



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☒ Award ☐ Contract ☐ Grant

Requested Board Meeting Date: November 16, 2021

** = Mandatory, information must be provided*

or Procurement Director Award ☐

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

Inflow Communications, LLC (Headquarters: Beaverton, OR)

***Project Title/Description:**

Mitel VoIP System Maintenance

***Purpose:**

Award: Master Agreement No. MA-PO-22-056. This Master Agreement is for an initial term of one (1) year in the annual award amount of \$280,000.00 (including sales tax) and includes four (4) one-year renewal options.

Administering Department: Information Technology.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.010, Competitive sealed bidding, Solicitation No. IFB-PO-2200017 was conducted. Three (3) responses were received. Award is to the lowest, responsive and responsible bidder.

PRCUID: 424033

Attachments: Notice of Recommendation for Award and Master Agreement.

***Program Goals/Predicted Outcomes:**

Provide IT staff with comprehensive technical support and troubleshooting assistance for the County's Mitel phone system through a Mitel support partner.

***Public Benefit:**

Maintain the County's VoIP technology to ensure open lines of communications between county staff, and between the County and the Public.

***Metrics Available to Measure Performance:**

Performance will be measured against the contractual service expectations.

***Retroactive:**

No.

To: COB 10-29-21(1)

Pgs: 18

Vers: 1

Contract / Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 22-056
 Commencement Date: 11/16/2021 Termination Date: 11/15/2022 Prior Contract Number (Synergen/CMS): _____
☒ **Expense Amount: \$** 280,000.00 ☐ **Revenue Amount: \$** _____

***Funding Source(s) required:** Telecom Services

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

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

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

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

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

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

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
 Amendment No.: _____ AMS Version No.: _____
 Commencement Date: _____ New Termination Date: _____
 Prior Contract No. (Synergen/CMS): _____
☐ Expense 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): _____
 Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

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

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

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

***Funding Source:** _____

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

Contact: Troy McMaster, Procurement Officer Troy McMaster Ana Wilber
Digitally signed by Troy McMaster
DN: cn=Troy McMaster, o=Pinola County,
ou=Procurement Department,
email=troy.mcmaster@pinola.gov, c=US
Date: 2021.10.28 09:13:40 -0700 Digitally signed by Ana Wilber
Date: 2021.10.28 09:30:19 -0700

Department: Procurement Director Terri Spencer Digitally signed by Terri Spencer
Date: 2021.10.28 11:36:27 -0700 Telephone: 520.724.8728

Department Director Signature/Date: Daniel C. Hunt Digitally signed by Daniel C. Hunt
DN: cn=Daniel C. Hunt, o=Pinola County, ou=Information Technology Department,
email=dhunt@pinola.gov, c=US
Date: 2021.10.28 13:15:07 -0700

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____
 (Required for Board Agenda/Addendum Items)



NOTICE OF RECOMMENDATION FOR AWARD

Date of Issue: October 28, 2021

The Procurement Department hereby issues formal notice to respondents to Solicitation No. IFB-PO-2200017 for Mitel VoIP System Maintenance that the following listed respondent will be recommended for award as indicated below. The award action is scheduled to be performed by the Board of Supervisors on or after Tuesday, November 16, 2021.

Award is recommended to the:

Lowest, responsive and responsible bidder

AWARDED

Inflow Communications, LLC

Mitel Partner Support (1b)

BID AMOUNT

\$254,288.78

AWARD AMOUNT

\$280,000.00

OTHER RESPONDENTS

Inflow Communications, LLC

Mitel Enterprise Support (1a)

BID AMOUNT

\$454,135.78

CPI Technologies, LLC dba CPI Telecom

Mitel Enterprise Support (1a)

Mitel Partner Support (1b)

\$511,975.00

\$443,926.00

Enterprise Network Solutions, Inc.

Mitel Enterprise Support (1a)

Mitel Partner Support (1b)

\$511,711.00

\$511,711.00

Issued by: Troy McMaster, Procurement Officer

Telephone Number: 520.724.8728

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

AW



MASTER AGREEMENT

PIMA COUNTY, ARIZONA

THIS IS NOT AN ORDER - TRANSMISSION CONSTITUTES
CONTRACT EXECUTION

Master Agreement No: 2200000000000000056

MA Version: 1

Page: 1 of 2

Description: Mitel VoIP System Maintenance

I S S U E R	Pima County Procurement Department	T E R M S	Initiation Date:	11-16-2021	
	150 W. Congress St. 5th Fl		Expiration Date:	11-15-2022	
	Tucson AZ 85701				
	Issued By:		TROY MCMASTER		
	Phone:		5207248728		
	Email:		troy.mcmaster@pima.gov		
			<div><div>NTE Amount:</div><div>\$280,000.00</div></div> <div><div>Used Amount:</div><div>\$0.00</div></div>		

V E N D O R	Inflow Communications, LLC	Contact:	Jenna Swikard
	9450 SW Gemini Dr. #54242	Phone:	206-962-3335
	Beaverton OR 97008	Email:	jswikard@inflowcommunications.com
		Terms:	0.00 %
		Days:	30

Shipping Method:	Vendor Method
Delivery Type:	
FOB:	
Modification Reason	
This Master Agreement is for an initial term of one (1) year in the annual award amount of \$280,000.00 (including sales tax) and includes four (4) one-year renewal options. Attachment: Offer Agreement	

This Master Agreement incorporates the attached documents, and by reference all instructions, Standard Terms and Conditions, Special Terms and Conditions, and requirements that are included in or referenced by the solicitation documents used to establish this agreement. All transactions and conduct are required to conform to these documents.



