



## COCHISE COUNTY PROCUREMENT DEPARTMENT

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### CONTRACT FOR CONSTRUCTION SERVICES

**No. IFB 17-32-BOS-03**

### **SOUTHERN ARIZONA CHILDREN'S HAVEN ARSON REMEDIATION REPAIR**

This Contract is made and entered into this 12th day of, September 2017, by and between the County of Cochise, hereinafter referred to as the "COUNTY", and B-R Constructors, Inc, hereinafter referred to as the "CONTRACTOR".

#### **I. SCOPE OF WORK**

This Contract is for services described in the original solicitation IFB 17-32-BOS-03 and shall be completed as per the plans and technical specifications incorporated therein.

#### **II. COMPENSATION AND METHOD OF PAYMENT**

In consideration of the performance of the services described in the Scope of Work, the County shall pay the Contractor the total sum of one hundred nineteen thousand, one hundred nineteen dollars **(\$119,119.00)** for the base bid. This Contract sum is subject to modifications only in the manner specified in the Contract.

The County will pay the Contractor following the submission of itemized invoices(s) for the services rendered. No payment shall be issued prior to receipt of material or service and correct invoice. Each itemized invoice must bear a written certification by an authorized County representative confirming the services for which payment is requested have been performed.

#### **III. DURATION, TERMINATION, AND RENEWAL**

Upon receipt of the County's Notice to Proceed, the Contractor shall have one hundred and eighty **(180) calendar days** to complete the services included in the Scope of Work, unless terminated, cancelled or extended as provided herein. The Contractor shall commence work only after receiving Notice to Proceed from an authorized County representative. The Contractor shall complete all work to the satisfaction of the County in accordance with the Scope of Work.

The County reserves the right to immediately terminate, with or without cause, the whole or any part of this Agreement due to failure of Contractor to carry out any term, promise, or condition of this Agreement. If this Agreement is terminated, the County shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination.

The County may, by written notice to the Contractor, cancel this agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the County. This Agreement is subject to the provisions of A.R.S. Sec. 38-511.

#### **IV. ENFORCEMENT, LAWS AND ORDINANCES**

This agreement shall be enforced under the laws of the State of Arizona. Contractor must comply with all applicable federal, state, and local laws, ordinances, and regulations. Contractor shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

**V. INDEPENDENT CONTRACTOR**

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Contractor is advised that taxes or social security payments shall not be withheld from a County payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any. The County will not provide any insurance coverage to the Contractor including Workmen's Compensation coverage.

**VI. MODIFICATIONS**

This Agreement may only be modified by a written amendment signed by persons duly authorized to enter into contracts on behalf of the County and the Contractor.

**VII. WAIVER**

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this contract shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

**VIII. INDEMNIFICATION and INSURANCE**

See solicitation Special Terms and Conditions, Section 6.0, Indemnification paragraph 6.10 and Insurance Requirements paragraph 6.11.

**IX. MISCELLANEOUS PROVISIONS**

- A. No assignment of this Agreement or subcontract shall be made by the Contractor with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Department. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.
- B. The Contractor shall establish and maintain procedures and controls that are acceptable to the County for the purpose of assuring that no information contained in its records or obtained from the County or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information must be referred to the County.
- C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Agreement shall be the property of the County and shall not be used by the Contractor or any other person except with the prior written permission of the County.
- D. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 110-335, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

**GENERAL CONDITIONS OF THE AGREEMENT**

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## ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

**Architect/Engineer** – the person licensed to practice architecture/engineering by the State of Arizona and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract plans, drawings, specifications and related documents. May be utilized to provide construction administration services.

**Bonds** – bid, performance and payment bonds and other instruments of security.

**Change Order** – a document approved by the County Contract Representative and which is signed by the Contractor and the County's Procurement Director or duly authorized designee and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the effective date of the Contract.

**County** – means the County of Cochise, Arizona, a body politic and corporate of the State of Arizona.

**County Contract Representative** – is the County official administering the Contract for the County of Cochise.

**Completion Time** – the number of calendar days agreed to by the County and Contractor for completion of the Work, which may be revised by written Change Order.

**Construction** – is defined as the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real public property.

**Construction-Manager-At-Risk** – is a project delivery method in which there is a separate contract for design services and a separate contract for construction services, with design and construction taking place in sequential or concurrent phases, and in which finance services, maintenance services, operations services and preconstruction services may be included.

**Construction Services** – means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

- a) construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods;
- b) a combination of construction and, as elected by the County, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

**Contract** – the written agreement and all associated attachments, drawings, addenda and change orders executed between the County and the Contractor covering the Work to be performed.

**Contract Price** – the amount payable by the County to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order, or, in the case of a job-order contract, in the Notice to Proceed.

**Contractor** – the person, firm or corporation with whom the County has entered into the Contract.

**Design-Build** – the process of entering into and managing a contract between the County and a contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services and preconstruction services.

**Design Services** – is defined as architect services, engineer services or landscape architect services.

**Procurement Director** – the person acting as Director of the County's Procurement Department and who has authority to award and revise County solicitations and contracts for construction, construction services, and construction-related services below \$50,000.00 as necessary.

**Drawings** – the graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**Estimate for Payment** – a form furnished by the County or an approved form submitted by the Contractor in lieu of County furnished form, and is required to be used when submitting requests for payments for work actually performed and materials supplied during an agreed-to preceding period of time.

**Field Order** – a written order or directive issued by the County Contract Representative that orders minor changes in the Work.

