUCTION DIVISION • 130 W. CONGRESS STREET, 3RD FLOOR • TUCSON, ARIZONA 85701-1317  
TELEPHONE (520) 724-8221 • FAX (520) 724-4434

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

**Borderland Construction Company, Inc.**

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

59 CSE QU1021

\_\_\_\_\_  
Policy Number

Hartford Fire Insurance Co

\_\_\_\_\_  
Insurance Carrier

A handwritten signature in dark ink, appearing to read "Bernard Nelson".

\_\_\_\_\_  
Authorized Carrier Signature

Bernard Nelson  
Printed Name

March 23, 2020  
Date of Signature

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

**WAIVER OF OUR RIGHT TO RECOVER  
FROM OTHERS ENDORSEMENT**  
**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Policy Number:** 59 WN QU1020

**Effective Date:** 11/01/2019

**Named Insured and Address:**

**Endorsement Number:**

Effective hour is the same as stated on the Information Page of the policy.

BORDERLAND CONSTRUCTION COMPANY, INC  
400 E 38TH STREET  
TUCSON, AZ 85726

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

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

SCHEDULE

ANY PERSON OR ORGANIZATION FROM WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER OF RIGHTS FROM US. To include; Pima County and its officers, officials and employees are named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor

Countersigned by



Authorized Representative

**ARIZONA STATUTORY PERFORMANCE BOND**  
**PURSUANT TO TITLE 34, ARIZONA REVISED STATUTES**  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:

**Borderland Construction Company, Inc.**

(hereinafter "Principal"), as Principal, and Travelers Casualty and Surety Company of America (hereinafter "Surety"), a corporation organized and existing under the laws of the State of Connecticut with its principal office in the City of Hartford, CT, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto Pima County, Arizona (hereinafter "Obligee") in the amount of **One Million Eight Hundred Eighty Seven Thousand One Hundred Sixty Three and 80/100 Dollars (\$1,887,163.80)**, for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract CT-FC-20-300 with the Obligee, dated the **5th of May, 2020** for:

**El Rio Preserve Bank Protection (5LKMNA)**

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

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

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

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

Witness our hands this 5th day of May, 2020.

Borderland Construction Company, Inc.  
Principal

By: 

Travelers Casualty and Surety Company of America  
Surety

By: 

Andrea T. Windish, Attorney-In-Fact

**ARIZONA STATUTORY PAYMENT BOND**  
PURSUANT TO TITLE 34, ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT:

**Borderland Construction Company, Inc.**

(hereinafter "Principal"), as Principal, and Travelers Casualty and Surety Company of America  
(hereinafter "Surety"), a corporation organized and existing under the laws of the State of Connecticut,  
with its principal office in the City of Hartford, CT, holding a certificate of authority to transact  
surety business in Arizona issued by the Director of Department of Insurance pursuant to Title 20, Chapter  
2, Article 1, as Surety, are held and firmly bound unto Pima County (hereinafter "Obligee") in the amount  
of **One Million Eight Hundred Eighty Seven Thousand One Hundred Sixty Three and 80/100** Dollars  
**(\$1,887,163.80)**, for the payment whereof, Principal and Surety bind themselves, and their heirs,  
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract CT-FC-20-300 with the Obligee,  
dated the, **5th of May, 2020** for:

**El Rio Preserve Bank Protection (5LKMNA)**

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

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

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

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

Witness our hands this 5th day of May, 2020.

Borderland Construction Company, Inc.  
Principal

By: 

Travelers Casualty and Surety Company of America  
Surety

By: 

Andrea T Windish, Attorney-In-Fact



**Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Andrea T Windish** of **TEMPE**

**Arizona**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

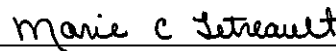
By:   
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

**In Witness Whereof**, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021



  
Marie C. Tetraault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

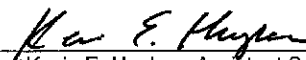
**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **5th** day of **May**, 2020



  
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**