

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
STURGEON ELECTRIC COMPANY, INC.**

THIS LINKING AGREEMENT (this “Agreement”) is entered into as of this _____ day of _____, 2022, between the City of Glendale, an Arizona municipal corporation (the “City”), and Sturgeon Electric Company, Inc., a(n) Michigan Corporation authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

RECITALS

- A. On April 4, 2022 under S.A.V.E Cooperative Purchasing Agreement, the City of Tucson entered into a contract with Contractor to purchase the goods and services described in the Job Order Contract for Installation, Maintenance, Repair of Fiber/Copper Networks, Contract No. 212710-02 (“Cooperative Purchasing Agreement”), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City’s Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City’s utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was April 4, 2022, until the date the contract expires on April 3, 2023 unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond April 3, 2027. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until April 3, 2023. If the underlying agreement

between the City of Tucson and Sturgeon Electric Company, Inc. is extended for a sufficient amount of time, the City may renew the term of this Agreement for (2) two additional two-year periods, or portions thereof, until the Cooperative Purchasing Agreement expires on April 3, 2027, or is renewed by City of Tucson and Sturgeon Electric Company, Inc. Glendale renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed Five hundred thousand dollars (\$500,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Julie Ossege
7070 W. Northern Avenue
Glendale, AZ 85303

And

Sturgeon Electric Company, Inc.
c/o Jesse Towle
2825 E. Ginter Road
Tucson, AZ 85706

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

“City”

“Contractor”

City of Glendale, an Arizona
municipal corporation

Sturgeon Electric Company, Inc.,
a Michigan Corporation

By: _____

Kevin R. Phelps
City Manager

By: 

Name: Jesse Towle
Title: Operations Manager

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
STURGEON ELECTRIC COMPANY, INC.**

EXHIBIT A

(Job Order Contract for Installation, Maintenance, Repair of Fiber/Copper Networks, City of Tucson Contract No. 212710-02)

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
STURGEON ELECTRIC COMPANY, INC.**

EXHIBIT B
Scope of Work

PROJECT

Contractor will provide services as needed for the installation, maintenance and repair of fiber/copper networks per the attached City of Tucson Contract No. 212710-02.



BUSINESS SERVICES DEPARTMENT—SHARED SERVICES PROCUREMENT

CONTRACT NO. 212710-02

Job Order Contract for Installation, Maintenance, Repair of
Fiber/Copper Networks

Sturgeon Electric Company, Inc
2825 E. Ginter Road
Tucson, AZ 85706

Email: jtowle@myrgroup.com

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I. INTRODUCTION

The City of Tucson (COT), hereinafter referred to as "COT" is conducting a competitive TWO-STEP process to award multiple contracts for Fiber/Copper Networks construction, repair and maintenance in accordance with Sec. 34-604 of the Arizona Revised Statutes. It is the City's intent to select up to three (3) CONTRACTORS for a Job Order Contract (JOC) to provide labor, materials, and some design services relating to this scope of work. The contracts issued pursuant to this RFQ will have an individual job order limit of \$100,000. Individual job orders will not exceed this project limits unless a waiver is requested of and granted by the Director of Business Services. Typical projects are in the \$10,000-\$25,000 range. The estimated usage for the first year is \$300,000.00. The term of this contract will be ONE (1) year with FOUR (4) one-year renewal options. Services will be requested on an as-needed, if-needed basis and the resultant contracts are neither exclusive nor a commitment by COT that the Contractors' services will be required.

The City will select up to FIVE (5) offerors from those submitting Statements of Qualifications (Step 1) for further consideration. A Request for Proposals (RFP) (Step 2) will be issued to the short-listed firms. The firms will then be requested to submit separate Technical and Price Proposals in response to an RFP. The RFP will contain a sample project as described in the Evaluation Criteria. Final Contract award will be determined through a selection process that considers the Final Technical Proposal and Price Proposal. The firm(s) determined to be best qualified will then be invited to enter negotiations with COT.