**Final Completion Date** – the calendar date when the Work is one hundred percent (100%) complete as determined by the County.

**Finance Services** – is defined as financing services for the Work.

**Guaranteed Maximum Price or GMP** – means the sum of the maximum cost of the Work; the CM@Risk's Construction fee; general conditions fee; taxes, bonds, insurances costs; and bid contingency as proposed and approved pursuant to this Agreement. The approved GMP will be made part of this Agreement by executing an amendment or additional amendments for phased construction.

**Job-Order-Contracting** – a project delivery method in which the contract is a requirements contract for indefinite quantities of construction and in which specified job orders are issued during the contract and may include finance services, maintenance services, operations services, preconstruction services and design services.

**Liquidated Damages** – Liquidated damages will not be applicable to this solicitation.

**Maintenance Services** – is defined as routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

**Notice to Proceed** – a written notice given by the County to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform the Contractor's obligations under the Contract. In the case of a job order, it may also contain the specifications exclusive to the job order as well as consideration for the Contractor.

**Operations Services** – is defined as routine operation of existing facilities, structures, buildings or real property.

**Preconstruction Services** – is defined as advice during the design stage of the Work.

**Price Proposal** – a form on which the County requires estimates or price proposals to be prepared and submitted for the Work or portions of the Work.

**Procurement Officer** – is the County official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the County's Procurement Director and in accordance with the County of Cochise Procurement Code.

**Public Inspector(s)** – that person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes.

**Schedule of Values** – a schedule submitted by the Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the County Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

**Shop Drawings** – drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

**Specifications** – those portions of the Contract, or Notice to Proceed if a Job Order, consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

**Substantial Completion** – a written declaration of the date upon which the County, in its sole discretion, determines the Work is substantially complete such that the County has beneficial use and/or occupancy. Upon substantial completion, the right of the County to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within thirty (30) days of substantial completion.

**The County of Cochise Procurement Policy** – in addition to applicable State statutes and applicable Federal regulations and requirements, the County ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

**The Work** – the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract, or, in the case of a job-order contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract. And/or Notice to Proceed, as appropriate.

## **ARTICLE 2. THE CONTRACT DOCUMENT INTENT AND EXECUTION**

### **2.1 The Contract**

**2.1.1** The documents in the Contract include but are not limited to the solicitation contents and any addenda, drawings, change orders and approved Contractor submittals.

**2.1.2** The Contract comprises the entire agreement between the County and the Contractor concerning the Work and supersedes any prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

### **2.2 Intent of the Contract**

**2.2.1** The intent of the Contract is to include all labor, materials, equipment, transportation and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

**2.2.2** The Contract shall be construed in accordance with the laws of the State of Arizona, and all such laws regulating the construction of Public Works by the County are hereby incorporated herein by reference and made a part hereof.

**2.2.3** Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

**2.2.4** The organization of the Contract into divisions, sections or articles is merely for the purpose of convenient reference, and neither the headings nor divisions shall have any legal or Contractual significance and shall not control the division of the Work by the Contractor among the various subcontractor or trades.

**2.2.5** The Contractor shall obtain all required County permits in addition to any and all ADOH required permits and pay any taxes or other costs associated with permitting. There will be no reimbursement for the cost of any ADOH or County permits.

**2.3** **Execution**

**2.3.1** Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract.

**2.4** **Ownership of the Contract**

**2.4.1** The Contract, including, but not limited to, the drawings and specifications, is the property of the County and is not to be used by the Contractor or any subcontractor on other projects outside the scope of the Work without the express written consent of the County.

**ARTICLE 3. ADMINISTRATION OF THE CONTRACT**

**3.1** **Lines of Authority and Communications**

**3.1.1** The County's Procurement Director is the County official with overall authority and responsibility for the award and administration of County contracts below the adopted formal bid threshold. The Procurement Director or his designated Procurement Department representative after consultation with the County Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Work.

**3.1.2** The County Contract Representative is the designated representative of the particular County department for which the Work is being constructed (the "user department") or the County department which is responsible for the oversight of the Work.

**3.1.3** Day-to-day administration of the Contract is the responsibility of the County Contract Representative. The County Contract Representative is the County's representative during the prosecution of the Work and shall act as surveillance and technical advisor for the County. The County Contract Representative duties are more fully described in Section 3.2 of this Article.

**3.1.4** The Contractor shall supervise and direct the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract gives other specific instructions concerning these matters. The Contractor's duties and responsibilities are more fully described in Article 4 of these Contract conditions.

**3.1.5** Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall initially communicate with the County Contract Representative.

**3.2** **County Contract Representative's General Authority and Responsibilities**

**3.2.1** Unless the Contractor is responsible for the design of the Work, the County Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, copies of drawings, specifications and instructions available for the execution of the Work. The County Contract Representative may furnish additional clarifications or interpretations in writing or by drawings as may be necessary for the proper progress and execution of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications where needed. All drawings, specifications and copies thereof furnished by the County Contract Representative are County property. They are not to be used on other work and, with the exception of the signed Contract, and are to be returned to the County Contract Representative at the completion of the Work.

