



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

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 05/19/20

\* = Mandatory, information must be provided

or Procurement Director Award ☐

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

See Purpose Below, Multiple Contractors

**\*Project Title/Description:**

Job Order Master Agreement: Demolition Services

**\*Purpose:**

B&C Contractors, Inc. (Headquarters: Tucson, AZ), Breinholt Contracting Co., Inc. (Headquarters: Gilbert, AZ),  
T B Contractors, Inc. (Headquarters: Tucson, AZ)

Award: Master Agreement No. MA-PO-20-190. This award of master agreement is recommended to the three (3) highest qualified contractors in an annual shared award amount not to exceed \$750,000.00 for an initial one (1) year term from 05/19/20 to 05/18/21 which may be extended for up to four (4) additional one-year terms. Administering Department: Regional Flood Control District.

Board of Supervisors Policy D 29.4 authorizes the Procurement Director to execute annual renewals in an amount not to exceed the annual amount approved by the Board of Supervisors. This is an indefinite delivery/indefinite quantity job order master agreement. For projects estimated at less than \$20,000.00 the department may select a contractor based on availability, specialty or other such basis as the department may determine in its sole discretion. For projects estimated at \$20,000.00 or more, selection will be based on the responses to a simplified request for quotation covering either cost or cost and schedule from all the job order contractors. No individual Job Order may exceed \$200,000.00, including any change orders.

**\*Procurement Method:**

Solicitation for Qualifications No. SFQ-PO-2000020 was conducted in accordance with A.R.S. § 34-604 and Pima County Board of Supervisors Policy D 29.1. Five (5) responsive statements of qualifications were received and evaluated by a three (3) member committee using qualifications and experience-based criteria. Based on the evaluation of the respondents' written representations of their qualifications and necessary due diligence, the final list of the three (3) highest qualified contractors is recommended for award.

Attachments: Notice of Recommendation for Award and Master Agreement.

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

The goal is to establish a Job Order Master Agreement with qualified contractors that provide demolition services.

**\*Public Benefit:**

The District is able to select a job order contractor to perform demolition services in an effective and efficient manner saving tax dollars.

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

The job order contractors will be evaluated per BOS D29.1 using the standard contractor evaluation form that considers quality, cost, and construction management.

**\*Retroactive:**

No.

To: COB (1)  
VLS: 1  
pgs: 117

**Contract / Award Information**Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 20-190Effective Date: 05/19/20 Termination Date: 05/18/21 Prior Contract Number (Synergen/CMS): \_\_\_\_\_☒ Expense Amount: \$\* 750,000.00 ☐ Revenue Amount: \$ \_\_\_\_\_\*Funding Source(s) required: Various FundsFunding 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: Matthew Sage, CPPB 4/30/2020 4/30/2020Department: Procurement 4/30/2020 Telephone: 724-8586Department Director Signature/Date: [Signature] 4/30/2020Deputy County Administrator Signature/Date: [Signature] 5/4/2020County Administrator Signature/Date: [Signature] 5/4/2020

(Required for Board Agenda/Addendum Items)



**NOTICE OF RECOMMENDATION FOR AWARD**

Date of Issue: April 24, 2020

The Facilities Management Department hereby issues formal notice to respondents to **Solicitation No. SFQ-PO-2000020 for Job Order Master Agreement: Demolition Services** that the following listed respondents will be recommended for award of a shared Master Agreement in the annual amount of \$750,000.00. The award action is scheduled to be performed by the Board of Supervisors on or after May 19, 2020.

Award is recommended to the most qualified Respondents (listed alphabetically):

**AWARDEE NAMES**

**B & C Contractors, Incorporated**

**Breinholt Contracting Co., Inc.**

**TB Contractors, Inc.**

**OTHER RESPONDENT NAMES**

Arizona Specialty Demolition LLC

Smithco Enterprises, Inc.

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

Issued by: 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](mailto:SBE@pima.gov)

**PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT**

**PROJECT:** JOB ORDER MASTER AGREEMENT: DEMOLITION SERVICES

**CONTRACTORS:** B&C Contractors, Incorporated  
P.O. Box 50863  
Tucson, Arizona 85703

Breinholt Contracting Co., Inc.  
1955 West Commerce Avenue  
Gilbert, Arizona 85233

T B Contractors, Inc.  
39583 South Highway 77  
Tucson, Arizona 85739

**MASTER  
AGREEMENT NO.:** MA-PO-20-190

**AMOUNT:** \$750,000.00

**FUNDING:** Flood Control District and Various Pima County Department Funds

**JOB ORDER MASTER AGREEMENT**

This Agreement is entered into between Pima County Regional Flood Control District, a body politic and corporate of the State of Arizona, hereinafter called DISTRICT, and B&C Contractors, Incorporated, Breinholt Contracting Co., Inc., and T B Contractors, Inc., hereinafter called CONTRACTOR in the singular, CONTRACTORS in the plural, collectively referred to as the Parties.

**WITNESSETH**

**WHEREAS**, DISTRICT has a need to establish an Agreement with up to three (3) Job Order Contractors for Demolition Services; and

**WHEREAS**, DISTRICT conducted a competitive qualifications-based procurement pursuant to A.R.S. §34-604, for Job Order Contractors under SFQ-PO-2000020; and

**WHEREAS**, based on an evaluation of the respondents' representations of their qualifications and necessary due diligence, DISTRICT selected the three (3) highest qualified CONTRACTORS as Job Order Contractors; and

**WHEREAS**, the Job Order Contractors have agreed to be bound by and adhere to the requirements of this Agreement.

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

**ARTICLE 1 – BASIC TERMS, RENEWALS, EXTENSIONS AND REVISIONS:**

This Master Agreement (Agreement or MA), as approved by the Board of Supervisors commences on May 19, 2020 and terminates on May 18, 2021, unless sooner terminated or further extended pursuant to the provisions of this Agreement. This Agreement establishes the terms under which the Job Order Contractors will be assigned and perform tasks and projects under this Agreement. DISTRICT, at its sole discretion, may extend up to four (4) additional one-year terms or add funding to this Agreement at any time with the Board of Directors' or the Procurement Director's approval pursuant to BOS Policy D29.4.

Contract extensions, renewals, or revisions will occur through the issuance by DISTRICT to Contractor of a revised MA document setting forth the requested changes. Failure by Contractor to object in writing to the proposed revisions, terms, conditions, scope modifications and/or specifications within ten (10) calendar days of issuance by DISTRICT will signify acceptance of all such changes by Contractor and the revision will be binding upon the parties.

Individual job orders will be implemented by issuing a Delivery Order (DO) to the selected Job Order Contractor to perform the work. Each DO will be an independent contract that will incorporate and be subject to the terms of this Agreement. The terms "DO", "Job Order", and "Contract" are used interchangeably in this Agreement.

For projects less than \$20,000.00, and during emergency situations, the DISTRICT may select a CONTRACTOR based on availability, specialty, or such other basis as the DISTRICT may determine in its sole discretion. During emergency situations requiring immediate attention by DISTRICT (ie. Flooding or other disaster prevention) the DISTRICT reserves the right to select a Job Order Contractor on a non-competitive basis for the work. In addition, the requirement that a Job Order Contract be in place prior to the initiation of work is waived during such an event. During such an emergency, a CONTRACTOR may be contacted and given instructions by a DISTRICT Project Manager to perform the work immediately without an approved Job Order. It is understood that the DISTRICT will prepare a Job Order as soon as practicable following said instructions.

For projects of \$20,000.00 or more, the CONTRACTORS will compete on the basis of cost or cost and schedule through a request for quotation procedure. Price may be either a fixed price or a guaranteed maximum price.

No individual Job Order may exceed \$200,000.00, including change orders.

These services are subject to the Pima County Code, Title 20, and Chapter 20.04, pertaining to participation of subcontractors. Due to limited subcontracting opportunities, no SBE goal is established for this project. Certified SBE firms are encouraged to participate. The current list of certified SBE firms can be located on the City of Tucson's Procurement Website, <http://www.tucsonprocurement.com/assets/SBEDirectory.pdf>.

Construction completion time for work to be performed under this Agreement will be as stated in individual Job Orders issued under this Agreement. DISTRICT will assess Liquidated damages against CONTRACTOR based upon the construction completion time, if so specified in a Job Order.

Each CONTRACTOR will select subcontractors in accordance with CONTRACTOR'S Subcontractor Selection Plan, incorporated herein by reference.

## **ARTICLE 2 – SCOPE OF SERVICES**

CONTRACTOR will provide for DISTRICT all labor, materials and equipment necessary to complete the work identified in individual Job Orders awarded to CONTRACTOR under this Agreement. The scope of work under this Agreement is more fully set forth in **Exhibit "A" Scope of Services (6 pages)**, attached and incorporated herein. All work will be done per specifications called for in Job Orders, **Exhibit "B" General Conditions (9 Pages)**, **Exhibit "C" Special Conditions – Multiple Award Job Order Contract (11 Pages)**, **Exhibit "D" Special Provisions (4 pages)** and other documents incorporated into this Agreement, all made a part hereof.