Federal Transit Administration (FTA), local and/or Regional Transportation Authority (RTA) funding may be utilized on specific projects under the Contract. Therefore, all FTA, HUD, federal, state and local requirements will be followed, and the RTA shall be listed as additionally insured and as an additional indemnitee in the resulting contract. FTA Terms and Conditions (Appendix C) are also provided as an attachment to this solicitation and will be incorporated into the resulting contract with signed FTA Certifications.

II. SCOPE OF WORK

1. SCOPE OF SERVICE

The Contractor shall provide labor, manpower and equipment as requested by the City of Tucson (COT), to perform the work outlined below in the metro Tucson area. All work shall conform to the requirements outlined in 29 CFR Part 1910 (Occupational Safety & Health Standards) & 1926 (Safety & Health Regulations for Construction), National Electric Code (NEC), National Electric Safety Code (NESC), Telecommunications Industry Association (TIA), Electronics Industry Alliance (EIA), and Authority Having Jurisdiction (AHJ).

2. SCOPE OF WORK

- a. Work shall include the repair, restoration, installation, and maintenance of aerial outside plant, underground fiber optic conduit and cable, and indoor intra-building fiber optic and copper LAN cable. This includes fusion splicing, hand terminations and the installation and maintenance of both aerial and underground fiber optic conduits (including boring and trenching). This also includes the installation and repair of conduit, fiber or risers as per associated drawings and specifications by AHJ, and verbal directions with follow up in writing, including copper cable installation and repair of infrastructure and associated utilities to support LAN communications
- b. Pole Make Ready: Make ready is defined as working with the pole owner/lessor to prepare the pole for installation of COT fiber in accordance with work orders issued by the COT. This preparation shall include, but not be limited to the installation of cable strand, required pole attachment hardware, riser conduit and associated fittings

- c. Relocation of Fiber: Relocating fiber is defined as physically moving existing fiber service to a different location on an existing pole. This task shall consist of, but not be limited to delashing fiber cable from existing messenger strands, moving existing hardware/fittings if serviceable (replace as necessary) to new location, reattach messenger cable to new pole height, installing new messenger if applicable, relashing fiber, and performance testing as requested by the City.
- d. Pole Relocate: Pole relocation shall consist of removing fiber cable from existing pole and reinstalling it onto a different pole location. This shall include, but not be limited to the determination of proper pole height (per pole owner specifications), installation of required hardware, installation of messenger cable, delashing and relashing of fiber cable, new fittings or hardware that may be required. It may also include the siting and erection of a new pole to the City's design, or AHJ, and specifications criteria. The City may request performance testing.
- e. Delashing /Relashing of Fiber Cable: When responding to an "emergency call-out", all fiber cable shall be delashed to the closest service loop or splicing point within one mile of emergency point. When service loops or splicing points are not available within one mile, COT technical personnel will instruct contractor (verbally, with follow-up in writing within a 24-hour period) of splicing and/or delashing instructions. All verbal instructions shall adhere to defined standards within this agreement, in which the most stringent shall be adhered to. COT technical personnel must approve (in writing) any services/material that are not clearly defined within this agreement's standards.
- f. Testing: The Contractor shall display competent knowledge and expertise in the testing of fiber optic cables using both an optical power meter (power meter testing must be done in both directions) and an optical time domain reflectometer. All fiber that has been physically moved, spliced or terminated shall be tested for dB loss and inspected for physical abnormalities that would adversely affect the integrity of the fiber network. Any span not within budget test parameters shall be cleaned and/or respliced and retested with test results resubmitted to the City. A record of all successful testing shall be presented to the City's Communication Maintenance Section and Communications Engineering Division in electronic and written format. The Contractor shall provide a copy of licensed software suitable for reviewing electronic testing results. Successful testing will be defined as the following:

Optical fiber test results shall be within specified attenuation loss budget parameters, per the City of Tucson requirements, unless approved by City Communication Engineering. These requirements are based on the maximum loss parameters specified in the ANSI/TIA/EIA standards for the section of fiber under test. Under no circumstance shall the requirements exceed the maximum stated in the ANSI/TIA/EIA Standards.