- 3.2.2** The County Contract Representative shall provide general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the County Contract Representative will become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.
- 3.2.3** The County Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished and Work performed and as to the rate of progress of the Work, and all questions which may arise as to the interpretation of the drawings and specifications.
- 3.2.4** The County Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work.
- 3.2.5** The County Contract Representative shall conduct an initial review of, and approve or deny, written Change Orders submitted by the Contractor, and may prepare Change Orders and provide field clarifications and corrections. All Change Orders shall be approved by the Procurement Director or appointed designee prior to any work being done. However, in emergencies endangering life or property, the County Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.
- 3.2.6** The County Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Procurement Director or designee as to all claims of the Contractor.
- 3.2.7** The County Contract Representative will review and process the Contractor's monthly Estimates for Payment, as more fully set forth in Article 7 of these General Conditions.
- 3.2.8** The County Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the Contract Officer.
- 3.2.9** The County Contract Representative will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility.

**3.3 Public Inspections**

- 3.3.1** Unless otherwise specifically provided in the Contract, Public Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications and applicable codes, and may provide clarification of any unspecified or unclear item or situation.
- 3.3.2** If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the County Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the County Contract Representative or the Public Inspectors, the Contractor shall advise the County Contract Representative of the date fixed for such inspection.
- 3.3.3** All tests, inspections or approvals required to be performed by the County Contract Representative, Public Inspectors, or other authorities or entities shall not relieve the Contractor of their obligation to perform the Work in accordance with the Contract.

**3.4 Special Inspections and Testing of Materials**

- 3.4.1** All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards, to establish conformance with specifications and suitability for the use intended, as determined by the County Contract Representative.

- 3.4.2** The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the County Contract Representative. Except as provided in subsection 3.4.3, the County will pay for approved tests and services rendered by the approved laboratory or agency in addition to the Contract price for construction.
- 3.4.3** When initial tests indicate that any portion of the Work is not in conformance with the Contract because of faulty workmanship, the Contractor shall be required to pay for necessary re-tests. When initial tests indicate that the work is in conformance with the Contract, any re-testing that's ordered by the County shall be paid for by the County.

#### **ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

##### **4.1 Contractor's Review of Contract Documents and Site Conditions**

- 4.1.1** It shall be the duty of the Contractor to carefully study and compare all drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the County Contract Representative.
- 4.1.2** The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale; but in the absence of figured dimensions, scale dimensions may be used with the prior written concurrence of the County Contract Representative. The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, level or grades, walks, driveways or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the County Contract Representative immediately. ***It is the responsibility of the Contractor to provide BLUESTAKE verification of underground utilities on and off the construction site.***
- 4.1.3** Change orders will not be issued to cover any cost, loss or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the County Contract Representative.
- 4.1.4** The Contractor shall perform the Work in accordance with the Contract and with shop drawings, product data and samples that have been approved by the County Contract Representative.
- 4.1.5** Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the County Contract Representative and shall be responsible for any required corrective action.

##### **4.2 Contractor's Supervision**

- 4.2.1** The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques and procedures and shall coordinate the sequences of all portions of the Work.
- 4.2.2** The Contractor shall ensure that the key personnel submitted in response to the Invitation for Bids and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of key personnel, the Contractor shall obtain prior approval from the County for key personnel substitution. The Contractor shall ensure that substituted personnel are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the County for its consideration and approval prior to substitution taking place.

**4.2.3** The Contractor agrees that it is as fully responsible to the County for the acts and omissions of its subcontractors and of persons, either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor.

**4.3 Materials and Labor; Warranty**

**4.3.1** Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, equipment, tools, construction equipment and machinery, water, gas, heat, utilities, transportation, and other facilities and services necessary for the execution, completion and delivery of the Work within the specified Completion Time.

**4.3.2** The Contractor shall pay all applicable taxes associated with the Work.

**4.3.3** The Contractor warrants to the County that all materials and equipment furnished under the Contract shall be new unless otherwise specified, and that all of the Work shall be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

**4.3.4** The Contractor shall be held to furnish all work as specified in the Contract. After a price proposal for the Work has been accepted by the County, changes of brand named, trade named, trademarked, patented articles, or any other substitutions shall be allowed only by written order signed by the County Contract Representative. Unless otherwise agreed to via Change Order, the County shall receive all benefits of the difference in costs.

**4.4 Construction Schedules and Submittals**

**4.4.1** Before commencing the Work, the Contractor shall provide the County Contract Representative with a construction schedule for the Work, fixing the dates at which various pre-determined events shall occur in order to promote a timely completion of the various parts of the Work in accordance with the Contract. The schedule may be revised from time to time as may be required by conditions of the Work, but shall not exceed time limits, or any extensions thereof, set forth in the Contract or in the individual job order, as appropriate.

**4.4.2** The Contractor shall prepare and keep current for the County Contract Representative's approval, a schedule of submittals which shall be coordinated with the Contractor's construction schedule and allow the County Contract Representative reasonable time to review such submittals.

**4.4.3** After review, the County Contract Representative, with reasonable promptness, shall approve these shop or setting drawings, product data, samples and sequences for conformance with the design concept of the project, the approved construction schedule, and other requirements of the Contract.

**4.4.4** The Contractor shall make any corrections required by the County Contract Representative and re submit such corrected materials to the County Contract Representative for approval. Any correction or change that will result in a design or function change or in an increase or decrease in the Contract price must also receive the prior approval of the County's Director of Procurement or his designee.

**4.4.5** The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or schedules until the respective submittals have been approved by the County Contract Representative, and shall not deviate from such submittals after final approval by the County Contract Representative.

**4.4.6** As-built documents must be provided to the County by the Contractor prior to final acceptance of electrical equipment. The County reserves the right to withhold final payment until complete as-built drawings have been received in good order by the County Contract Representative.