MASTER AGREEMENT DETAILS

Master Agreement No: 22000000000000000056

MA Version: 1

Page: 2 of 2

Line	Description					
1	Mitel Enterprise Support Annual Fee					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$343,727.00			
2	Mitel Partner Support with Tech Cust. Success Mgr Annual Fee					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$201,095.00			
3	Support Hourly Rates (Business Hours 8 am to 5pm)					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$250.00			
4	Support Hourly Rates (Outside Standard Business Hours)					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$325.00			
5	Mitel Hardware - 48% off Mitel List Price (Freeform Line)					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$0.00			
6	Mitel Licensing - 48% off Mitel List Price (Freeform Line)					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$0.00			
7	Maintenance: TelStrat Record – Liability Recording Seat					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	YEAR	\$43.68			
8	Intrado Annual Maintenance and Support - EGW					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	YEAR	\$6,862.66			
9	Intrado Annual Maintenance and Support – EGW Licenses					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	YEAR	\$1,663.67			
10	Intrado Annual Maintenance and Support – Desk Alert					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	YEAR	\$1,143.78			
11	Professional Services Hourly Rates (UC)					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$250.00			
12	Professional Services Hourly Rates (CC)					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$275.00			

OFFER AGREEMENT**1. INTENT:**

This document is intended to establish a Master Agreement ("MA") to provide Pima County ("County") with technical support and maintenance of the County's Mitel VoIP Phone System, and with new hardware and licensing, on an "as required basis" by issue of Delivery Order ("DO") or Delivery Order Maximo ("DOM").

As defined by the Pima County Standard Terms and Conditions included herein, this contract is non-exclusive and County may terminate it for any reason without penalty or cost.

All Goods and Services that Contractor offers or provides pursuant to the contract will conform to the requirements defined by or referred to by the solicitation documents including *Solicitation Amendments*, *Instructions to Offerors*, *Standard Terms and Conditions*, and this *Offer Agreement*, all of which are incorporated herein.

This document, including all attachments and documents incorporated by reference, constitutes the entire contract between the parties pertaining to the subject matter hereof, and merges all prior or contemporaneous agreements and understandings, oral or written, herein.

2. CONTRACT TERM, RENEWALS, EXTENSIONS and REVISIONS:

The initial term of the MA will be for a one (1) year period and includes four (4) one-year renewal options that the parties may exercise upon written agreement as follows:

Contract extensions, renewals, or revisions will occur through the issuance by County 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 County will signify acceptance of all such changes by Contractor and the revision will be binding upon the parties.

3. CONTRACTOR MINIMUM QUALIFICATIONS:

The Contractor certifies that it is competent, willing and responsible for performing the services or providing the products in accordance with all requirements of the solicitation and this contract. Contractor certifies that it possesses all licenses required by applicable Agencies to satisfy the requirements of this contract.

Minimum Qualification:	Qualification Met: (to be filled in by contractor)	Supporting Documentation: (to be filled in by contractor)
Authorized supplier of Mitel licensing and support with a minimum Mitel status of Silver	Mitel Status Level: <u>Platinum (highest tier)</u>	Please follow this link to the Mitel Partner Finder site for confirmation of Inflow's Platinum status: https://www.mitel.com/find-a-partner?partner=Inflow%20Communications#numberOfResults=100&f:PartnerLevel=[Platinum]
Minimum of two MiVC & ECC Certified technicians	Number of MiVC Certified Technicians: <u>21</u> Number of ECC Certified Technicians: <u>18</u>	These numbers represent a combination of certified Mitel support technicians as well as Mitel project engineers on staff.
One to three Government Client References receiving similar levels of support	Number of References: <u>3</u>	<ol style="list-style-type: none"> City of Goodyear Contact: Brian Watson Phone: 623-882-7871 Email: brian.watson@goodyearaz.gov City of Medford Contact: Barbara Madruga Phone: 541-774-2064 Email: barbara.madruga@cityofmedford.org City of Oregon City Contact: David Knoll Phone: 503-496-1557

		Email:dknoll@orcity.org
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4. PRODUCT OR SERVICE SPECIFICATIONS & SCOPE:

GENERAL SPECIFICATIONS. Contractor will process orders for hardware, licensing, and training with Mitel, and adhere to the following service expectations:

1. Contractor will provide Pima County ITD Telecom with first level technical support, and as necessary assist County in troubleshooting open tickets with Mitel TAC. Contractor will maintain up-to-date official Mitel partner status to facilitate this support.
2. Contractor will implement all recommended system software upgrades, firmware upgrades, and patches as these upgrades and patches become available.
3. Contractor will provide quarterly updates of new Mitel announcements and consulting services for product and code recommendations.