All copper cabling links in the installation shall be tested in accordance with the Telecommunications Industry Association (TIA) standard ANSI/TIA/EIA-568-B.1 Section 11.2: 100-Ohm twisted-pair transmission performance and field test requirements. The test equipment (tester) shall comply with or exceed the accuracy requirements for enhanced level II (Level II-E) field testers as defined in TIA-568-B; Annex I: Section I"

All electronic format submittals shall be compatible with existing COT Communication Maintenance software.

3. SPECIAL REQUIREMENTS

- a. Response Time: Provide emergency call-out service for excavation and restoration of fiber optic cable. Contractor shall respond to "emergency call-outs" for the purpose of assisting COT technical personnel in the repair of fiber/copper cable and appurtenant equipment, if directed. Such assistance entails any form of OSP and ISP functions required in an effort to restore and/or protect service. Contractor shall be on site with labor and equipment as specified in the call-out within (2) hours of notification.

Contractor shall remain on site, prepared to perform work as required until released by COT. Contractor shall be available for call-out 24 hours per day, seven days per week, throughout the year. Contractor agrees that time is of the essence in all such emergency call-out situations and shall respond at all times to the requirements of the service restoration situation with a sense of urgency.

- b. Practice Drills: Periodically, COT may stage practice drills to test the effectiveness of Contractor's emergency response. Contractor shall be reimbursed for such drills in accordance with the rate schedule of the contract.
- c. Work Schedule: By acceptance of this contract, the Contractor agrees that the Contractor must respond to all written inquiries within 1 working day. In addition, the Contractor and City will negotiate schedules for each component's or project's completion, to which the Contractor and City will both, be expected to adhere.

Before beginning any City engagement based on an hourly rate, the Contractor shall provide, at no cost to the City, a not-to-exceed estimate of the Contractor hours required to complete the project.

This estimate shall be valid for 90 days.

On all unplanned, short-term or "emergency" projects, the Contractor must be on site and started on the project within 24 hours of written notification. The City is the party who determines when an "emergency" exists and will require all emergencies or short-term projects to be fulfilled according to COT defined standards within this agreement. Projects shall be completed adhering to the most stringent of the standards within a reasonable time frame agreed upon (in writing) between the Contractor and COT.

- d. Project Initiation: Before beginning any planned project, the City and the contractor will negotiate a schedule, including the deliverables, to be signed by both parties. Progress payments may be allowed at the City's discretion. There will be no pre-negotiation for designated emergencies as defined in the work schedule above. However, all COT declared emergencies will adhere to standards within this master agreement.

Note: In writing, in emergency situations, refers to a handwritten note signed by COT technical personnel approving special service or installation of nonstandard material. This will be required for tracking of nonstandard material used in the fiber network for correction after clearing emergency call-out services.

- e. Security Requirement: By acceptance of this contract, the Contractor agrees that any and all Contractor employees who will perform services at designated secure facilities, including but not limited to Tucson Police Department (TPD) facilities, must successfully pass a background check and be issued appropriate identification prior to commencement of work at subject facilities.

4. PROJECT WORK

Perform any work reasonably requested by the COT for the installation, restoration or enhancement of the COT telecommunication fiber/copper network.

5. QUALITY ASSURANCE

- a. Quality of Work: In the event COT decides that a person provided by the Contractor is not meeting the desired level of expertise, as needed for adequate performance of services. COT may, at any time, with or without cause, require Contractor to remove said person from performing services for COT under this master agreement. Upon request, the Contractor shall immediately fill any vacancy created by such removal with a qualified person without remobilization charge.
- b. Sub-Contractors: The Contractor shall not, without prior written approval of COT, subcontract any portion of services to be performed. All subcontractors shall incorporate the terms and conditions substantially as contained in this agreement. Contractor shall, at all times, be responsible for the acts, commissions and performance of the subcontractors. In the interest of facilitating timely emergency response, Contractor may request COT's written pre-approval of specific subcontractors

and subcontract agreements. COT, at its sole discretion, may issue such written pre-approval. Second tier subcontracting is prohibited.