**4.5 Documents and Samples at the Work Site**

**4.5.1** Unless otherwise directed by the County's Contract Representative, the Contractor shall maintain at the Work site a complete file of the drawings, specifications, addenda, change orders and other approved modifications, in good order and marked to reflect changes and selections made during construction, together with all approved shop drawings, product data, samples and similar required submittals. Such files shall be made available to the County Contract Representative and Public Inspectors upon request.

**4.6 Protection and Use of Site – (Signs, Utilities, Water, Sanitation, Traffic, etc.)**

**4.6.1** The County will provide land, rights-of-way and easements for all work specified in the Contract. (If applicable)

**4.6.2** Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the County harmless from damages for any injury done to such pipes, structures or property during the course of the Work.

**4.6.3** Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public.

**4.6.4** The Contractor shall supply safe drinking water and sanitary facilities for all contractor's employees at the work site.

**4.6.5** If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The County Contract Representative will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the County Contract Representative. Extensions in the Contract time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 10 of these General Conditions.

**4.7 Cleaning Up**

**4.7.1** The Contractor shall at all time keep the construction site and surrounding area free from accumulations of waste material or rubbish caused by operations under the Contract. Upon completion of the Work, the Contractor shall remove all rubbish, tools, equipment, scaffolding and surplus materials from the site and surrounding areas and leave the area "broom clean" or its equivalent, unless otherwise instructed by the County Contract Representative.

**4.7.2** If the Contractor fails to clean up as provided in the Contract, the County may do so and the cost thereof shall be charged against the Contractor.

**4.8 Emergencies**

**4.8.1** In an emergency affecting the safety of life or property, the Contractor, without special instruction or authorization from the County Contract Representative, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury.

**4.8.2** Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the County unless such work has been specifically requested and approved by the County Contract Representative.

**4.8.3** The Contractor shall file with the County Contract Representative the names, addresses and telephone numbers of their company who can be contacted at any time in case of emergency. These Contractor representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by the County or the Public Inspectors.

**4.9 Permits, Fees and Notices**

**4.9.1** The Contractor shall, at its expense, obtain all necessary permits and licenses for work performed under the Contract, and shall give all necessary notices required by laws, ordinances, rules, regulations and lawful orders of public authorities pertaining to performance of the work, public health and safety.

**4.9.2** If the Contractor knowingly performs work which is not in compliance with such laws, ordinances, rules, regulations or orders, without such notice to the County Contract Representative, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

**4.10 Royalties and Patents**

**4.10.1** The Contractor shall pay all royalties and license fees.

**4.10.2** The Contractor and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark, or copyright, and the Contractor shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or, subject to Engineer's approval, replace same with no infringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes no infringing.

**4.10.3** If appropriate, the Contractor shall furnish the County Contract Representative satisfactory evidence of patent licenses or patent releases covering County-specified proprietary materials, equipment, devices or processes, as the case may be.

**4.11 Protection of Persons and Property**

**4.11.1** The Contractor shall be responsible for initiating, maintaining, supervising and directing all safety precautions and programs in connection with the performance of the Contract.

**4.11.2** The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated whether in storage on or off the Work site.

**4.11.3** The Contractor shall, at their own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the work site or adjacent thereto, and the Contractor and their sureties shall be liable therefore.

**4.11.4** The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Article 6 of these General Conditions.

- 4.11.5** In the event the Contractor encounters on the work site material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop work in the area affected and report the condition to the County Contract Representative.
- 4.11.6** The Contractor shall take all necessary precautions for the safety of employees on the work site and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.

The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hood hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

- 4.11.7** The Contractor warrants it is fully familiar and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or decodified from time to time). Also the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or decodified from time to time), as promulgated by the Federal Government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in the solicitation Section 6.0, paragraph 6.10.

**4.12** **INSURANCE REQUIREMENTS**

The County requires a complete and valid Certificate of Insurance prior to the commencement of any service or activity as specified in this Contract for Construction Services. The Contractor must submit an original copy of the Certificate of Insurance maintaining the coverage limits as specified in the original solicitation document, **Section 6.0 Special Terms and Conditions, paragraph 6.11 titled Insurance Requirements**. The coverage's shall be maintained in full force and in effect during the term of the Contract for Construction Services and shall not serve to limit any liabilities or any other Contractor obligations.

**ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS**

**5.1** **Subcontracts**

- 5.1.1** The Contractor shall ensure that the subcontractors submitted in response to the Invitation for Bid and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of subcontractors, the Contractor shall obtain prior approval from the County for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the County for its consideration and approval prior to substitution taking place.

- 5.1.3** In job-order-contracting, by appropriate written agreement, the Contractor agrees that each subcontractor has been notified in writing of the negotiated amount or coefficient agreed to for billing purposes. Furthermore, by appropriate written agreement, the Contractor agrees that each subcontractor shall be bound to the Contractor by the terms of the Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.

- 5.1.4** Contractor shall ensure that each subcontract shall preserve and protect the rights of the County under the Contract with respect to the work to be performed by the subcontractor. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with

sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor shall be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.

**5.1.5** Each subcontract shall require the subcontractor to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment to the County in a timely manner, including any claims for extras, extensions of time, and damages for delays or otherwise to the Contractor in the manner provided in the Contract for like claims by the Contractor upon the County.