## **ARTICLE 3 – COMPENSATION AND PAYMENT**

CONTRACTOR will provide detailed documentation in support of each requested payment. Any payments under this Article do not prevent DISTRICT from objecting to charges after payment therefor in appropriate cases, or from seeking reimbursement for any such charges. Payments will be made in accordance with A.R.S. § 34-609.

CONTRACTOR must cite the Delivery Order number on all invoices.

For the period of record retention required under **Article 24**, 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 Agreement or law

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

#### **ARTICLE 4 – RESERVED**

#### **ARTICLE 5 – INSURANCE**

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit, the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII. Pima County in no way warrants that the minimum insurer rating is sufficient to protect the CONTRACTOR from potential insurer insolvency.

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

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

- 5.1.1 **Commercial General Liability (CGL)** – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.
- 5.1.2 **Business Automobile Liability** – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Master Agreement with a Combined Single Limit (CSL) of \$1,000,000 each accident.
- 5.1.3 **Workers' Compensation (WC) and Employers' Liability** - Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage- \$1,000,000 each accident and each person - disease.  
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.
- 5.1.4 **Builder's Risk** - Insurance applies to this Agreement, but need not be provided unless required for a particular job order. If Builders Risk Insurance applies to a particular job order, then the CONTRACTOR is 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 the job order, which shall include "All Risk" coverage. **Pima County** shall be named as a "Loss Payee". CONTRACTOR is responsible for equipment, materials, and supplies until completion of the project and acceptance by DISTRICT.
- 5.1.5 **Claim-Made Insurance Coverage** - If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Master Agreement expiration, termination or cancellation.

##### **5.2 Additional Insurance Requirements:**

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

- 5.2.1 **Additional Insured:** The General Liability and Business Automobile Liability Policies shall 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 CONTRACTOR.

- 5.2.2 **Subrogation:** The General Liability, Business Automobile Liability and Workers' Compensation Policies shall 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 CONTRACTOR.
- 5.2.3 **Primary Insurance:** The CONTRACTOR'S policies shall stipulate that the insurance afforded the CONTRACTOR shall be primary and that any insurance carried by DISTRICT, its agents, officials, or employees shall be excess and not contributory insurance.
- 5.2.4 Insurance provided by the CONTRACTOR shall not limit the CONTRACTOR'S liability assumed under the indemnification provisions of this Contract.

**5.3 Notice of Cancellation:**

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

**5.4 Verification of Coverage:**

CONTRACTOR shall furnish DISTRICT with certificates of insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- 5.4.1 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 Master Agreement must be in effect at, or prior to, commencement of work under this Master Agreement. Failure to maintain the insurance coverages or policies as required by this Master Agreement, or to provide evidence of renewal, is a material breach of contract.
- 5.4.2 All certificates required by this Master Agreement shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the DISTRICT project or Master Agreement number and project description on the certificate. DISTRICT reserves the right to require complete copies of all insurance policies required by this Master Agreement at any time.

**5.5 Approval and Modifications:**

DISTRICT Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Master Agreement amendment, but the approval must be in writing. Neither the DISTRICT'S failure to obtain a required insurance certificate or endorsement, the DISTRICT'S failure to object to a non-complying insurance certificate or endorsement, or the DISTRICT'S receipt of any other information from the CONTRACTOR, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

**ARTICLE 6 – INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR indemnifies, defends, 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 Agreement. The obligations under this Article do not extend to the negligence of COUNTY, its agents, employees or indemnities.

All warranty and indemnification obligations under this Agreement survive expiration or termination of the Agreement, 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 7 – BONDING REQUIREMENTS**

CONTRACTOR will file payment and performance bonds with DISTRICT, as required by A.R.S. §§ 34-610 and 34-611, no later than the time of agreement on the price (or Guaranteed Maximum Price) for any construction under this Agreement. Bonds will be submitted on an annual basis for the full value of all construction reasonably anticipated during the Agreement year or may be provided on a Job-Order by Job-Order basis; in the latter case, CONTRACTOR will anticipate additional Job Orders and provide bonds in reasonable increments. At no time will the cumulative value of the bonds be less than the total value of the construction performed by CONTRACTOR under this Agreement, including Job Orders awarded to CONTRACTOR but not yet completed.

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

## **ARTICLE 8 – 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 Agreement. The laws and regulations of the State of Arizona govern the rights of the Parties, the performance of this Agreement, and any disputes hereunder. Any action relating to this Agreement must be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Agreement apply, but do not require an amendment.

## **ARTICLE 9 – 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 10 – CONTRACTOR/SUBCONTRACTOR PERFORMANCE**

CONTRACTOR will perform the work in accordance with the terms of the Agreement 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 Agreement. Prior to changing any key personnel, especially those key personnel DISTRICT relied upon in making this Agreement, 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 Agreement. CONTRACTOR will not permit any SUBCONTRACTOR to perform work that does not fall within the scope of the SUBCONTRACTOR'S license, except as may be permitted under the rules of the Registrar of Contractors.

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



#### **ARTICLE 11 – ASSIGNMENT**

CONTRACTOR will not assign its rights to this Agreement in whole or in part, without prior written approval of DISTRICT. DISTRICT may withhold assignment at its sole discretion.

#### **ARTICLE 12 – NON-DISCRIMINATION**

CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Agreement as if set forth in full herein **including flow down of all provisions and requirements to any SUBCONTRACTORS**. During the performance of this Agreement, CONTRACTOR will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

#### **ARTICLE 13 – AMERICANS WITH DISABILITIES ACT**

CONTRACTOR will 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 will maintain accessibility to the program to the same extent and degree that would be required of 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 14 - AUTHORITY TO CONTRACT**

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

#### **ARTICLE 15 – 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 Agreement or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

#### **ARTICLE 16 – CANCELLATION FOR CONFLICT OF INTEREST**

This Agreement 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 CONTRACTOR to any other party to the contract with respect to the subject matter of the contract."

#### **ARTICLE 17 – TERMINATION OF CONTRACT FOR DEFAULT**

- A. Upon a failure by CONTRACTOR to cure a default under this Agreement within ten (10) days of receipt of notice from DISTRICT of the default, DISTRICT may, in its sole discretion, terminate this Agreement for default by written notice to CONTRACTOR. In this event, DISTRICT may take over the work and complete it by Agreement 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 Agreement, 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 Agreement;
  7. Disregard of laws, ordinances, or the instructions of DISTRICT or its representatives, or any otherwise substantial violation of any provision of the Agreement; 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 Agreement 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. Neither this Agreement nor any job order issued under this Agreement will be terminated for default or the CONTRACTOR responsible for 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 DISTRICT in either its sovereign or contractual capacity,
    - (iii) Acts of another contractor in the performance of a Contract with 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 SUBCONTRACTORS 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 Agreement.

- F. If, after termination of the Agreement 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 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 Agreement.

#### **ARTICLE 18 – TERMINATION FOR CONVENIENCE OF DISTRICT**

DISTRICT may terminate this Agreement 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 Agreement 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 19 – NON-APPROPRIATION OF FUNDS**

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

#### **ARTICLE 20 – NOTICES**

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

**DISTRICT:**

Suzanne Shields, P.E.,  
District Chief Engineer / Director  
Pima County Regional Flood Control District  
201 North Stone Avenue, 9<sup>th</sup> Floor  
Tucson, Arizona 85701  
Tel: (520) 724-4600  
Fax: (520) 724-4621

Any Notice required or permitted to be given by DISTRICT may be served by personal delivery or certified mail to CONTRACTOR'S contact name in CONTRACTOR'S electronic vendor record.

#### **ARTICLE 21 - NON-EXCLUSIVE AGREEMENT**

CONTRACTOR understands that this Agreement 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 22 - AGREEMENT DOCUMENTS**

- A. INCORPORATION OF DOCUMENTS: CONTRACTOR and DISTRICT in entering into this Agreement have relied upon information provided in SOLICITATION NO. SFQ-PO-2000020 – Job Order Master Agreement: Demolition Services, EXHIBIT "A" – SCOPE OF SERVICES, BONDS (BID, PAYMENT, AND PERFORMANCE BONDS), EXHIBIT "B" - GENERAL CONDITIONS, EXHIBIT "C" - SPECIAL CONDITIONS – MULTIPLE AWARD JOB ORDER CONTRACT, EXHIBIT "D" SPECIAL PROVISIONS, and on information provided in the CONTRACTOR'S response to this Solicitation, Job Orders and Modifications thereto, and all drawings and specifications referenced in this Agreement or included in such Job Orders as may be issued under this Agreement. These documents are hereby incorporated into and made a part of this Agreement by reference as if set forth in full herein. The CONTRACTOR'S respective Subcontractor Selection Plans are incorporated by reference; each CONTRACTOR shall be bound by the terms of its own Subcontractor Selection Plan.