6.QUALITY OF EQUIPMENT

The Contractor warrants that any equipment used for the purposes of fulfilling its obligations hereunder shall be in proper operating condition and capable of fulfilling its intended use. In the event COT determines, in its sole opinion, that the equipment used does not meet such proper operating condition during the term of this master agreement, COT may require Contractor to remove said equipment until such time as COT is satisfied as to the equipment's proper operating condition, without remobilization charges.

7.TESTING

The Contractor shall display competent knowledge and expertise in the testing of fiber optic cables using both an optical power meter (power meter testing must be done in both directions) and an optical time domain reflectometer. All fiber that has been physically moved, spliced or terminated shall be tested for dB loss and inspected for physical abnormalities that would adversely effect the integrity of the fiber network. Loss testing may be requested, at the city's discretion. A record of all successful testing shall be presented to the City's Communication Maintenance Section and Technical Planning and Resources Division in electronic and written format. Successful testing will be defined as the following:

Test results will remain within DB loss budget per City of Tucson specifications which are based on ANSI/TIA/EIA standards for the section of fiber under test.

All electronic format submittals shall be compatible with existing COT Communication Maintenance software.

8.PERMITS AND LICENSES

Contractor shall keep current all governmental permits, certificates and licenses (including professional licenses, if applicable) necessary for Contractor to perform these services.

9.CONTRACT REPRESENTATIVE

The City shall designate a Contract Representative to monitor the contract, assign individual projects and to act as liaison between the City and the successful vendor.

10.SAFETY

The Contractor shall perform all work in compliance with all federal, state and local laws, regulations and ordinances that pertain to Occupational Safety and Health Administration (OSHA), National Electrical Code and National Electrical Safety Code and the authority having jurisdiction.

III. SPECIAL TERMS AND CONDITIONS

- 1. COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See http://www.tucsonprocurement.com/coop_partners.aspx and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.mesaaz.gov/home/showdocument?id=23638> for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

- 2. BASIS FOR AWARDING INDIVIDUAL JOB ORDERS:** In the event the City awards more than one contract for these services, individual job orders will be awarded based upon consideration of the firm's ability to complete the work expeditiously and the proposed cost. The City intends to request price and schedule proposals from all contracted firms for each individual job order. However, when quoting individual job orders is impracticable, the City reserves the right to award job orders as it deems to be in its best interest.

Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in a fully executed Notice to Proceed letter prior to Contractor beginning the work.

The Contractor shall be available on a five-day work basis throughout the term of the contract unless notified in writing by the City that this requirement may be temporarily waived due to the Contractor's approved written request or a reduced need by the City. The Contractor must be available to commence work on assignments within one week from award of an individual job order.

- 3. CONTRACT TERM AND RENEWAL:** The term of this contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, as its sole option, to renew the Contract for two (2) additional two-year periods, or portions thereof. If the City chooses to exercise this option, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of fee basis and minor scope additions and/or deletions.

- 4. PRICE ADJUSTMENT:** The City will review fully documented requests for fee basis adjustments after any contract has been in effect for one (1) year. Adjustments will only be made at the time of contract renewal or extension, except for financial emergencies, and will be a factor in the renewal/extension review process. The City will determine whether the requested adjustment or an alternate option is in the best interest of the City. Any adjustment will be effective on the first day of the contract renewal or extension.

- 5. COMPENSATION AND METHOD OF PAYMENT:** In consideration of the performance of the services described in the Scope of Services of each individual job order and pursuant to the master Scope of Work herein, the City shall pay the Contractor in accordance with the negotiated contract rates, and the Contractor shall charge the City only in accordance with those same rates.