**5.1.6** The Contractor further agrees:

1. To be bound to the subcontractor with respect to obligations under the contract in the same manner and to the same extent that the County assumes obligations under this Contract, including provisions of the contract that afford remedies and redress to the Contractor from the County.
2. To promptly pay the subcontractor in accordance with applicable State statute.
3. That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them. Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.
4. To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.
5. To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the County in making payments to the Contractor for any cause not the fault of the subcontractor.
6. To share or forward, as appropriate, with its subcontractors or, as appropriate, with the County, any fire insurance proceeds received by the Contractor under the insurance provisions of the Contract.
7. That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following the month in which the claim originated.
8. To give the subcontractor an opportunity to be present and to submit evidence in any Contractual claim, controversy or dispute.

**5.1.7** Nothing in this Article shall create any obligation on the part of the County to pay to, or to see to the payment of, any sums to any subcontractor, except as may otherwise be required by law.

**5.1.8** Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the County provided that:

1. Assignment is effective at the sole option of the County and only upon termination of the Contract for cause pursuant to Article 9 of these General Conditions, and only for those subcontract agreements which the County determines to accept by notifying the subcontractor in writing, and
2. Assignments is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

**5.2            Separate Contracts**

- 5.2.1**            The County reserves the right to perform construction or operations related to the Work with the County's own forces and to let separate Contracts in connection with other portions of the Work or other construction or operations on the Work site.
- 5.2.2**            The Contractor shall afford other Contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.
- 5.2.3**            The County Contract Representative shall coordinate the activities of the County's own forces and of each separate Contractor with the work of the Contractor. The Contractor and all other Contractors on the Work site shall be required to review their construction schedules and cooperate with the County Contract Representative in coordinating the various portions of the Work with the schedules of such separate contractors.
- 5.2.4**            If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the County Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to defects not then reasonably discoverable.
- 5.2.5**            Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.
- 5.2.6**            If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the County on account of any damage alleged to have been so sustained, the County shall notify the Contractor, who shall defend such proceedings and, if any judgment against the County arises there from, the Contractor shall pay or satisfy it.
- 5.2.7**            Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the County shall not be held responsible or liable therefore in any way other than extensions of completion time in accordance with Article 6 of these General Conditions.

**ARTICLE 6. TIME FACTORS**

**6.1            Time**

- 6.1.1**            Unless otherwise provided in the Contract, the Completion Time is the number of calendar days, including authorized time extensions, specified for completion of the Work.
- 6.1.2**            Completion Time shall commence on the day specified in the Notice to Proceed. The date shall not be postponed on account of the failure of the Contractor, or of any of its subcontractors to take any action required to commence the Work.
- 6.1.3**            The date of Substantial Completion is the date certified by the County Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions.
- 6.1.4**            The term "day" as used in the Contract shall mean calendar day.
- 6.1.5**            By execution of the Contract documents, or by concurrence with the Notice to Proceed in the case of a job order, the Contractor acknowledges that the time described is a reasonable period for a competent Contractor to complete the Work.
- 6.1.6**            The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

## **6.2 Delays and Time Extensions**

- 6.2.1** It is agreed that the County's only liability for any delay from any cause shall be limited to granting a time extension to the Contractor and that no extended general conditions for any delay will be applicable unless agreed to by the County. There is no other obligation, express or implied, on the part of the County to the Contractor for delay from any cause.
- 6.2.2** The completion time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority or allocation order duly issued by the Federal Government.
- 6.2.3** Should a dispute arise between the Contractor and the County regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

## **ARTICLE 7. PAYMENTS TO THE CONTRACTOR**

### **7.1 Contract Price; Request for Payment; Schedule of Values**

- 7.1.1** The Contract amount or coefficient stated in the Contract documents or, in the case of a job order, in the Notice to Proceed, plus or minus any authorized adjustments is the amount payable by the County to the Contractor for performance of the Work under the Contract or for a specific job order.
- 7.1.2** During the course of construction, the Contractor shall request payment for work actually performed during the preceding month or some other time period as mutually agreed to, using "ESTIMATE FOR PAYMENT" forms, which are furnished by the County or a County approved form submitted by the Contractor. Completed forms shall be submitted to the County Contract Representative. A schedule of values and an updated project schedule shall accompany the request for payment.

### **7.2 Certification and Payment; Retainage; Substitute Securities**

- 7.2.1** The County by mutual agreement may make progress payments on Contracts of less than ninety (90) days and shall make monthly progress payments on all other Contracts as provided for in this paragraph.

Payment to the Contractor on the basis of a duly certified and approved estimate for payment of the work performed during the preceding calendar month under the Contract may include payment for material and equipment, but to ensure the proper performance of the Contract, the County shall retain ten per cent of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the Contract. An estimate of the work submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission unless before that time the County or the County's designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the Contract. The County may withhold an amount from the progress payment sufficient to pay the expenses the County reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen (14) days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the County on submission to any person designated by the County for the submission, review or approval of the estimate of the work.

- 7.2.2** When the Contract is fifty per cent complete, one-half of the amounts retained including any securities substituted under paragraph 7.2.4 shall be paid to the Contractor on the Contractor's request provided the Contractor is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty per cent complete, no more than five per cent of the amount of any subsequent progress payments made under the Contract may be retained providing the Contractor is making satisfactory progress on the project, except that if at any time the County determines satisfactory progress is not being made ten

per cent retention shall be reinstated for all progress payments made under the Contract after the determination.