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

1. This Agreement
2. Special Conditions – Multiple Award Job Order Contract
3. General Conditions
4. Special Provisions
5. Subcontractor Selection Plan
6. Job Orders
7. Technical Specifications
8. Contractor's Response to the Solicitation

The Parties may, by written mutual agreement, deviate from this order of precedence in resolving inconsistencies between or among Agreement documents. Any such agreement altering the order of precedence must be incorporated into this Agreement 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 takes precedence.

#### **ARTICLE 23 - 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 Agreement vest in and become the property of DISTRICT and will be delivered to DISTRICT upon completion or termination of the services, but CONTRACTOR may retain record copies thereof.

#### **ARTICLE 24 – 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 Agreement 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 25 – REMEDIES**

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

#### **ARTICLE 26 – SEVERABILITY**

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

#### **ARTICLE 27 – 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 28 – DISPUTES**

In the event of a dispute between DISTRICT and CONTRACTOR regarding any part of this Agreement or the Parties' obligations or performance hereunder, the dispute must be referred to DISTRICT in writing with a request for review and response by DISTRICT within a reasonable time. 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 Regional Flood Control District and CONTRACTOR'S counterpart official, such meeting to be held within one (1) 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 including 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.

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

## **ARTICLE 29 – 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 Agreement, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any information submitted related to this Agreement that CONTRACTOR believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to 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 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 is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is DISTRICT in any way financially responsible for any costs associated with securing such an order.

## **ARTICLE 30 – LEGAL ARIZONA WORKERS ACT COMPLIANCE**

CONTRACTOR hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to CONTRACTOR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR will further ensure that each SUBCONTRACTOR who performs any work for CONTRACTOR under this Agreement likewise complies with the State and Federal Immigration Laws. 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 Agreement subjecting CONTRACTOR to penalties up to and including suspension or termination of this Agreement. If the breach is by a SUBCONTRACTOR, and the subcontract is suspended or terminated as a result, CONTRACTOR will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement SUBCONTRACTOR (subject to 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 Agreement 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 Agreement subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this Agreement."

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 31 - COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Facsimile or other electronically delivered copies of signature pages to this Agreement shall be treated between the Parties as original signatures for all purposes.

#### **ARTICLE 32 – ISRAEL BOYCOTT CERTIFICATION**

Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this 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.

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**ARTICLE 33 – ENTIRE AGREEMENT**

This document, in all its parts, together with Attachments and documents incorporated by reference constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Except as otherwise specifically provided in Article 1, this Agreement may be modified, amended, altered or extended only by a written amendment signed by the Parties.

IN WITNESS WHEREOF, the CONTRACTORS and the DISTRICT have affixed their signatures to this Agreement on the dates written below.

APPROVED:

\_\_\_\_\_  
Chairman, Board of Directors

\_\_\_\_\_  
Date

ATTEST:

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

CONTRACTOR:

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Authorized Officer Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

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

Kell Olson

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

05/04/20

\_\_\_\_\_  
Date

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APPROVED:

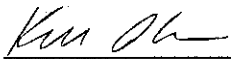
\_\_\_\_\_  
Chairman, Board of Directors

\_\_\_\_\_  
Date

ATTEST:

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

APPROVED AS TO FORM:

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

Kell Olson  
\_\_\_\_\_  
Name (Please Print)

05/04/20  
\_\_\_\_\_  
Date

CONTRACTOR:

Breinholt Contracting Co., Inc.  
\_\_\_\_\_  
Contractor Name

  
\_\_\_\_\_  
Authorized Officer Signature

Devin Breinholt, President  
\_\_\_\_\_  
Printed Name and Title

05/05/2020  
\_\_\_\_\_  
Date



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APPROVED:

\_\_\_\_\_  
Chairman, Board of Directors

\_\_\_\_\_  
Date

ATTEST:

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

CONTRACTOR:

TB Contractors Inc.  
Contractor Name

  
Authorized Officer Signature

Julie Wester Admin  
Printed Name and Title

5/4/20  
Date

APPROVED AS TO FORM:



Deputy County Attorney

Kell Olson

Name (Please Print)  
05/04/20

                      
Date

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IN WITNESS WHEREOF, the CONTRACTORS and the DISTRICT have affixed their signatures to this Agreement on the dates written below.

APPROVED:

\_\_\_\_\_  
Chairman, Board of Directors

\_\_\_\_\_  
Date

ATTEST:

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

APPROVED AS TO FORM:

Kell Olson  
Deputy County Attorney

Kell Olson

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

05/04/20

\_\_\_\_\_  
Date

CONTRACTOR:

B&C Contractors, Inc  
Contractor Name

[Signature]  
Authorized Officer Signatu

JEFF Pankow - President  
Printed Name and Title

5-6-2020  
Date

## **EXHIBIT "A"**

### **SCOPE OF SERVICES (6 pages)**

This is in an indefinite quantity, annual term, Job Order contract under which the Contractors will provide all labor, materials, management, supervision, services, and coordination required to perform a variety of demolition, well closure and site cleanup services including but not limited to: removal of structures, foundations, patios, sidewalks, fences, walls, asphalt paving, removal and/or filling of pools, septic tanks, basements, etc., capping of utilities at property lines, removal of debris (such as shrubs, limbs, trees, trash, scrap iron, poles), removal of abandon homeless camp trash and associated debris removal of underground storage tanks, the removal of asbestos containing materials, and minor remodel work. Typical demolition items and structures are listed in Examples of Services (Attachment 1 to Appendix "A").

Work will be authorized on an as-needed basis by a job order as defined and ordered by the DISTRICT. There is no minimum guarantee of work during the term of the Master Agreement. Generally, the Contractor will be required to create plans and perform take-offs to determine the required items and quantities required to deliver each Job Order complete and in-place, submit a detailed LUMP SUM "Complete and In-Place" Price, quote to the DISTRICT for all labor, materials, equipment and services required to satisfy the Job Order and negotiate acceptance by the DISTRICT prior to the commencement of work on each Job Order.

If the price of the Job Order is expected to exceed \$20,000.00, the DISTRICT will request competing proposals from all Job Order Contractors under the Master Agreement for these services. The Job Order will then be assigned to the contractor with the most advantageous offer, taking into consideration such issues as price, response, time, and other factors as may arise.

#### **Location**

Work may be anywhere in Pima County, including Ajo, Arizona, but generally will be in the metropolitan Tucson area.

#### **Schedule**

The Project schedule for each job ordered in accordance with the Master Agreement shall be as agreed to in the individual Job Order quote by the CONTRACTOR and DISTRICT. All work shall be completed within the term defined by the Job Order.

#### **Conformance**

All work authorized under this Master Agreement must be performed in conformance with the most recent version of all applicable Federal, State and local laws, regulations, specifications and details including, but not limited to, the following:

- Occupational Safety and Health Act
- Clean Water Act
- Clean Air Act
- Department of Transportation Regulations
- Pima County Code
- Fire Code
- Arizona Department of Water Resources
- Pima Association of Governments Standard Specifications and Details for Public Improvements, 2015 Edition
- The executed Master Agreement, including the General and Special Conditions and the Supplemental Provisions of the Job Order Master Agreement.

#### **Disposal Fees**

Landfill and disposal fees will be incidental to the items of work.

## **Permits and Bonds**

The Contractor shall obtain and pay for all permits, licenses, and bonds required for the execution of the work under this Master Agreement. Actual documented cost for National Emission Standards for Hazardous Air Pollutants (NESHAPS) and demolition permits will be reimbursed. The NESHAPS and demolition permits will be a pass-through for the actual cost of the permits only.

The Contractor and personnel shall maintain in current status all professional licenses, contractor licenses, certifications of training, operator licenses, etc. required by law for the activities to be performed.

## **Inspection**

DISTRICT personnel will review and inspect all work prior to approval of payment.

## **Site Conditions**

Prior to preparation of the quotation for a job order for a new project, the Contractor should visit the site with the Engineer to inform himself of the character and type of structures to be removed and to determine quantities.

The Contractor shall accept the site as he finds it. The DISTRICT assumes no responsibility for the condition of the buildings and structures on the premises. Damage or loss, whether by reason of fire, theft, or other occurrences, shall be at the risk of the Contractor from the date of the Job Order's Notice to Proceed and no such damage or loss to buildings or structures shall relieve the Contractor from any obligation under the Master Agreement.

## **Multiple Construction Types**

Should a structure contain more than one type of construction, such as wood frame and brick/block construction, multi-story, the quantities of work will be paid under a Lump SUM bid.