Compensation under this contract should not exceed \$100,000 per individual job order unless a waiver is requested of and granted by the Director of Business Services.

The City of Tucson reserves the right to adjust the individual job limit at time of annual contract renewal upon written approval from the Business Services Director. The City will pay the Contractor following the submission of itemized invoice(s) for the service rendered. No payment shall be issued prior to receipt of material or service and correct invoice.

All requests for payment shall follow a format to be approved by the City Representative. Invoices shall be submitted monthly on a job-by-job basis.

6. INSURANCE PROVISIONS

- A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation, or reduction in coverage in any policy.
- B. The Commercial General Liability, Commercial Automobile Liability and umbrella policies where applicable will include the City as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- C. Provide and maintain minimum insurance limits as applicable.

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability:	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Project	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Arizona)*1	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000

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*1 Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

- D. CLAIMS MADE INSURANCE COVERAGE:** If any or part of the required insurance is written on a claims-made basis, any policy retroactive date must precede the date of the contract and the Contractor must maintain such coverage for a period not less than three (3) years following contract expiration, termination or cancellation.
- E. ADDITIONAL INSURANCE REQUIREMENTS:** All Policies, excluding Employment Practices Liability and Professional Liability (Errors & Omissions), shall include or be endorsed to include the following provisions:
1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor (Including Worker's Compensation).
 2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
 3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- F. NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require (10) days written notice from the contractor to the City of Tucson. Such notice shall be sent directly to the Department of Procurement
- G. ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- H. VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Business Services Department - Procurement.

The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

- I. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- J. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance.
7. **BONDING:** Contractors will be required to provide payment and performance bond equal to 100% of the value of the negotiated value(s) of construction.
8. **SBE PROGRAM REQUIREMENTS:** The SBE participation goal for individual projects awarded under this JOC will be evaluated during the negotiation phase prior to award.

Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Prime Contractor shall submit to the Business Services Department, Business Enterprise & Compliance Program, either a completed statement of proposed SBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The SBE Plan must include:

- 1.The name of the SBE subcontractors/suppliers;
- 2.The type and scope of work or service each SBE will perform;
- 3.The dollar value of each SBE's subcontract;
- 4.The dollar value of the prime contractor's self-performed work if claiming SBE credit;
- 5.The total dollar value of SBE work performed and percentage of the contract value;
- 6.If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of Notice To Proceed (NTP).

A signed offer in response to this RFQ represents the offerors intent to comply with the SBE program.

See **APPENDIX D - SBE Program Provisions for Professional Services**

- 9.**DBE PROGRAM REQUIREMENTS:** The Job Order Contractor shall be required to comply with DBE Program requirements, if goals are applicable, on federally funded projects that exceed the Formal Solicitation Threshold established by the Tucson Procurement Code, currently at fifty thousand dollars (\$50,000). Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Job Order Contractor shall submit **to the Office of Equal Opportunity Programs (OEOP) via the city's Project Manager, after the project proposal phase**, either a completed statement of proposed DBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The DBE Plan must include:

- 1.The names and addresses of the DBE subcontractors/suppliers;
- 2.The type and scope of work or service each DBE will perform;
- 3.The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver request must be in place prior to issuance of the Notice To Proceed (NTP) for individual project construction as well as a DBE Acknowledgment of Participation which provides signed confirmation from the DBE(s) that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

A signed offer in response to this RFQ represents the offerors's intent to comply with the DBE program.

Also See APPENDIX (E) - DBE Program Provisions for Alternative Project Delivery Method (APDM) for Construction Services.