4. Technical and customer support will be provided on a 24/7/365 basis.
5. Contractor must employ a minimum of two MiVC and ECC certified technicians that are familiar with County's phone system to provide remote and/or onsite support as needed.
6. Contractor will provide any support not covered by this agreement at the hourly rates set in Section 8 Compensation & Payment. These rates must remain firm during the term of the contract. **COMPLY**
7. Contractor must respond to all emergency requests within a two-hour window, and to all non-emergency requests within a four-hour window.
8. Contractor will provide quotes (with list price, discount percentage, and extended unit price) as needed for Mitel hardware and licensing when requested.
9. Contractor will coordinate with Intrado and TelStrat to acquire quotes for their related products and services on County's system.
10. Contractor will process any replacements for out-of-box failures and warranty issues.
11. Contractor will provide a standard price discount percentage for Mitel equipment, and a standard price discount percentage for Mitel licensing.

ITEM SPECIFICATIONS. Contractor support must extend to the following licenses and equipment:

Connect License Utilization

1. Additional Language Licenses – 2
2. Additional Site Licenses – 13
3. Operator Access License – a minimum of 60 up to 140
4. Personal / Phone Only Access License – a minimum of 1,145 up to 6,000
5. Professional / Connect Access License – a minimum of 7,300 up to 8,600
6. ShoreWare Extension License – a minimum of 8,250 up to 8,300
7. ShoreWare Mailbox License – a minimum of 6,400 up to 6,600
8. ShoreWare Phone API License – a minimum of 2,300 up to 2,500
9. ShoreWare Remote Server Software – a minimum of 11 up to 20
10. ShoreWare SoftPhone License – a minimum of 6,750 up to 8,950
11. ShoreWare Standard Resolution Video License – a minimum of 80 up to 8,700
12. ShoreWare TAPI Application Server – a minimum of 3 up to 6
13. SIP Phone License – a minimum of 75 up to 8,700
14. SIP Trunk License – a minimum of 90 up to 225
15. Virtual SIP Trunk License – a minimum of 500 up to 800
16. Virtual Switch IPPhone License – a minimum of 6,750 up to 8,950
17. Workgroup Agent Access License – a minimum of 265 up to 280
18. Workgroup Supervisor Access License – a minimum of 40 up to 100

ECC Licenses

1. CC System – Standard
2. CC Group Activity API – 2
3. CC Supervisors – 41
4. CC Agent Activity API – 2
5. CC Redundancy – 1
6. CC IVR Ports – 300
7. CC Voice – 280

Equipment

- | | |
|-----------------|-----------------|
| 1. SG220T1 – 16 | 7. SGT1k – 9 |
| 2. SG220T1A – 8 | 8. vCollab – 5 |
| 3. SG24A – 79 | 9. vPhone – 35 |
| 4. SG30 – 26 | 10. vTrunk – 4 |
| 5. SG50 – 1 | 11. WinDVS – 14 |
| 6. SG90 – 2 | 12. WinHQ – 1 |

5. SUSTAINABILITY:

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

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

6. OFFER ACCEPTANCE & ORDER RELEASES:

County will accept offer and execute this contract by issue of a MA (recurring requirements) to be effective on the document's date of issue without further action by either party. The MA will document the term of the agreement.

Pursuant to the executed MA, County departments requiring the goods or services defined herein will issue a DO to the Contractor. County will furnish the DO to Contractor via facsimile, e-mail or telephone. **If County gives the order verbally, the County Department issuing the order will transmit a confirming order document to Contractor within five (5) workdays of the date it gives the verbal order.**

Contractor must not supply materials or services that are not specified on the MA and are not documented or authorized by a DO at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County DO.

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this contract. In particular, Contractor will not provide goods or services in excess of the executed contract items, item quantity, item amount, or contract amount without prior written authorization by contract revision that County has properly executed and issued. Any items Contractor provides in excess of those stated in the contract are at Contractor's own risk. Contractor will decline verbal requests to deliver items in excess of the contract and will report all such requests in writing to the County Procurement Department within one (1) workday of the request. The report must include the name of the requesting individual and the nature of the request.

7. ACCEPTANCE OF GOODS & SERVICES:

The County Department designated on the issued order (DO) will accept goods and services only in accordance with this contract. Such acceptance is a prerequisite to the commencement of payment terms.

8. COMPENSATION & PAYMENT:

The MA issued to accept Contractor's offer will define the not-to-exceed amount of the contract.