## **Utilities**

Sewer connections to public sewage facilities are to be plugged at the property line in a manner acceptable to the Engineer, Wastewater Management and the Health Department. Any septic tanks are to be emptied, caved in or removed, and backfilled in a manner acceptable to the Engineer and the Health Department.

DISTRICT will arrange to have all utility services shut off at the meters. The Contractor will be required to cap the water line on the property side of the meter. The Contractor shall preserve in operating condition all utility lines traversing the property. The Contractor shall, at his own expense, repair damage to any utility due to work under this Master Agreement to the satisfaction of the Engineer.

Capping/plugging of on-site utilities will be incidental to the demolition of the structures. The removal of septic tanks inclusive of pumping and backfilling will be paid as part of the LUMP Sum bid.

## **Asbestos Inspections**

Generally, DISTRICT will perform asbestos inspections on structures. The results of the inspections will be provided to the Contractor prior to asking the Contractor to demolish the structures.

The Contractor may be asked to perform asbestos inspections on some of the structures prior to being asked to perform the demolition. This work shall be done by an Asbestos Hazard Emergency Response Act (AHERA) certified building inspector and submitted to an accredited laboratory and paid by the hour. The laboratory costs will be paid with no markup and will be negotiated during the preparation of the Job Order.

## **Asbestos Removal**

Asbestos removal shall be done prior to demolition and shall be done in accordance with Section 940 of the Standard Specifications and Federal and County requirements.

## **Protection of Property and Public Safety**

Should the Contractor be unable to demolish at once any building released to him by the DISTRICT, he shall remove or make safe any condition in the building that the Engineer designates as an imminent hazard. The Contractor shall board up and otherwise secure all empty buildings when instructed to do so by the Engineer. The work of demolition and site clearance shall be carried on in a manner so that the adjacent property, property which is occupied, and persons occupying such property will suffer no damages or injuries from falling debris or other causes, and so that there is no interference with the use of adjacent buildings and structures or with the free and safe passage to and from them.

The Contractor shall take precautions to protect all walks, roads, streets, curbs, pavements, trees, and plantings off premises, and all such items in the demolition area which are designated for preservation, and shall repair and replace or otherwise make good as directed by the Engineer any damage caused by the Contractor.

## **Traffic Control/Care of the Work Area**

The Contractor shall furnish signs, lights, barricades and other equipment as may be necessary for the safe preservation of his work. The Contractor shall assign a flagger to direct traffic when directed by the Engineer. The Contractor shall furnish and erect signs or markings of bypasses and detours where necessary in compliance with applicable rules and regulations of the State of Arizona and Pima County.

Payment for traffic control required will be incidental to the items of work.

## **Use of Explosives**

No blasting will be allowed on the project except with prior written permission from the Engineer, and after obtaining and exhibiting all necessary permits required.

## **Disposal by Fire**

No burning of materials or debris will be allowed on the project without prior written authorization from the Engineer.

## **Dust Control and Abatement**

The Contractor shall obtain an Activity Permit from Pima County Department of Environmental Quality. The cost of said permit shall be incidental to the work.

All work areas shall be wet down thoroughly during demolition and clearing to prevent the spread of dust. The Contractor shall provide and pay for all water and necessary connections.

The Contractor shall have a water truck on the job at all times, and shall see that all streets on the job and any adjacent streets on which the Contractor's is operating equipment, or on which traffic is detoured, are adequately sprinkled for dust control. Dust Control shall be incidental to the other items of work.

On some projects, the DISTRICT may request that after the completion of the demolition and grading work the Contractor apply an approved soil stabilizer, such as Soil-Sement® by EarthCare Consultants, for dust abatement. Application shall be per Section 207 of the Special Provisions (Appendix D).

The Engineer may also elect to use other methods for control of dust such as hydroseeding or the application of gravel.

## **Grading and Cleanup**

After all demolition and site clearance is completed and debris is removed from the site, the site shall be graded to eliminate ponding of water. The site shall be left in a clean condition free of debris and trash. No debris shall be dumped in existing trenches/ ditches, nor shall any debris be buried on site. This work is incidental to the other items of work.

**Lead in Paint**

The structures have not been checked for lead paint.

**Arizona Pollutant Discharge Elimination System**

The Agency has not provided a Storm Water Pollution Prevention Plan/Construction Pollution Prevention Plan. The Contractor is, however, required to implement "good housekeeping" practices and, as necessary, construction control measures throughout the duration of the work to prevent erosion and pollution of washes, streams, lakes, and reservoirs from pollutants.

If the area of disturbance for any project exceeds one acre, the Contractor will be directed to take specific actions to mitigate the effects of the work on the waters of the United States.

**Backfill Material**

All backfill material will be aggregate base course material and compacted to 95% maximum density, unless otherwise approved by the Engineer. DISTRICT will provide the density testing on backfill compaction.

**Swimming Pool**

The bottom of the pool shall be broken up sufficiently, so that water will not be retained. The top two (2) feet of the sides of the pool shall be removed. This material may be used as fill in the pool, if the pieces are small enough to allow for finer materials to filter around the pieces, thereby reducing the void spaces.

Fill materials needed for backfilling swimming pools shall be provided by the Contractor, and paid for as incidental items of work. The fill materials shall be aggregate base course material and shall compacted to 95% maximum density, unless otherwise approved by the Engineer. DISTRICT will provide the density testing on backfill compaction.

**Mobilization**

Mobilization for Asbestos Abatement, Mobilization for Demolition, and Mobilization for Dust Abatement will be considered as incidental items of the job Order and will be paid within the LUMP SUM bid.

**Removal of Underground Storage Tanks**

Removal of Underground Storage Tanks (UST) containing petroleum product, which has not contaminated the adjacent soils, will be considered as incidental items of the Job Order, and be paid within the LUMP SUM bid. The work will include proper notifications and permits, pumping and proper disposal of the petroleum products, the removal of the tank and proper disposal of the tank, clearance sampling and backfilling the hole.

**Temporary Fencing**

Temporary chain link fencing will be supplied at the direction of the Engineer when special conditions require additional protection not covered under Protection of Property and Public Safety.

**Outside Containment**

When asbestos is found on the outside of a structure and requires complete enclosure for the removal of exterior RACM. Enclosure labor and materials will be considered as incidental items of the Job Order and will be paid within the LUMP SUM bid.

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# ATTACHMENT 1 TO APPENDIX "A" SCOPE OF SERVICES – EXAMPLES OF SERVICES (2 pages)

<b><u>Potential Service Items</u></b>	Removal of Palm Trees
Demolition of wood frame residential	Removal of fence posts
Demolition of wood frame/stucco residential	Removal of swimming pools including backfill
Demolition of brick or block residential	Removal and backfill of septic tanks & cesspools
Demolition of multi-story structures	Removal of Regulated Asbestos Containing Material (RACM)
Demolition of commercial buildings	Outside Containment for RACM
Sub-structure/basement excluding backfill	Removal of RACM Category I
Demolition of a metal building with slab	Removal of RACM Category II
Concrete slabs, Misc. concrete < 6" thick	Removal of Asbestos containing Pipe
Raised slab/floor, misc. concrete > 6" thick	Dust Abatement
Below grade concrete footings	Asbestos Inspection
Asphalt concrete paving less than 6"	Lab analysis of Asbestos Samples (includes supplies)
Concrete Curb	NESHAPS Permits
Concrete Parking Bumpers	Demolition Permits
Removal & Disposal of Clean Concrete Rubble	Removal of Underground Storage Tanks (UST)
Removal & Disposal of Concrete/Block Retaining Walls	Remove Railroad Ties
Backfill Material	Remove Bollards
Placement of Backfill Material	Remove Sign Posts including footing
Removal of fencing, block	Remove Light Poles with footing:
Removal of fencing, chain link, wire or wood	Remove Tires, Car/pickup, Over the Road Truck, Equipment/OffRoad, with or without rims
Fencing, Temporary	Freon Recovery – Large Units
Remove and dispose of Misc. debris, trash, rubble, etc	Compressor Demo – After Freon Recovery
Removal & Disposal of Vegetation (including Trees)	AC Units – Recover Freon and Demo all tonnage units
Removal of trees; 6" diameter or less	Grease Trap/Oil Water Separator
Removal of trees, >6' to 14" dia.	

<b><i>Potential Heavy Equipment Usage</i></b>
CASE 580 4WD Tractor- Loader -Backhoe or equivalent
Cat 320 (130 HP) Wheel mounted hydraulic excavator or equivalent
Cat 966F (220 HP) 4WD Articulated Wheel loader or equivalent
Cat 933C (70 HP) Crawler Loader or equivalent
Skid steer loader (38 HP) or equivalent
Highway Truck and Trailer (Flatbed/cargo)
Forklift (8,000 lb. standard)
Water Truck (2,000 gal.)
Cat 980G (300 HP) 4WD Articulated Wheel loader or equivalent
Manually Guided Vibratory Compactor
Dump Truck (10-12 CY)
40 CY Rolloff
Pick up Truck (3/4 Ton)
Highway Light Duty Crew Truck

**END OF ATTACHMENT 1 TO EXHIBIT "A"**

**END OF APPENDIX "A" – SCOPE OF SERVICES**



## **EXHIBIT "B"**

### **GENERAL CONDITIONS (9 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 Directors, 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.