- 7.2.3** On completion and acceptance of each separate building, public work or other division of the Contract on which the price is stated separately in the Contract, except as qualified in paragraph 7.2.5, payment may be made in full, including retained percentages, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the architect, engineer or other person, as specified in the Contract.
- 7.2.4** Ten per cent of all estimates shall be retained by the County as a guarantee for complete performance of the Contract, to be paid to the Contractor within sixty (60) days after completion or filing notice of completion of the Contract. Retention of payments by the County longer than sixty (60) days after final completion and acceptance requires a specific written finding by the County of the reasons justifying the delay in payment. The County may not retain any monies after sixty (60) days that are in excess of the amount necessary to pay the expenses the County reasonably expects to incur in order to pay or discharge the expenses determined by the County in the finding justifying the retention of monies. In lieu of the retention provided in this section, the County, at the option of the Contractor, shall accept as a substitute an assignment of time certificates of deposit of banks licensed by this state, securities of or guaranteed by the United States of America, securities of this state, securities of counties, municipalities and school districts within this state or shares of savings and loan institutions authorized to transact business in this state, in an amount equal to ten per cent of the bid amount that will be retained by the County as a guarantee for complete performance of the Contract. If the County accepts substitute securities, as described in this paragraph, for the ten per cent retention, the Contractor is entitled to receive all interest or income earned by this security as it accrues and all such security in lieu of retention shall be returned to the Contractor by the County within sixty (60) days after final completion and acceptance of all material, equipment and work covered by the Contract if the Contractor has furnished the County satisfactory receipts for all labor and material billed and waivers of liens from any and all persons holding claims against the work. In no event shall the County accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to set off against either the County or the Contractor in relationship to the certificates or shares assigned.
- 7.2.5** In any instance where the County has accepted substitute security as provided in paragraph 7.2.4, any subcontractor undertaking to perform any part of this public work is entitled to provide substitute security to the Contractor on terms and conditions similar to those described in paragraph 7.2.4, and this security is in lieu of any retention under the subcontract.
- 7.2.6** Notwithstanding paragraphs 7.2.1 through 7.2.5, retention is not required for job-order-contracting construction services contracts, except that the County may elect to require retention for a job-order-contracting construction services contract. If the County elects to require retention, paragraphs 7.2.1 through 7.2.5 apply to the job-order-contracting construction services Contract, except that:
1. Contract, or failure to reasonably account for the application or use of those payments, constitutes grounds for disciplinary action by the Registrar of Contractors. The subcontractor or material supplier shall notify the Registrar of Contractors and the County in writing of any payment less than the amount or 1 Retention shall be five percent of each payment instead of ten percent reducing to five percent.
  2. Retention applicable to each job order shall be released within sixty (60) days after final completion of the job order and acceptance of the work under the job order.
  3. No retention on the job order may be released until that time.
  4. The retention percentage shall not be increased.

- 7.2.7** The Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven (7) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest, except that no Contract for construction services may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. The payments to subcontractors or material suppliers shall be based on payments received pursuant to this section.
- 7.2.8** A subcontractor may notify the County in writing requesting that the subcontractor be notified by the County in writing within five (5) days from payment of each progress payment made to the Contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.
- 7.2.9** Nothing in this section prevents the Contractor or subcontractor, at the time of application and certification to the County or Contractor, from withholding the application and certification to the County or Contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the County.
- 7.2.10** If any payment to a Contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.
- 7.2.11** If any periodic or final payment to a subcontractor is delayed by more than seven (7) days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or fraction of a month on the unpaid balance as may be due.
- 7.2.12** Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a construction services Contract for construction and does not apply to amounts payable in a construction services Contract for design services, preconstruction services, finance services, maintenance services, operations services and other related services.
- 7.2.13** The County Contract Representative, with reasonable dispatch, will review the contents of the ESTIMATE FOR PAYMENT submitted by the Contractor, determine the sufficiency of the estimate, satisfy himself that the County has received full value, certify the estimate and submit it through normal channels for payment.
- 7.2.14** Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the County shall constitute an acceptance of any portion of the Work.

**7.3** **Payment Withheld**

If the County Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the ESTIMATE FOR PAYMENT, the County Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the County Contract Representative shall promptly notify the Contractor. If the County Contract Representative and the Contractor cannot agree on a revised amount, the County Contract Representative will promptly issue a certificate for payment in an amount he determines is justified.

**7.3.2** The County Contract Representative or other County official, as a result of subsequently discovered evidence, may also withhold or nullify the whole or a part of any certification to such extent as may be necessary to protect the County from loss on account of:

1. Defective work not remedied.
2. Third-party claims filed or reasonable evidence indicating probable filing of such claims.
3. Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment.
4. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount, or reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
5. Damage to another contractor or to the County.
6. Damage to the real or personal property of another and failure to repair or replace the same.
7. Persistent failures to carry out the Work in accordance with the Contract.

**7.3.3** When the grounds for withholding payment have been corrected to the satisfaction of the County Contract Representative or other County official concerned, the County shall proceed to process any amounts due.

#### **7.4 Substantial Completion**

**7.4.1** When the Contractor considers that the Work, or a portion thereof which the County has agreed to accept separately, is ready for its intended use, it shall notify the County Contract Representative in writing that the work or the agreed upon portion thereof, is substantially complete and request the County Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the County Contract Representative shall make an inspection of the Work, or the designated portion thereof, to determine the status of completion. If the inspection discloses any item that is not in accordance with the Contract, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for a re-inspection by the County Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the County Contract Representative shall prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the County and Contractor, pending final payment by the County, for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list attached to the certificate.

**7.4.2** Warranties required by the Contract shall commence on the date of Final Completion for a period of one year, except where a specific provision of the Contract provides otherwise.