Contractor's unit prices must include all incidentals and associated costs required to comply with and satisfy all requirements of this solicitation, which includes the Instructions to Offerors, Standard Terms and Conditions, and Offer Agreement. County will make no payments for items not in the contract.

Quantities in this solicitation are estimates only. County reserves the right to increase or decrease quantities and amounts. County makes no guarantee regarding actual orders for items or quantities during the term of the agreement. County is not responsible for Contractor inventory or order commitment.

UNIT PRICES (Net 30-day Payment Terms)

ITEM #	ITEM NAME Items to include and satisfy all Solicitation & Offer Agreement requirements, General & Item Specifications	ESTIMATED ANNUAL USAGE QUANTITY	UOM	UNIT PRICE \$	EXTENDED AMOUNT \$
1a.	Mitel Enterprise Support	1	Year	\$343,727.00	\$343,727.00
1b.	Mitel Partner Support with Tech Customer Success Manager	1	Year	\$201,095.00	\$201,095.00
2.	Support Hourly Rates – Business Hours (8 am - 5 pm)	150	Hour	\$250	\$ N/A- Unlimited support access is included in our Partner Support plan
3.	Support Hourly Rates – Outside Business Hours	60	Hour	\$325	\$ N/A-Unlimited Emergency after hours support is included in Partner Support for no additional fee for critical issues.
4.	Maintenance for TelStrat Record – Liability Recording Seat	125	Year	\$43.68	\$5,460.00
5.	Intrado Annual Maintenance & Support – EGW	1	Year	\$6,862.66	\$6,862.66
6.	Intrado Annual Maintenance & Support – EGW Licenses	2	Year	\$1,663.67	\$3,327.34
7.	Intrado Annual Maintenance & Support – Desk Alert	1	Year	\$1,143.78	\$1,143.78
8.	Mitel Hardware – Discount Off List Price	\$ 35,000.00	Year	48%	\$18,200.00
9.	Mitel Licensing – Discount Off List Price	\$ 35,000.00	Year	48%	\$18,200.00
FOB Destination/Unloaded; include cost of freight in unit price.				TOTAL BID 1a	\$397,135.78
Although County will pay taxes IF applicable, do NOT include sales tax in unit price.				TOTAL BID 1b	\$254,503.78

Unless the parties otherwise agree in writing, all pricing will be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination"). Contractor will deliver and unload products or services at the destination(s) that the delivery article of this contract or accepted Order indicates. The offered Unit Price must include all freight costs.

Although an order may not fully define State and City sales tax, County will pay such taxes as are DIRECTLY applicable to County and Contractor invoices such taxes as a separate line item. Contractor must not include such taxes in the item unit price.

Price Warranty. Contractor will give County the benefit of any price reduction before actual time of shipment.

Price Escalation. All unit prices include compensation for Contractor to implement and actively conduct cost and price control activities. Pricing will remain firm during the initial year of the contract term after which the parties may consider price increases no more frequently than once per year. Contractor will submit a written request to County that includes supporting documents justifying requested increases at least ninety (90) days prior to the renewal date. Contractor will provide evidence, cite sources, demonstrate specific conditions and document how those conditions affect the cost of its performance, and identify specific efforts Contractor has taken to control and reduce those and other costs to avoid the need to increase prices. County will review proposed pricing and determine if it is allowable, fair and reasonable, and in the best interest of County to accept the proposal. County reserves the right to continue, accept or reject the price proposal, or terminate and re-solicit the contract.

The parties may negotiate and establish unit pricing in writing under the contract for items included in the scope of the contract that does not have previously defined unit pricing.

Standard Payment Term Net (30) is effective from the date of valid invoice document and does not commence until the later of 1) the receiving County Department receives goods or services into County's payment system or 2) County Financial Operations receives and verifies Contractor's invoice.

OPTIONAL EARLY PAYMENT DISCOUNT TERM: Pima County Administrative Procedure No. 22-35 Section 2.2.4 defines County's practice regarding discounts for early payment. Contractor offers the following discounts to those prices to be used for all orders issued pursuant to this contract. County will utilize the existing payment code that best matches that offered and does not exceed the offered discount percentage. Payment days cannot be less than ten (10) calendar days. Contractor will submit valid invoice document consistent with the associated (DO) to County Finance Department at least seven (7) calendar days prior to the date on which the discounted payment is due. If desired, for any order issued pursuant with this contract, Contractor may offer early payment discounts that exceed this Early Payment Discount.

Optional Early Payment Discount Percent: NA % if payment tendered within NA Days as indicated above.

Contractor will submit Request(s) for Payment or Invoices to the location and entity defined by County's (DO) document.

All maintenance and support options will be invoiced annually.

All Invoice documents will reference the County's (DO) number under which the services or products were ordered. ALL Invoice line items will utilize the item description, precise unit price and unit of measure defined by the County's order document. County may return invoices that include line items or unit prices that do not match those documented by the County's order to Contractor unprocessed for correction. Contractor will not accept orders, or provide services or products that cumulatively exceed the contract amount.