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

Department: 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 PAG Standard Specifications for Public Improvements 2015 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**

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

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

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

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

- a. Laws to be Observed -- CONTRACTOR is presumed to be familiar with and at all times will observe and comply with all Federal and State laws and local ordinances, worker's compensation, occupational disease, and unemployment compensation laws together with the payment of all premiums and taxes therefor, also all laws, ordinances, and regulations in any manner affecting the conduct of the work and will indemnify and hold harmless 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 -- CONTRACTOR will procure all DISTRICT 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, Warning Lights, 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. RESERVED**

## **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. RESERVED**

#### **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. 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 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. RESERVED**



## **ARTICLE 37. ARCHAEOLOGICAL FEATURES**

Construction for this project may occur in an archaeological sensitive area. The County Office of Conservation and Sustainability Cultural Resources Division will determine prior to construction (other than emergencies) any special site monitoring requirements. Human burials, including human skeletal remains, cremations, and funerary objects are protected under A.R.S. section 41-844 on state, county, and municipal lands, and under A.R.S. section 41-865 on private lands. Should archaeological features and/or artifacts or human remains, including human skeletal or cremation remains be discovered, work at that location will cease immediately, and the area will be taped off and avoided until archaeological investigations are completed. Construction is subject to delay in that location pursuant to applicable State law, while consultation with the Arizona State Museum and appropriate documentation and data recovery takes place. To the extent permitted by law, all archaeological artifacts and other materials will belong to 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 DISTRICT, 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".

## **ARTICLE 41. WASTE DISPOSAL FACILITIES**

CONTRACTOR will legally dispose of all construction debris in appropriate Pima 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**

## **ARTICLE 44. BUILDER'S RISK**

CONTRACTOR will be responsible for equipment, materials, and supplies until completion of the project and acceptance by DISTRICT.

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

**EXHIBIT "C" (11 pages)**  
**SPECIAL CONDITIONS – MULTIPLE AWARD JOB ORDER CONTRACT**

**ARTICLE 1 – OVERVIEW AND DEFINITIONS**

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

The Contract Price for each Job Order shall not exceed \$200,000.00, including any Change Orders.

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

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

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

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

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

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

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

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

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

**"Day"** means calendar day unless specifically provided otherwise or required by law.

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

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

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

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

**"Minor Change"** means a change in the Work having no impact on cost or time or the DISTRICT'S approved design intent, as determined by DISTRICT.

**"Notice to Proceed"** means written notice given by DISTRICT to the CONTRACTOR fixing the date on which the CONTRACTOR will start to perform the Work under that Job Order. The start date will be the Start Date stated in the Job Order.

**"Plans and Specifications"** means the plans and specifications upon which the Job Order's price proposal is based.

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

**"Project"** means each project of DISTRICT as to which some or all of the work is to be performed under a Job Order.

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

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

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

**"Start Date"** means, as to a Job Order, the date specified in the Notice to Proceed for that Job Order for CONTRACTOR to begin the Work.

**"Subcontractor"** means a subcontractor of the CONTRACTOR for any of the Work included in a Job Order or any subcontractor at any tier of such a subcontractor.

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

**"Supplier"** means a person providing materials, supplies or equipment to be included in the Work to CONTRACTOR or any Subcontractor.

**"Technical Specifications"** means the general provisions and the detailed specifications prescribed by DISTRICT describing the materials and performance required for each individual Job Order.

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

## **ARTICLE 2 – JOB ORDER DEVELOPMENT**

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

1. For Projects estimated under \$20,000.00, and during emergency situations DISTRICT will notify the selected CONTRACTOR of a new Project and may or may not schedule a site visit to explain and discuss the project. Design documents, if any, will be provided to the CONTRACTOR by the time of the site visit. Once the parties agree on the scope of the project, DISTRICT will memorialize the agreement in a Job Order and deliver it to CONTRACTOR who shall have five (5) working days, unless a shorter period is specified in the Job Order, to commence construction. Unless otherwise specified by DISTRICT, issuance of the Job Order shall constitute Notice to Proceed. In the event of an emergency, the requirement that a Job Order Contract be in place prior to the initiation of work is waived. During such an emergency, a Contractor may be contacted and given instructions by a DISTRICT Project Manager to perform the work immediately without an approved Job Order. It is understood that the DISTRICT will prepare a Job Order as soon as practicable following said instructions.
2. For Projects estimated at \$20,000.00 or greater, the DISTRICT will notify all Job Order Contractors under contract to DISTRICT. The request shall advise all CONTRACTORS of the nature of the Work to be done and include the selection criteria and methodologies DISTRICT will use to make the "best value" decision. Criteria could include lowest bid, lowest bid meeting schedule, best cost alternative(s), etc. The request letter may also include an estimate of the total dollars the DISTRICT has budgeted for the Job. CONTRACTOR shall be provided an opportunity to ask questions, seek clarification and/or inspect the site, if requested. Alternatively, the DISTRICT may identify in the request the date and time for a meeting or site visit to explain and discuss the Work and further refine the scope of the project. Design documents, if any, may be provided in advance or at the meeting or site visit.
3. Upon establishment of the scope of the needed Project, each CONTRACTOR interested in performing the Job Order shall prepare its proposal for accomplishment of the Project utilizing the CONTRACTOR'S best estimating practices to develop a fixed, lump sum or not-to-exceed Guaranteed Maximum Contract Price to complete the Work, including any additional Pre-Construction Services (if necessary). See Article 3 for a description of required proposal items. Quotes will be in letter format including an attached table listing major construction components (ie. Mobilization, grade control structures, soil cement bank protection, excavation, clearing/grubbing, subgrade prep., etc.) with quantities, unit cost, total cost as columns in the table. The time for submittal of proposals for individual Projects shall not exceed seven (7) working days unless approved by the DISTRICT.
4. DISTRICT shall review each CONTRACTOR'S proposal and may either accept the proposals or negotiate modifications to the proposals until such time the DISTRICT is satisfied with each of the proposals. Such negotiations shall be limited to value alternatives of costs less than 20% of the original quotation price. Scope modifications or value alternatives that are equal to or greater than 20% shall require DISTRICT to modify the original request and rebid to the benefit of all interested CONTRACTORS under this Contract.

5. The Job Order will then be issued by DISTRICT to the Job Order Contractor that submitted the best quotation (including schedule and/or value engineering alternatives), as measured by the criteria in the request for quotation. Past performance on earlier Job Orders, including past performance on cost or price control, may be used to determine award of future Job Orders.
6. Upon issuance of each Job Order by DISTRICT, the Job Order Contract will be binding upon the CONTRACTOR and DISTRICT. A Job Order is considered "issued" when delivered to the CONTRACTOR or sent by facsimile copy, in which case the Job Order will be "issued" when sent to CONTRACTOR'S fax number and DISTRICT'S fax machine prints an acknowledgement of receipt or DISTRICT.

### **ARTICLE 3 – JOB ORDER PROPOSAL CONTENT**

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

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

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

### **ARTICLE 4 – JOB ORDER NEGOTIATION**

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

## **ARTICLE 5 – JOB ORDER MANAGEMENT**

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

1. Project Management

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

2. Daily Log

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

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

3. Progress Schedule and Float

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

B. Reporting

1. Monthly Reporting

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

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

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

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

## 2. Contractor Responsibility

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

## **ARTICLE 6 – CHANGES AND CHANGED CONDITIONS**

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

## **ARTICLE 7 – DELAYS AND TIME EXTENSIONS**

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

## **ARTICLE 8 – PERFORMANCE MEASUREMENT**

- A. Performance Assessment – Promptly after final completion of the Work under each Job Order, DISTRICT will complete a written evaluation of CONTRACTOR'S performance of the Work. The evaluation shall consist of completion by DISTRICT of the Performance Quality Evaluation Form attached as **Attachment "1"** to these **SPECIAL CONDITIONS**.
- B. Feedback – The completed Performance Evaluation will be shared with CONTRACTOR as a means of providing feedback regarding CONTRACTOR'S cost, schedule and quality performance. CONTRACTOR may submit additional information, comment, recommendations or rebuttal for association with the Performance Evaluation.
- C. Comparative Assessment – CONTRACTOR's cost, schedule and quality performance of Job Orders under this Contract will be compared periodically to the performance of other like-situated Contractors. The results of these comparisons will be provided to CONTRACTOR.