10.FEDERALLY FUNDED PROJECTS: For projects that are identified as being federally funded, Federal Labor Standards will be applicable to that project. All Federal forms are attached and will be incorporated into any resulting contract(s)*. It shall be mandatory upon the Contractor(s) to whom the contract is awarded, and upon subcontractors working on this project to comply with the following:

- A. Davis Bacon Act: (AZ Wage Decision) Minimum wage rate, withholding, payroll, apprentice, subcontracting, and termination provisions.
- B. Work Hour and Safety Standards Act: overtime pay and safety.
- C. Mandatory Preconstruction meeting for Prime Contractor and all listed subcontractors

IV. STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.
3. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.
4. **ARBITRATION:** It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration shall apply to or be binding upon the City except by the City's express written consent given subsequent to the execution of the Contract. However, if both parties agree, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. Sec. 12-1501, et seq. Consultant shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this section.
5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.
6. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
7. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not

property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.

- 8. COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.
- 9. CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City 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 should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
- 10. CONFLICT OF INTEREST:** Subconsultants who design and/or develop specifications for materials for this project will be precluded from contract award for that item if a solicitation is issued for the item.
- 11. CONTRACT MODIFICATIONS:** No work outside of the contracted scope of work shall begin without an executed Contract Amendment and a written Notice to Proceed. Contractor shall notify COT immediately when projected hours for individuals under contract are within no less than 20% of exceeding the proposed hours. All direction regarding tasks, deliverables and level of effort shall originate with the designated City Project Manager/Contract Representative or the Department of Procurement. No direction shall be taken from, nor shall any work commence with direction from, any other party.
- 12. CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:
 - A. Amend the contract or enter into supplemental verbal or written agreements;
 - B. Grant time extensions or contract renewals;
 - C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.
- 13. CONTRACT:** The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

- 14. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.
- 15. DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
- 16. EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
- 17. FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

- 18. FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

- 19. GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City

amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

20. INDEMNIFICATION: To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subconsultant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subconsultant's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City. If Consultant or any of Consultant's employees are certified to receive a premium tax credit or cost sharing reduction which triggers a §4980H (a) or (b) penalty against the City, the Consultant shall indemnify the City from and shall pay any assessed tax penalty.

21. INDEPENDENT CONTRACTOR: It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, 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.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

22. INSPECTION AND ACCEPTANCE: All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

23. INTERPRETATION-PAROLE EVIDENCE: This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

- 24. LICENSES:** 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 as applicable to this Contract.
- 25. LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.
- 26. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.
- 27. NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.
- 28. OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
- 29. PATENT INFRINGEMENT:** The Consultant 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 Consultant 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 Consultant 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 replace same with noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

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

- 30. PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

31. PROTECTION OF GOVERNMENT PROPERTY: The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

32. PROVISIONS REQUIRED BY LAW: Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

33. RECORDS: Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.

Consultant shall maintain all pertinent files, records, and documents which relate to the delivery of the services provided in this Contract. Supporting documents, files, and records shall be retained by Consultant for at least five (5) years after the termination of this Contract.

34. RIGHT TO ASSURANCE: Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.

35. RIGHT TO INSPECT: The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

36. RIGHTS AND REMEDIES: No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

37. SEVERABILITY: The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

- 38. SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.
- 39. SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. 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.
- 40. SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.
- 41. SUSPENSION OF WORK:**
- A. The City may order the Consultant, in writing, to suspend, delay, or interrupt all or any part of the work under this Contract for the period of time that the City determines appropriate for the convenience of the City.
 - B. The Consultant agrees that no charges or claims for damages shall be made against the City for any delays or hindrances during the progress of this Contract. Such delays or hindrances, if any will be covered by an extension of time for such reasonable period as mutually agreed upon between the parties. It is agreed and understood, however, that permission to proceed with the Contract after the established completion date, shall not be construed as a waiver by the City of any of the rights herein.
- 42. TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

43. TITLE AND RISK OF LOSS: The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

44. WARRANTIES: Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

V. Price

Scope, schedule, price, and liquidated damages (if applicable) are agreed upon in an executed Notice to Proceed letter prior to proceeding with the work. Contractor to charge in accordance with prices/rates in Appendix F.