Contractor will provide detailed documentation in support of payment requests, which should be consistent with and not exceed County's (DO) document. Contractor will bill County within one (1) month after the date on which Contractor's right to payment accrues ("Payment Accrual Date"), which, unless this contract specifically provides otherwise, is the date Contractor delivers goods, performs services or incurs costs. Invoices must assign each billed amount to an appropriate line item of County's order and document each Payment Accrual Date. County may refuse to pay any amount that Contractor bills in which does not conform to County's (DO) document. County will refuse to pay any amount that Contractor bills more than six (6) months after the Payment Accrual Date, pursuant to A.R.S. § 11-622(C).

9. DELIVERY:

"On-Time" delivery is an essential part of the consideration that Contractor is to provide to County under the contract. Contractor will make delivery in accordance with the Instructions to Offerors, Standard Terms and Conditions and to the location(s) on the (DO) document.

Contractor guarantees delivery of product or service no later than the delivery date as specified by the DO or DOM. Response time for emergency support will not exceed two hours, and response time for non-emergency support will not exceed four hours. If necessary to satisfy the guaranteed delivery time, Contractor will utilize premium freight method at no additional cost to County.

10. TAXES, FEES, EXPENSES:

Pursuant to IRS Publication 510, County is exempt from federal excise taxes for goods. County is subject to State and City sales tax. County will pay no separate charges for delivery, drayage, express, parcel post, packing, insurance, license fees, permits, costs of bonds, surcharges, or bid preparation unless the contract expressly includes such charges and the solicitation documents itemize them.

11. OTHER DOCUMENTS:

Contractor and County in entering into this contract have relied upon information provided or referenced by Pima County Solicitation No. IFB-PO-2200017 including the Invitation for Bid, Instructions to Offerors, Offer Agreement, Standard Terms and Conditions, Solicitation Amendments, Contractor's Bid Offer, documents submitted by Contractor or References to satisfy Minimum Qualifications and any other information and documents that Contractor has submitted in its response to County's Solicitation. The Contract incorporates these documents as though set forth in full herein, to the extent not inconsistent with the provisions of this contract.

12. 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.

Minimum Scope and Limits of Insurance:

Contractor shall procure and maintain, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. Pima County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

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.

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

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.

Technology Errors and Omissions (E&O) Insurance – This insurance is required when the Professional Liability or any other coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance policy shall cover professional misconduct or negligent acts of anyone performing any services under this contract.

Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.

Certificate of Insurance shall identify if the Tech E&O insurance required by this Contract is a claims-made policy. Contractor shall warrant that continuous coverage will be maintained as outlined in Required Insurance. A Claims-Made policy is acceptable.

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 Contract expiration, termination or cancellation.

Additional Insurance Requirements:

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

Additional Insured: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

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

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

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

Notice of Cancellation:

Each Required Insurance policy must provide, and certificates specify, that County 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.

Verification of Coverage:

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

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

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

Approval and Modifications:

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

13. PERFORMANCE BOND:

Not applicable to this Agreement.

14. ACKNOWLEDGEMENT OF SOLICITATION AMENDMENTS:

Contractor acknowledges that it incorporates the following solicitation amendments in its offer and this contract:

Amendment #	Date	Amendment #	Date	Amendment #	Date
01	September 28, 2021	03	October 1, 2021		
02	September 29, 2021	04	October 8, 2021		

15. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION:

Is your firm SBE certified as defined by the solicitation "Instruction to Offerors" section? Yes ☐ No ☒ (select one)

If Yes, have you included your certification document? Yes ☐ No ☐ (select one)

NOTE: If you do not submit the SBE Certification document with your bid, County will not apply the SBE Preference.

16. BID/OFFER CERTIFICATION:**CONTRACTOR LEGAL NAME:** Inflow Communications, LLC**BUSINESS ALSO KNOWN AS:** Inflow Communications**MAILING ADDRESS:** 9450 SW Gemini Drive #54242**CITY/STATE/ZIP:** Beaverton, Oregon 97008**REMIT TO ADDRESS:** 9450 SW Gemini Drive #54242**CITY/STATE/ZIP:** Beaverton, Oregon 97008**CONTACT PERSON NAME/TITLE:** Jenna Swikard, Enterprise Account Executive**PHONE:** 206-962-3335**FAX:** 206-962-3335**CONTACT PERSON EMAIL ADDRESS:** jswikard@inflowcommunications.com**EMAIL ADDRESS FOR ORDERS & CONTRACTS:** jswikard@inflowcommunications.com**CORPORATE HEADQUARTERS ADDRESS:** 9450 SW Gemini Drive #54242, Beaverton, Oregon 97008**WEBSITE:** www.inflowcommunications.com