CONTRACTOR understands that these assessments will necessarily involve significant subjectivity. CONTRACTOR agrees to this process and agrees further that the application of subjectivity in these assessments shall not form the basis for any claim or cause of action of any form whatsoever.

- D. Consideration of Renewal – CONTRACTOR'S record of cost, schedule and quality performance and comparative assessments shall be significant considerations in the DISTRICT'S determination whether to renew CONTRACTOR'S participation in the Agreement. CONTRACTOR agrees that any determination by DISTRICT not to renew its participation based on performance will be at the sole discretion of DISTRICT.

#### **ARTICLE 9 – SUBCONTRACTORS**

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

#### **ARTICLE 10 – TERMINATION FOR CAUSE**

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

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

- A. Cause for Termination – In addition to the termination rights of the DISTRICT in **ARTICLE 17 – TERMINATION OF CONTRACT FOR DEFAULT** of the Agreement between DISTRICT and CONTRACTOR, the DISTRICT may terminate any or all Job Orders and/or the overall Job Order Agreement at the election of DISTRICT, upon the occurrence of any one or more of the following events:
1. If CONTRACTOR refuses or fails to prosecute the Work under any Job Order with such diligence as will ensure its completion within the Contract Time for that Job Order; or if the CONTRACTOR fails to complete the Work under any Job Order within the Contract Time for that Job Order;



2. If CONTRACTOR or any of its key Subcontractors under any Job Order is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if CONTRACTOR or any of its key Subcontractors under any Job Order or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning CONTRACTOR or any of its key Subcontractors under any Job Order, or if a trustee or receiver is appointed for CONTRACTOR or any of its key Subcontractors under any Job Order or for any of CONTRACTOR'S property on account of CONTRACTOR or a key Subcontractor under any Job Order, and, in each case, CONTRACTOR or its successor in interest or its respective key Subcontractor under any Job Order does not provide reasonably adequate assurance of future performance in accordance with the Contract Documents within 10 days after receipt of a request for assurance from the DISTRICT;
3. If CONTRACTOR persistently fails to supply sufficient skilled workmen or suitable materials or equipment for the Work under any Job Order;
4. If, as to any Job Order, CONTRACTOR fails to make prompt payments to Subcontractors or Suppliers at any tier, or for labor, materials or equipment;
5. If CONTRACTOR fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;
6. If, as to any Job Order, CONTRACTOR fails to follow any reasonable instructions by the DISTRICT, which are consistent with the Construction Documents;
7. If, as to any Job Order, CONTRACTOR performs Work which deviates from the Job Order Documents and neglects or refuses to correct rejected Work; or
8. If, as to any Job Order, CONTRACTOR otherwise violates in any material way any provisions or requirements of this Agreement or any Job Order Contract Documents.

B. Notice and Cure Period – If DISTRICT determines that one or more events of default described in **Article 10(A)** has occurred, the DISTRICT may elect to terminate any or all Job Orders and/or terminate CONTRACTOR'S participation in the overall Agreement. To do this, the DISTRICT must first give CONTRACTOR and its Surety written notice of the events of default ("**Notice of Default**") and allow CONTRACTOR and its Surety ten (10) calendar days to cure the events of default. If the events of default are not cured within the ten (10) calendar days, DISTRICT may terminate any or all Job Orders and/or terminate CONTRACTOR'S participation in the overall Agreement by written notice to Contractor and its Surety.

C. Completion of Terminated Work

1. If any Job Order or participation in the Agreement is terminated, DISTRICT may take over the Work under terminated Job Orders and prosecute them to completion, by contract or otherwise, and may exclude CONTRACTOR from the sites. The DISTRICT may take possession of the Work under the terminated Job Orders and of all of CONTRACTOR's tools, appliances, construction equipment, machinery, supplies and plant which may be on the site of the Work for each terminated Job Order, and use the same to the full extent they could be used by CONTRACTOR, all without liability to CONTRACTOR.

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

2. If any Job Order is terminated, the DISTRICT may demand that CONTRACTOR'S surety take over and complete the Work under the Job Order. The DISTRICT may require that in so doing, the CONTRACTOR's surety not utilize CONTRACTOR in performing the Work. Upon the failure or refusal of CONTRACTOR's surety to take over and begin completion of the Work within 20 days after the demand, the DISTRICT may take over the Work and prosecute it to completion as provided above.

3. As to any terminated Job Order, DISTRICT shall have the option of requiring any, all or none of the Subcontractors and Sub-subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.
4. If DISTRICT takes over the Work under any terminated Job Order, unexecuted orders entered into by CONTRACTOR for performance of any part of the Work will be effective upon acceptance by DISTRICT in writing and only as to those subcontracts and purchase orders which the DISTRICT designates in writing.

D. Payment for Terminated Work

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

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

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

**ARTICLE 11 – TERMINATION FOR CONVENIENCE OF THE DISTRICT**

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

**END OF SPECIAL CONDITIONS – MULTIPLE AWARD JOB ORDER CONTRACT**

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

FOR OFFICIAL USE ONLY (WHEN COMPLETED)

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

**FOR OFFICIAL USE ONLY (WHEN COMPLETED)**

**PART III - EVALUATION OF PERFORMANCE ELEMENTS**

N/A = NOT APPLICABLE O = OUTSTANDING A = ABOVE AVERAGE S = SATISFACTORY M = MARGINAL U = UNSATISFACTORY

15. QUALITY CONTROL							16. EFFECTIVENESS OF MANAGEMENT						
	N/A	O	A	S	M	U		N/A	O	A	S	M	U
a. QUALITY OF WORKMANSHIP							a. COOPERATION AND RESPONSIVENESS						
b. ADEQUACY OF THE CQC PLAN							b. MANAGEMENT OF RESOURCES/ PERSONNEL						
c. IMPLEMENTATION OF THE CQC PLAN							c. COORDINATION AND CONTROL OF SUBCONTRACTOR(S)						
d. QUALITY OF QC DOCUMENTATION							d. ADEQUACY OF SITE CLEAN-UP						
e. STORAGE OF MATERIALS							e. EFFECTIVENESS OF JOB-SITE SUPERVISION						
f. ADEQUACY OF MATERIALS							f. COMPLIANCE WITH LAWS AND REGULATIONS						
g. ADEQUACY OF SUBMITTALS							g. PROFESSIONAL CONDUCT						
h. ADEQUACY OF QC TESTING							h. REVIEW/RESOLUTION OF SUBCONTRACTOR'S ISSUES						
i. ADEQUACY OF AS-BUILTS							i. IMPLEMENTATION OF SUBCONTRACTING PLAN						
j. USE OF SPECIFIED MATERIALS													
k. IDENTIFICATION/CORRECTION OF DEFICIENT WORK IN A TIMELY MANNER													
<b>17. TIMELY PERFORMANCE</b>							<b>18. COMPLIANCE WITH LABOR STANDARDS</b>						
a. ADEQUACY OF INITIAL PROGRESS SCHEDULE							a. CORRECTION OF NOTED DEFICIENCIES						
b. ADHERENCE TO APPROVED SCHEDULE							b. PAYROLLS PROPERLY COMPLETED AND SUBMITTED						
c. RESOLUTION OF DELAYS							c. COMPLIANCE WITH LABOR LAWS AND REGULATIONS WITH SPECIFIC ATTENTION TO THE DAVIS-BACON ACT AND EEO REQUIREMENTS						
d. SUBMISSION OF REQUIRED DOCUMENTATION													
e. COMPLETION OF PUNCHLIST ITEMS							<b>19. COMPLIANCE WITH SAFETY STANDARDS</b>						
f. SUBMISSION OF UPDATED AND REVISED PROGRESS SCHEDULES							a. ADEQUACY OF SAFETY PLAN						
g. WARRANTY RESPONSE							b. IMPLEMENTATION OF SAFETY PLAN						
							c. CORRECTION OF NOTED DEFICIENCIES						
<b>20. REMARKS</b> (Explanation of unsatisfactory evaluation is required. Other comments are optional. Provide facts concerning specific events or actions to justify the evaluation. These data must be in sufficient detail to assist contracting officers in determining the contractor's responsibility. Continue on separate sheet(s), if needed.)													

DD FORM 2626 (BACK), JUN 94

**END OF ATTACHMENT 1 TO EXHIBIT "C" - PERFORMANCE EVALUATION FORM**

**END EXHIBIT "C" - SPECIAL CONDITIONS**

## **EXHIBIT "D" (4 pages)**

### **SPECIAL PROVISIONS**

Work under this contract will be performed in accordance with the Pima Association of Governments Standard Specifications and Details for Public Improvements, 2015 Edition, as supplemented these Special Provisions.

#### **SECTION 101: ABBREVIATIONS AND TERMS**

**101-3 TERMS** of the Standard Specifications are revised to read:

Advertisement for Bids: Change this to "Invitation to Bid" with the Same Definition.

Change Order: Change to read: "Synonymous with supplemental agreement."