#### **7.5 Final Completion and Final Payment**

**7.5.1** Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the County Contract Representative will determine that all items on the punch list have been completed or corrected and the County will make payment reflecting adjustments in retainage, if any, for such work or portion thereof as provided for in the Contract.

**7.6 Consent of Surety/ Lien Waivers and As-Built Drawings**

**7.6.1** Neither the final payment nor any part of the retained percentage shall become due until the Contractor provides to the Contract Officer a Consent of Surety Certificate from their bonding company, or lien waivers, at the Contract Officer's discretion and all completed as-built drawings.

**7.7 Partial Utilization**

**7.7.1** The County may occupy or use any portion of the Work which the County and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the County without significant interference with the Contractor's performance of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided the County and the Contractor have accepted in writing their mutual responsibilities regarding the used portion, including but not limited to insurance coverage, maintenance and utilities.

**7.7.2** Partial use or occupancy of the Work by the County shall not constitute acceptance of Work not complying with the requirements of the Contract.

**ARTICLE 8. UNCOVERING AND CORRECTION OF WORK; CHANGES IN THE WORK**

**8.1 Uncovering of Work**

**8.1.1** Piping, wiring, ducts, etc., shall not be covered up before proper inspection, approval and certificates, if required, are issued. Should any work that is designated for inspection by the County Contract Representative or the Contract before covering is covered before such inspection, it must be uncovered by the Contractor at their expense when examination is ordered by the County Contract Representative.

**8.1.2** If a portion of the Work not designated by the County Contract Representative or the Contract for inspection has been covered and the County Contract Representative or a Public Inspector orders such work uncovered for inspection, the Contractor shall immediately uncover such work. If such uncovered work is found to be in accordance with the Contract, an appropriate Change Order shall be issued to compensate the Contractor for the expense of uncovering and replacing the work. If such work is found to be not in compliance with the Contract, the Contractor shall pay such costs, unless the condition was caused by the County or a separate Contractor.

**8.1.3** The County shall not be responsible for or bear the cost of any re-examination and replacement occasioned by defects in the work caused by subcontractors.

**8.2 Correction of Work**

**8.2.1** Correction of Work Before Final Payment: The Contractor shall promptly remove from the site of the Work all materials and/or associated portions of the Work rejected by the County Contract Representative as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract, without expense to the County, and shall bear the expense of making good the work of other contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such rejected Work and/or materials within a reasonable time, fixed by written notice, the County may remove it and may store the materials at the expense of the Contractor.

**8.2.2** Should the Contractor fail to repair such defective material and/or workmanship or to make replacements within five (5) calendar days after written notice by the County, it is agreed that the County may, at its sole discretion, make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor or his surety.

### **8.3 Changes in the Work**

**8.3.1** The County Contract Representative may order extra work or make changes by altering, adding to or deducting from the Work, the Contract price being adjusted accordingly by Change Order without invalidating the Contract. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

**8.3.2** The value of any extra work or change ordered under the Contract shall be determined in one or more of the following ways:

1. By estimate and acceptance in a lump sum.
2. By unit prices in the Contract or subsequently agreed upon prices.
3. By a fixed fee.

## **ARTICLE 9. SUSPENSION OR TERMINATION OF THE WORK**

### **9.1 Suspension of the Work for Cause; County's Right to Perform the Work**

**9.1.1** If the Contractor fails to correct Work which is not in accordance with the Contract, or persistently fails to carry out the Work in accordance with the Contract, the Contract Officer, after consultation with the County Contract Representative, may order the Contractor in writing to stop the Work, or any portion of the Work, until the cause for such order has been eliminated.

**9.1.2** If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the County may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the County may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and its surety shall be liable to the County for such deficiency.

### **9.2 Termination by the County for Cause**

**9.2.1** The County, upon certification by the County Contract Representative, without prejudice to any other right or remedy of the County and after giving the Contractor seven (7) days written notice, may terminate this Contract as to all or any part of the Work for any of the following reasons:

1. If the Contractor abandons the work, or unnecessarily delays the work.
2. If the Contractor should consistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractor.
3. If the Contractor fails to timely make payment to subcontractor for materials or labor in accordance with the respective agreements between the Contractor and the subcontractor or as expressly set forth herein.
4. If the Contractor persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract.
5. If the Contractor should be adjudged bankrupt.
6. If the Contractor should make a general assignment for the benefit of its creditors or if a receiver should be appointed on account of its insolvency.
7. If the Contractor is otherwise in substantial breach of a provision of the Contract as determined by the County.

- 9.2.2** Upon termination of the Contract for any of the above reasons, the County, subject to any prior rights of the surety, may:
1. Take possession of the Work and of all materials, equipment, tools, and construction equipment and machinery at the Work site or adjacent thereto belonging to the Contractor.
  2. Accept assignments of subcontracts pursuant to Subsection 5.1.8 of Article 5 of these General Conditions.
  3. Finish the Work by whatever reasonable method the County may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the County may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the County's possession and may make all necessary repairs and replacements thereto.
- 9.2.3** If the County terminates the Contract for one of the reasons stated in Subsection 9.2.1, the Contractor shall not be entitled to receive any further payment.
- 9.2.4** The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the County to other Contractors, all costs of repairs and replacements of machinery, implements, tools and plant of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including but not limited to the cost of the County Contract Representative's additional services and added expenses made necessary by the termination of the Contract.
- 9.2.5** If the unpaid balance of the Contract price exceeds costs of finishing the Work, such excess may, at the County's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the County may sell all materials, supplies, machinery, implements, tools and plant of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) days notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay such deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.
- 9.3** **Suspension by the County for Convenience**
- 9.3.1** The County may, without cause, order the Contractor in writing to suspend or interrupt the Work in whole or in part for such period of time as the County may determine whenever such suspension or interruption would be in the best interest of the County.
- 9.3.2** If the County suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:
1. That performance is, was or would have been so suspended or interrupted by another cause for which the Contractor is responsible, or
  2. That an equitable adjustment is made or denied by the County.
- 9.4** **Termination by the County for Convenience**
- 9.4.1** The performance of the Work under this Contract may be terminated by the County, in whole or in part, in accordance with this clause whenever the County reasonably determines that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.
- 9.4.2** If the Contract is terminated by the County as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated profit on unperformed Work.