By signing and submitting these Offer Agreement documents, the undersigned certifies that they are legally authorized to represent and bind Contractor to legal agreements, that all information submitted is accurate and complete, that Contractor has reviewed the Pima County Procurement website for solicitation amendments and has incorporated all such amendments to its offer, that Contractor is qualified and willing to provide the items requested, and that Contractor will comply with all requirements of the solicitation. The Unit Pricing includes all costs incidental to the provision of the items in compliance with the above documents; no additional payment will be made. Conditional offers that modify the solicitation requirements may be deemed not 'responsive' and County may not evaluate them. Contractor's submission of a signed offer agreement will constitute a firm offer and upon the issuance of a MA or PO document issued by the Pima County Procurement Director or authorized designee will form a binding contract that will require Contractor to provide the goods or services and materials described in this solicitation. The undersigned hereby offers to furnish the goods or services in compliance with all terms, conditions, specifications that the solicitation defines or references, which includes Pima County Standard Terms & Conditions, this Offer Agreement and other documents as listed in this Offer Agreement's ["Other Documents"] section.

SIGNATURE:  **DATE:** 10/12/2021

Jenna Swikard, Enterprise Account Executive**PRINTED NAME & TITLE OF AUTHORIZED CONTRACTOR REPRESENTATIVE EXECUTING OFFER****PHONE & EMAIL:** 425-749-1894 jswikard@inflowcommunications.com**County Attorney Contract Approval "As to Form".**

PIMA COUNTY STANDARD TERMS AND CONDITIONS**1. OPENING:**

Pima County ("County") will publicly open responses on the date and at the location as stated in the Invitation for Bid (IFB) or Request for Proposal (RFP). The County will read each respondent's name, and for responses to an IFB will also read the total bid amount. County will open proposals so as to avoid disclosure of the contents of any proposal to competing Offerors during the evaluation process. County invites all interested parties to attend the bid opening.

2. EVALUATION:

County will evaluate responses to determine which are most advantageous to County considering conformity to the specifications stated in the IFB, evaluation criteria stated in the RFP, and other factors, regardless of solicitation type.

If County makes an award, County will enter into an agreement with one or more Contractor(s) that submitted the lowest responsive bid(s) or highest scoring proposal that County determined responsible for providing the required goods or services. Unless otherwise specified on the IFB document, County will determine the low or lowest bids considering all items listed in the Unit Price Schedule.

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

3. AWARD NOTICE:

County will post a Notice of Recommendation for Award for IFB or RFP on the Procurement website available for review by interested parties. The Procurement Department will maintain a tabulation of the bids or ranking of proposals.

4. AWARD:

Either the Procurement Director or the Board of Supervisors will make the contract award in accordance with the Pima County Procurement Code. County reserves the right to reject any or all proposals, bids or to waive irregularities and informalities in the best interest of County. Unless County expressly agrees otherwise, resulting contracts are not exclusive, they are for the sole convenience of County, and County reserves the right to obtain like goods or services from other sources.

5. WAIVER:

Each Offeror, by submission of a proposal, bid or proposal waives any and all claims for damages against County or its officers or employees when County exercises any of its reserved rights.

6. ACKNOWLEDGEMENT AND ACCEPTANCE:

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

7. INTERPRETATION AND APPLICABLE LAW:

The laws of the State of Arizona govern the interpretation and construction of this Contract. If any of Contractors' terms or conditions is not in agreement with County's terms and conditions as set forth herein, County's will govern. This contract incorporates the complete agreement of the parties with respect to the subject matter of this contract. No oral agreement or other understanding will in any way modify the terms and conditions of this contract.

8. WARRANTY:

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

9. QUANTITY:

Contractor will not exceed or reduce the quantity of goods ordered without written permission from County in the form of a properly executed Master Agreement ("MA"), Purchase Order ("PO"), Delivery Order ("DO"), or Delivery Order Maximo ("DOM") revision or amendment as the County's Procurement Code requires. All quantities are estimates and County provides no guarantee regarding actual usage.

10. PACKING:

Contractor will make no extra charges for packaging or packing material. Contractor is responsible for safe packaging conforming to carrier's requirements.

11. DELIVERY:

On-time delivery of goods and services is an essential part of the consideration that County will receive.

Contractor must provide a guaranteed delivery date, or interval period from order release date to delivery if the Price proposal document requires it. Upon receipt of notification of delivery delay, County at its sole option and at no cost to County may cancel the order or extend delivery times. Such extension of delivery times will not be valid unless an authorized representative of County extends it to Contractor in writing.

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

Contractor is not responsible for unforeseen delays caused by fires, strikes, acts of God, or other causes beyond Contractor's control, provided that Contractor provides County immediate notice of delay.

12. SPECIFICATION CHANGES:

County has the right to make changes in the specifications, services, or terms and conditions of an order. If such changes cause an increase or decrease in the amount due under an order or in time required for performance, County will make an acceptable adjustment and will modify the order in writing. No verbal agreement for adjustment is acceptable.

Nothing in this clause reduces Contractor's responsibility to proceed without delay in the delivery or performance of an order.