Contract Time: Change to read "Construction Time". This change is applicable when the term "Contract Time" is used in all sections throughout the Standard Specifications.

Supplemental Agreement: Add the following: "All supplemental agreements will be issued in compliance with Section 11.16.010 of the Pima County Procurement Code."

**101-3 TERMS** of the Standard Specifications is modified to add:

National Pollutant Discharge Elimination System (NPDES) - National Pollutant Discharge Elimination System (NPDES) shall also include the Arizona Pollution Discharge Elimination System (AZPDES).

#### **SECTION 105: CONTROL OF WORK**

**105-6 COOPERATION WITH UTILITY COMPANIES:** the 6<sup>th</sup> paragraph of the Standard Specification is modified to add:

The contractor will also acknowledge and agree that no monetary compensation will be given to the contractor by the Agency as a result of the impacts or delays to his operations that are caused by the utility companies.

#### **SECTION 106: CONTROL OF MATERIAL**

**106-9 STORAGE OF MATERIALS** of the Standard Specifications is modified to add:

A Temporary Use Permit (**Section 18.93.040 of the Pima County Zoning Code**) will be required for material storage and construction yards located outside road right-of-way on private property not zoned for such purposes. Said permits are issued by the Zoning Board of Adjustments.

#### **SECTION 107: LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

**107-15.01 National Pollution Discharge Elimination System** of the Standard Specifications is hereby deleted.

**107-18 INSURANCE** of the Standard Specifications is superceded by Article IV of the Construction Services Agreement.

**107-21 CONTRACTORS RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES** of the Standard Specifications is modified to add:

It shall be the responsibility of the Contractor to contact the utility companies in order for them to determine if there is a need for any bracing or shoring of power or telephone poles during the construction of this project. If bracing or shoring is necessary, the Contractor shall accomplish this work to the satisfaction of the utility company.

No measurement or direct payment will be made for bracing or shoring.

The Contractor shall take full responsibility of costs incurred due to damage to utilities as a result of grading or excavation operations. Utility locations shown on the Plans are approximate, and all utilities are not necessarily shown. The possibility of conflicts with existing utilities-in-service exists. If conflicting utilities interfere with the Contractor's normal progress towards completion of this project, the Pima County Department of Transportation may, at its option, authorize the Contractor to relocate said conflicting utilities by Force Account.

## **SECTION 109: MEASUREMENT AND PAYMENT**

**109-2 SCOPE OF PAYMENT:** the last two paragraphs of the Standard Specifications are hereby deleted.

**109-5 EXTRA AND FORCE ACCOUNT WORK:**

**(A) Extra Work.** the second paragraph of the Standard Specifications is revised to read:

Upon receipt of an approved supplemental agreement, the Contractor shall proceed with the ordered work.

**(B) Force Account Work.**

**(3) Equipment.**

**(a) Rental Rates (Without Operators)** is modified to add:

$$F = 0.933$$

**(C) Force Account Work by Subcontractor** of the Standard Specifications is revised to read:

When force account work is determined by the Engineer to require specialized labor or equipment not normally utilized by the contractor, and such force account work is performed by subcontractors, the contractor will be allowed an additional markup based on the following:

For Force Account work performed by subcontractors or any combination of subcontractors, the prime contractor will be allowed a ten percent supplemental markup on the first \$10,000 of the work performed (less markups for overhead and profit).

For all subsequent Force Account work performed by subcontractors, the prime contractor will be allowed a five percent supplemental markup (less markups for overhead and profit).

The ten-percent supplemental markup shall apply to the first accumulated total of all force account work performed by all subcontractors.

The contractor shall submit payrolls or other cost data documents for all force account work performed by subcontractors. There shall be no payments made for force account work until receipt of proper and correct documentation.

## **SECTION 207: DUST PALLIATIVE**

**207-1 DESCRIPTION**

Provide dust abatement on disturbed native soil with the specified soil stabilization / erosion and dust control agent for non-traffic areas.

## 207-2 MATERIALS

**207-2.01 Dust Control Product:** The dust control product shall be acceptable to the Engineer. Petroleum based products, pine tar resins, magnesium chlorides, calcium chlorides, and lignin sulfonates are not acceptable.

**(A) Specification.** The dust control product shall be an approved acrylic, acrylate and acetate liquid polymer dust control product consisting of the following properties in its undiluted state as it is to be delivered to the job site:

Composition:	Acrylic, Acrylates, and Acetate Liquid Polymer
Appearance:	Milky White Liquid
Odor:	Characteristic Acrylic Odor
Specific Gravity:	1.01-1.15
Density:	8.4-9.5 lbs/gal
pH:	4.0-9.5
Solubility in Water:	Dilutable
Solids:	Minimum of 40%

A Certificate of Compliance shall be submitted to the Engineer for the soil stabilizer / erosion and dust control product brought to the job site.

**(B) Testing** When bid, contractor shall submit test results (report) from an independent AASHTO accredited lab, signed and sealed by a Professional Engineer, registered in the State of Arizona, showing the CBR value of untreated soil from the project area and CBR values of that same soil at the optimum stabilizer content. Results of treated soil should show a minimum 25% increase in CBR value over the untreated. The test method used shall be a modified version of ASTM D 1883 Test Method for CBR (California Bearing Ratio) of Laboratory Compacted Samples. The following curing modification shall be used:

**Curing:** CBR specimens, after molding, shall be left in their mold, on their sides and cured in laboratory air for 7 days prior to being immersed in water for 96 hours and then tested for CBR.

**Moisture Content:** CBR samples shall be compacted at the optimum moisture content, both treated and untreated (ASTM D698, method C.) Three specimen average required. Surcharge weight shall be 10 lbs.

**Report:** Shall include all the information required by ASTM D1883, Section 10.0 for both treated and untreated CBR samples. In addition, the penetration vs. stress plots for each test shall be included (ASTM D 1883, Fig. 2).

## 207-3 CONSTRUCTION DETAILS

**207-3.01 General Requirements:** Prior to the start of work the following information shall be provided to the Agency:

1. Manufacturer's standard literature for soil stabilizer / erosion and dust control product.
2. Application Methods, Dilution Ratios, and Application Rates
3. Manufacturer's Material Safety Data Sheets
4. Applicator qualifications.
5. Test results requested in section 2.1.4 of the of the Material Requirements and Specifications.

**207-3.02 Preparation:** Prior to the soil stabilizer / erosion and dust control product application, mask or otherwise protect buildings, concrete, roads, sidewalks, etc. Care will be taken to avoid excess over spray that may affect any adjacent areas. Grading, compacting, of the native site materials will be performed prior to the application of the dust control product in accordance with the plans and specifications.

**207-3.03 Application:** The soil stabilizer / erosion and dust control application shall penetrate to a minimum depth of 1/8 inch. The application process shall result in a uniformly treated mixture that contains the required amount of soil stabilizer / erosion and erosion control product, as recommended by the manufacturer or as approved by the Engineer. The total application rate to stabilize the surface of the native materials shall be a minimum of 300 gallons per acre of undiluted liquid soil stabilizer / erosion and dust control product per manufacturer's recommendation. As required by the manufacturer, the soil stabilizer / erosion and dust control product shall be diluted with potable water in accordance with the manufacturer's recommendations and as approved by the engineer prior to the application.

The soil stabilization / erosion and dust control product shall be applied on native site materials in-place. A representative from the product manufacturer shall be present on the job.

The soil stabilization / erosion and dust control product application shall provide 100% control efficiency of PM<sub>10</sub>, for a minimum of 12 months from date of application. The contractor shall provide and install the soil stabilization / erosion and dust control product free of charge if the finished project fails to meet the performance requirement of these specifications. The contractor shall provide additional applications when they are required, and within two weeks from a performance failure when notified.

**208-7.04 Curing:** No equipment or traffic will be permitted on the stabilized area for 48 hours unless approved by the product Manufacturer's representative.

**207-3.05 Record Keeping and Reporting:** Contractor shall provide detailed reports of product applications to show compliance to The Clean Air Act and EPA requirements.

**207-4 Method of Measurement**

Dust abatement will be measured by the acre to the nearest tenth of an acre for area receiving an application of soil stabilization / erosion and dust control product.

**207-5 Basis of Payment**

The accepted quantities of Dust Abatement measured as provided above, will be paid for at the contract unit price per acre.