**9.4.3** In the event the County terminates the Work, in whole or in part, for cause pursuant to Section 9.2 of this Article 9 and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 9.4 shall apply.

**9.4.4** Termination of the Contract or portion thereof by the County for convenience shall not relieve the Contractor of their contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

**9.5 Contractor's Right to Terminate Contract**

**9.5.1** The Contractor may terminate the Contract for any of the following reasons:

1. If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month through no act or fault of the Contractor or of anyone directly or indirectly employed by him.
2. If the County has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the County Contract Representative, or
3. If repeated suspensions or interruptions ordered by the County pursuant to Section 9.3 total in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or two hundred and ten (210) days in any three hundred sixty-five (365) day period, whichever is less.

**9.5.2** If one of the above reasons exists, the Contractor may, upon seven (7) additional days, written notice to the County Contract Representative, stop Work and terminate the Contract and recover payment from the County for all Work executed and accepted by the County and any loss sustained upon any plant or materials and reasonable profit and damages.

**ARTICLE 10. CLAIMS AND DISPUTES**

**10.1 County Contract Representative's Resolution of Claims and Disputes; Review by Procurement Director or Designee**

**10.1.1** This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.

**10.1.2** All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the County Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

**10.1.3** Claims by either party must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

**10.1.4** Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the County shall continue to make payments in accordance with the Contract.

**10.1.5** The County Contract Representative shall, within twenty-one (21) days of receipt of a claim, do one of the following:

- (1) Issue a decision either rejecting or approving the claim.
- (2) Suggest an equitable compromise of the claim.
- (3) Provide a schedule to the parties indicating when they expect to be able to take action, which shall be within a reasonable time.

- 10.1.6** The County Contract Representative may require the submission of additional documentation from either party to facilitate a decision. In each case, the County Contract Representative will submit reasons and/or documentation supporting its action and the deadline shall be extended by the time it takes to obtain a response thereto.
- 10.1.7** The parties shall have ten (10) days from the date of the County Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of a party to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If either party rejects the decision of the County Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Procurement Director for de novo review.
- 10.1.8** The Procurement Director shall have sixty (60) days from receipt of a written objection by the Contractor to the County Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the County of Cochise Procurement Code. During such period, the Procurement Director may require such additional documentation or testimony as deemed necessary to support his/her response.

## **ARTICLE 11. MISCELLANEOUS PROVISIONS**

### **11.1 Governing Law**

- 11.1.1** The Contract shall be governed and construed according to the laws of the State of Arizona.

### **11.2 Written Notice**

- 11.2.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

### **11.3 Conflict of Interest**

This agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-501-511 regarding Conflict of Interest.

### **11.4 Notice to Proceed**

- 11.4.1** It is agreed that the County Procurement Director or designee will issue the Notice to Proceed with the Work to commence under this Agreement within twenty (20) consecutive calendar days, or some other mutually agreed upon time period, after the date of the County's Purchase Order for this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

- 11.4.2** The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

### **11.5 Miscellaneous**

- 11.5.1** Guarantee. The Contractor shall guarantee all work under this Agreement against defects of material and workmanship as referenced in the Scope of Work.

- 11.5.2** Assignment. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder without the previous written consent of the County.

**11.5.3** Contract Documents. The following listed documents constitute the Contract Documents and they are all as fully a part of this Agreement as if repeated herein:

1. This Agreement.
2. Construction Specifications, including any and all Standard, Special, Technical and Supplementary Specifications included herein.
3. The General Conditions of the Contract.
4. Any and all Amendments/Change Orders.

**11.5.4** Precedence. In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved by giving precedent to the terms of the above documents in the order listed.

- Special Terms and Conditions
- General Terms and Conditions
- Scope of Work
- Documents referenced in the solicitation
- General Instructions to Bidders/Offerors

Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Agreement shall be a part of the Agreement between the parties and shall take precedence over all of the other Contract Documents.

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**CONTRACT FOR CONSTRUCTION SERVICES**

**No. IFB 17-32-BOS-03  
SOUTHERN ARIZONA CHILDREN'S HAVEN ARSON REMEDIATION REPAIR**

This Contract represents the entire contract between the COUNTY and the CONTRACTOR relating to this requirement and shall prevail over any and all previous verbal or written contracts.

**CONTRACTOR:**  
**B-R Contractors Inc.**

**APPROVED BY:**  
**Cochise County Board of Supervisors**

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

\_\_\_\_\_  
Ann English, Chairman  
Board of Supervisors

\_\_\_\_\_  
Print Name and Title

**ATTEST:**  
\_\_\_\_\_  
Arlethe Rios  
Clerk of the Board

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Britt Hanson  
County Attorney