13. INSPECTION:

County may inspect or test all goods and services at place of manufacture, destination, or both. Contractor will hold goods failing to meet specifications of the order or contract at Contractor's risk and County may return such goods to Contractor with costs for transportation, unpacking, inspection, repacking, reshipping, restocking or other like expenses to be the responsibility of Contractor. In lieu of return of nonconforming supplies, County, at its sole discretion and without prejudice to County's rights, may waive any nonconformity, receive the delivery, and treat the defect(s) as a warranty item, but any waiver of any condition will not apply to subsequent shipments or deliveries.

14. SHIPPING TERMS:

Unless the contract states otherwise, delivery terms are to be F.O.B. Destination & Freight Prepaid Not Billed ("F.O.B. Destination") and Contractor is to include such terms in its Unit Price proposal.

15. PAYMENT TERMS:

Payment terms are net thirty (30) days, unless the contract specifies otherwise.

16. ACCEPTANCE OF MATERIALS AND SERVICES:

County will not execute an acceptance or authorize payment for any service, equipment or component prior to delivery and verification that the delivery meets all specification requirements.

17. RIGHTS AND REMEDIES OF COUNTY FOR DEFAULT:

In the event any item that Contractor furnishes in the performance of the contract should fail to conform to the specifications thereof, or to the sample that Contractor submitted, County may reject same, and it thereupon becomes the duty of Contractor to reclaim and remove the same, without expense to County, and immediately replace all such rejected items with others conforming to the specifications or samples. Should Contractor fail, neglect, or refuse immediately to do so, County has the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any monies due or that may become due to Contractor the difference between the price named in the MA or Purchase Order ("PO") and the actual cost to County.

In the event Contractor fails to make prompt delivery as specified of any item, the same conditions as to the rights of County to purchase in the open market and invoke the reimbursement condition above apply, except when delivery is delayed by fire, strike, freight embargo, or acts of god or of the government. In the event of cancellation of the MA, PO or associated orders, either in whole or in part, by reason of the default or breach by Contractor, Contractor will bear and pay for any loss or damage sustained by County in procuring any items which the Contractor agreed to supply.

The rights and remedies of County provided above are not exclusive and are in addition to any other rights and remedies provided by law or under the contract.

18. FRAUD AND COLLUSION:

Each Contractor, by submission of a bid, certifies that no officer or employee of County or of any subdivision thereof:

1) has aided or assisted Contractor in securing or attempting to secure a contract to furnish labor, materials or supplies at a higher price than that proposed by any other Contractor; 2) has favored one Contractor over another by giving or withholding information or by willfully misleading the bidder in regard to the character of the material or supplies called for or the conditions under which the proposed work is to be done; 3) will knowingly accept materials or supplies of a quality inferior to those called for by any contract; 4) has any direct or indirect financial interest in the proposal or resulting contract. Additionally, during the conduct of business with County, Contractor will not knowingly certify, or induce others to certify, to a greater amount of labor performed than has been actually performed, or to the receipt of a greater amount or different kind of material or supplies that has been actually received. If County finds at any time that Contractor has in presenting any proposal(s) colluded with any other party or parties for the purpose of preventing any other proposal being made, then County will terminate any contract so awarded and that person or entity will be liable for all damages that County sustains.

19. COOPERATIVE USE OF RESULTING CONTRACT:

As allowed by law, County has entered into cooperative procurement agreements that enable other Public Agencies to utilize procurement agreements that County has developed. Participating agencies may contact Contractor with requests to provide services and products pursuant to the pricing, terms and conditions defined by the County MA, or PO. Minor adjustments are allowed subject to agreement by both Contractor and Requesting Party to accommodate additional cost or other factors not present in the County's agreement and required to satisfy particular Public Agency code or functional requirements and within the intended scope of the solicitation and resulting contract. The parties to the cooperative procurement will negotiate and transact any such usage in accordance with State, County and other Public Agency procurement rules, regulations and requirements. Contractor will hold harmless County, its officers, employees, and agents from and against all liability, including without limitation payment and performance associated with such use. Contractor may view a list of agencies that are authorized to use County contracts at the Procurement Department Internet home page: <http://www.pima.gov/procure>, under the Vendor Information tab, by selecting the link titled *County Cooperative Agreements – Authorized Agencies*.

20. PATENT INDEMNITY:

Contractor will indemnify, defend and hold County, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the MA, PO, and associated orders. County may require Contractor to furnish a bond or other indemnification to County against any and all loss, damage, costs, expenses, claims and liability for patent or copyright infringement.

21. INDEMNIFICATION:

Contractor will indemnify, defend, and hold harmless County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any act, omission, fault or negligence by Contractor, its agents, employees or anyone under its direction or control or on its behalf in connection with performance of the MA, PO or associated orders. Contractor warrants that all products and services provided under this contract are non-infringing. Contractor will indemnify, defend and hold County harmless from any claim of infringement arising from services provided under this contract or from the provision, license, transfer or use for their intended purpose of any products provided under this Contract.