**END OF EXHIBIT 'D' - SPECIAL PROVISIONS**





TBCONTR-03

JBROKAW

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/4/2020

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> The Mahoney Group - Tucson 5330 N. La Cholla Blvd Tucson, AZ 85741	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b> (520) 795-8511	<b>FAX (A/C, No):</b> (520) 795-8542
<b>INSURED</b>  TB Contractors, Inc.; BBK Fencing, LLC 39583 S. Highway 77 Tucson, AZ 85739	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Cincinnati Casualty Company	<b>NAIC #</b> 28665
	<b>INSURER B:</b> CopperPoint Indemnity Insurance Company	13928
	<b>INSURER C:</b> Westchester Surplus Lines Ins. Co	10172
	<b>INSURER D:</b>	
<b>INSURER E:</b>		
<b>INSURER F:</b>		

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	EPP 0563262	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	EBA 0563262	1/1/2020	1/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			EPP 0563262	1/1/2020	1/1/2021	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in Nh) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	1010014	1/1/2020	1/1/2021	<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
C	Pollution Coverage			G70964181 001	5/27/2019	5/27/2020	1,000,000 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Certificate holder is additional insured per attached forms GA472AZ(09/17), CG2001(04/13), GA4316AZ(09/17), GA233(09/17), AA288(01/16) and WC000313(4-84).

## CERTIFICATE HOLDER

## CANCELLATION

Pima County Procurement Dept  
Design & Construction Division  
130 W Congress St 3rd Floor  
Tucson, AZ 85701-1317

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

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
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3. Damage To Premises Rented To You.....	9
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5. Medical Payments.....	10
6. 180 Day Coverage For Newly Formed Or Acquired Organizations.....	10
7. Waiver Of Subrogation.....	11
8. Automatic Additional Insured - Specified Relationships:.....	11
• Managers Or Lessors Of Premises;	
• Lessor Of Leased Equipment;	
• Vendors;	
• State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises; and	
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#### B. Limits Of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$1,000,000  
Aggregate Limit: \$3,000,000  
Deductible Amount: \$ 1,000

##### 3. Damage To Premises Rented To You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

- Bail Bonds: \$2,500

b. Loss Of Earnings: \$ 500

**5. Medical Payments**

Medical Expense Limit: \$ 10,000

**9. Property Damage To Borrowed Equipment**

Each Occurrence Limit: \$10,000

Deductible Amount: \$ 250

**16. Voluntary Property Damage Coverage (Coverage a.) And Care, Custody Or Control Liability Coverage (Coverage b.)**

**Limits Of Insurance**

Coverage a.

\$1,000 Each Occurrence

\$5,000 Aggregate

Coverage b. \$5,000 Each Occurrence unless otherwise stated \$ \_\_\_\_\_

**Deductible Amount (Each Occurrence)**

Coverage a. \$250

Coverage b. \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS	RATE	ADVANCE PREMIUM
	(a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	(For Limits in Excess of \$5,000)	(For Limits in Excess of \$5,000)
b. Care, Custody Or Control			\$
TOTAL ANNUAL PREMIUM			\$

## C. Coverages

### 1. Employee Benefit Liability Coverage

- a. The following is added to **Section I - Coverages**:

#### **Employee Benefit Liability Coverage**

##### **(1) Insuring Agreement**

- (a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **Section III - Limits Of Insurance**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments**.

- (b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and
- 1) Occurs during the policy period; or
  - 2) Occurred prior to the "first effective date" of

this endorsement provided:

- a) You did not have knowledge of a claim or "suit" on or before the "first effective date" of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

- b) There is no other applicable insurance.

##### **(2) Exclusions**

This insurance does not apply to:

- (a) **Bodily Injury, Property Damage Or Personal And Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

- (b) **Dishonest, Fraudulent, Criminal Or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

- (c) **Failure To Perform A Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency Of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation And Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**Section I - Coverages, Supplementary Payments - Coverages A And B** also apply to this Coverage.

**b. Who Is An Insured**

As respects **Employee Benefit Liability Coverage, Section II - Who Is An Insured** is replaced by the following:

- (1) If you are designated in the Declarations as:
  - (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your part-

ners, and their spouses are also insureds but only with respect to the conduct of your business.

- (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program";
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed; or
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organi-

zation. However, coverage under this provision:

- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

#### c. Limits Of Insurance

As respects **Employee Benefit Liability Coverage, Section III - Limits Of Insurance** is replaced by the following:

- (1) The Limits of Insurance shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
  - (a) Insureds;
  - (b) Claims made or "suits" brought;
  - (c) Persons or organizations making claims or bringing "suits";
  - (d) Acts, errors or omissions; or
  - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
  - (a) An act, error or omission; or

- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions;

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

**(4) Deductible Amount**

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the Deductible Amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.
- (b) The Deductible Amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.
- (c) The terms of this insurance, including those with respect to:
- 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
  - 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim;
- apply irrespective of the application of the Deductible Amount.
- (d) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon no-

tification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, Section IV - Commercial General Liability Conditions** is amended as follows:

- (1) Item **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** is replaced by the following:

**2. Duties In The Event Of An Act, Error Or Omission, Or Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:
- (1) What the act, error or omission was and when it occurred; and
  - (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
- b. If a claim is made or "suit" is brought against any insured, you must:
- (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.
- You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers re-

ceived in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(2) Item 5. **Other Insurance** is replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when c. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

**b. Method Of Sharing**

If all of the other insurance permits contribu-

tion by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects **Employee Benefit Liability Coverage, Section V - Definitions** is amended as follows:

(1) The following definitions are added:

**1. "Administration" means:**

a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

b. Interpreting the "employee benefit programs";

c. Handling records in connection with the "employee benefit programs"; or

d. Effecting, continuing or terminating any "employee's" participation in



any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
  3. "Employee benefit programs" means a program providing some of all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
    - a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
    - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

4. "First effective date" means the date upon which coverage was first effected in a series of uninterrupted renewals of insurance coverage.

(2) The following definitions are deleted in their entirety and replaced by the following:

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;

- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

- c. An appeal of a civil proceeding.

2. **Unintentional Failure To Disclose Hazards**

**Section IV - Commercial General Liability Conditions, 7. Representations** is amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

3. **Damage To Premises Rented To You**

- a. The last Paragraph of **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions c. through q. do not apply to "property damage" by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you, with permission of the owner, for which the amount we will pay is limited to the **Damage To Premises Rented To You Limit** as described in **Section III - Limits Of Insurance**.

- b. The insurance provided under **Section I - Coverage A - Bodily Injury And Property Damage Liability** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

- (1) As respects Water Damage Legal Liability, as provided in Paragraph 3.b. above:

The exclusions under **Section I - Coverage A - Bodily Injury And Property Damage Liability, 2. Exclusions**, other than i. **War** and the **Nuclear Energy Liability Exclusion (Broad Form)**, are deleted and the following are added:

This insurance does not apply to:

- (a) "Property damage":
- (i) Assumed in any contract or agreement; or
  - (ii) Caused by or resulting from any of the following:
    - 1) Wear and tear;

- 2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

- 3) Smog;

- 4) Mechanical breakdown, including rupture or bursting caused by centrifugal force;

- 5) Settling, cracking, shrinking or expansion;

- 6) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals; or

- 7) Presence, growth, proliferation, spread or any activity of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

- (b) "Property damage" caused directly or indirectly by any of the following:

- (i) Earthquake, volcanic eruption, landslide or any other earth movement;

- (ii) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

- (iii) Water under the ground surface pressing on, or flowing or seeping through:

- 1) Foundations, walls, floors or paved surfaces;

- 2) Basements, whether paved or not; or
- 3) Doors, windows or other openings.

(c) "Property damage" caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, fire protection systems, or other equipment, caused by or resulting from freezing, unless:

- (i) You did your best to maintain heat in the building or structure; or
- (ii) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) "Property damage" to:

- (i) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or
- (ii) The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

#### c. Limit Of Insurance

With respect to the insurance afforded in Paragraphs 3.a. and 3.b. above, the **Damage To Premises Rented To You** Limit as shown in the Declarations is amended as follows:

(1) Paragraph 6. of **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the **Damage To Premises Rented To You** Limit is the most we will pay under **Coverage A - Bodily Injury And Property Damage Liability** for damages because of "property damage" to any one premises:

- a. While rented to you, or temporarily occupied by

you with permission of the owner;

b. In the case of damage by fire, explosion, lightning, smoke or soot, while rented to you; or

c. In the case of damage by water, while rented to and occupied by you.

(2) The most we will pay is limited as described in **Section B. Limits Of Insurance, 3. Damage To Premises Rented To You** of this endorsement.

#### 4. Supplementary Payments

Under **Section I - Supplementary Payments - Coverages A And B:**

a. Paragraph 2. is replaced by the following:

Up to the limit shown in **Section B. Limits Of Insurance, 4.a.** Bail Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in **Section B. Limits Of Insurance, 4.b.** Loss Of Earnings of this endorsement per day because of time off from work.

#### 5. Medical Payments

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in **Section B. Limits Of Insurance, 5. Medical Payments** of this endorsement

#### 6. 180 Day Coverage For Newly Formed Or Acquired Organizations

**Section II - Who Is An Insured** is amended as follows:

Subparagraph a. of Paragraph 3. is replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after