22. UNFAIR COMPETITION AND OTHER LAWS:

Responses must comply with Arizona trade and commerce laws (Title 44 A.R.S.) and all other applicable County, State, and Federal laws and regulations.

23. COMPLIANCE WITH LAWS:

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

24. ASSIGNMENT:

Contractor may not assign its rights to the contract, in whole or in part, without prior written approval of County. County may withhold approval at its sole discretion, provided that County will not unreasonably withhold such approval.

25. CANCELLATION FOR CONFLICT OF INTEREST:

This contract is subject to cancellation pursuant to A.R.S. §§38-506 and 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

26. NON-DISCRIMINATION:

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

27. NON-APPROPRIATION OF FUNDS:

County may cancel this contract pursuant to A.R.S. § 11-251(42) if for any reason the County Board of Supervisors does not appropriate funds for the stated purpose of maintaining the contract. In the event of such cancellation, County has no further obligation, other than payment for services or goods that County has already received.

28. PUBLIC RECORDS:

Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

The Contractor agrees to waive confidentiality of any price terms in the event of a contract award.

29. CUSTOM TOOLING, DOCUMENTATION AND TRANSITIONAL SUPPORT:

Costs to develop all tooling and documentation, such as and not limited to dies, molds, jigs, fixtures, artwork, film, patterns, digital files, work instructions, drawings, etc. necessary to provide the contracted services or products and unique to the services or products supplied to County are included in the agreed upon Unit Price unless the contract specifically states otherwise. Such tools and documentation are the property of County and will be marked, as is practical, as the "Property of Pima County" and County so requests, Contractor will deliver a copy of the tooling and documentation to County within twenty (20) days of acceptance by County of the first article sample, or not later than ten (10) days of termination of the contract associated with their development, without additional cost to County. Contractor also agrees to act in good faith to facilitate the transition of work to a subsequent Contractor if and as reasonably requested by County at no additional cost. Should exceptional circumstances be present that may justify an additional charge, Contractor may submit said justification and proposed cost and negotiate an agreement acceptable to both Contractor and County, but Contractor may not withhold any requested tooling, document or support as defined above that would delay the orderly, efficient and prompt transition of work. Should conduct by Contractor result in additional costs to County, Contractor will reimburse County for said actual and incremental costs provided that County has given Contractor reasonable time to respond to County's requests for support.

30. AMERICANS WITH DISABILITIES ACT:

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

31. NON-EXCLUSIVE:

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

32. PROTESTS:

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

33. TERMINATION:

County reserves the right to terminate any MA, PO, Delivery Order, DOM or award, in whole or in part, at any time, without penalty or recourse, when in the best interests of County. Upon receipt of written notice, Contractor will immediately cease all work as directed by the notice, notify all subcontractors of the effective date of termination and take appropriate actions to minimize further costs to County. In the event of termination under this paragraph, all documents, data, and reports prepared by Contractor under the contract become the property of County and Contractor must promptly deliver them to County. Contractor is entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

34. ORDER OF PRECEDENCE – CONFLICTING DOCUMENTS:

In the event of inconsistencies between contract documents, the following is the order of precedence, superior to subordinate, that will apply to resolve the inconsistency: MA, DO or DOM, PO, Offer Agreement or contract attached to a MA, PO, DO or DOM; these standard terms and conditions; any other solicitation documents.

35. INDEPENDENT CONTRACTOR:

The status of Contractor is that of an independent Contractor. Contractor and Contractor officer's agents or employees are not considered employees of County and are not entitled to receive any employment-related fringe benefits under the County Merit System. Contractor is responsible for payment of all federal, state and local taxes associated with the compensation received pursuant to this Contract and will indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes. Contractor is solely responsible for its program development and operation.

36. BOOK 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 County. In addition, Contractor will retain all records relating to this contract at least five (5) years after its termination or cancellation or, if later, until any related pending proceeding or litigation has been closed.

37. COUNTERPARTS:

The parties may execute the MA or PO that County awards pursuant to this solicitation in any number of counterparts, and each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

38. AUTHORITY TO CONTRACT:

Contractor warrants its right and power to enter into the MA or PO. If any court or administrative agency determines that County does not have authority to enter into the MA or PO, County is not liable to Contractor or any third party by reason of such determination or by reason of the MA or PO.

39. FULL AND COMPLETE PERFORMANCE:

The failure of either party to insist on one or more instances upon the full and complete performance with any of the terms or conditions of the MA, PO, DO or DOM to be performed on the part of the other, 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.

40. SUBCONTRACTORS:

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

41. SEVERABILITY:

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

42. LEGAL ARIZONA WORKERS ACT COMPLIANCE:

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

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

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

Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

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

Any additional costs attributable directly or indirectly to remedial action under this Section is the responsibility of Contractor. In the event that remedial action under this Section 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.

43. CONTROL OF DATA PROVIDED BY COUNTY:

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

44. 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.

END OF PIMA COUNTY STANDARD TERMS AND CONDITIONS