VI. Subcontractor Selection Plan

Contractor will select subcontractors for services under this contract pursuant to the plan in Appendix G and in accordance with the requirements of A.R.S. 34-603.

CONTRACT APPENDICES:

Appendix A GENERAL CONDITIONS FOR CONSTRUCTION

- Appendix B** CONSTRUCTION AGREEMENT
- Appendix C** FTA TERMS AND CONDITIONS
- Appendix D** SBE PROGRAM PROVISIONS
- Appendix E** DBE PROGRAM PROVISIONS
- Appendix F** PRICING
- Appendix G** SUBCONTRACTOR SELECTION PLAN
- Appendix H** BONDS
- Appendix I** INSURANCE

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX A

GENERAL CONDITIONS FOR CONSTRUCTION

GENERAL CONDITIONS OF THE CONTRACT

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- 2.2 Intent of the Contract Documents
- 2.3 Execution
- 2.4 Ownership of the Contract Documents

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- 7.2 Certification and Payment; Retainage; Substitute Securities
- 7.3 Payment Withheld
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- 9.1 Suspension of the Work for Cause;
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- 9.2 Termination by the City for Cause
- 9.3 Suspension by the City for Convenience
- 9.4 Termination by the City for Convenience
- 9.5 Contractor's Right to Terminate Contract

ARTICLE 10. CLAIMS AND DISPUTES

- 10.1 City Contract Representative's Resolution of
Claims and Disputes; Review by Contracting
Officer

ARTICLE 11. MISCELLANEOUS PROVISIONS

- 11.1 Governing Law
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ARTICLE 12. CONSTRUCTION SERVICES AGREEMENT

- 12.1 Project and Contract Price
- 12.2 Contract Time
- 12.3 Miscellaneous

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:

Amendment - written or graphic instrument issued prior to the due date which clarifies, corrects or changes the Solicitation.

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 City Contract Representative and which is signed by the Contractor and the City's Director of Procurement or duly authorized designee and

authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Completion time, issued on or after the effective date of the Contract.

City - means the City of Tucson, Arizona, a municipal corporation.

City Contract Representative - the City official administering the Contract for the City of Tucson.

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

Construction – 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.

Contract - the written agreement and all associated attachments, drawings, amendments and change orders executed between the City and the Contractor covering the Work to be performed.

Contract Price - the amount payable by the City to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order.

Contract Officer - the City official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the City's Director of Procurement and in accordance with the Tucson Procurement Code.

Contractor - the person, firm or corporation with whom the City has entered into the Contract.

Director of Procurement – the person acting as Director of the City's Department of Procurement and who has authority to award and revise City solicitations and contracts for construction, construction services, and construction-related services 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 City or an approved form submitted by the Contractor in lieu of city furnished form, and is required to be used when submitting requests for payments for work actually performed and materials supplied during a an agreed-to preceding period of time.

Field Order - a written order or directive issued by the City 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 City.

Liquidated Damages – a sum set forth in the Contract documents that will be deducted from any monies due to the Contractor, not as a penalty, but in lieu of actual damages for late completion of the work.

Notice to Proceed - a written notice given by the City to the Contractor fixing the date on which the Completion time will commence and upon which the Contractor shall start to perform the Contractor's obligations under the Contract.

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 City 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 City, in its sole discretion, determines the Work is substantially complete such that the City has beneficial use and/or occupancy. Upon substantial completion, the right of the City to assess liquidated damages for time after the date of substantial completion ceases, except as allowed for failure to meet final completion within thirty days of substantial completion.

Tucson Procurement Code – in addition to applicable State statutes and applicable Federal regulations and requirements, the municipal 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 ITS EXECUTION AND INTENT

2.1 The Contract

2.1.1 The documents in the Contract include the solicitation contents, any amendments, drawings, change orders and approved Contractor submittals.

2.1.2 The Contract comprises the entire agreement between the City 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 Contractor shall take no advantage of any apparent error or omission in the plans, estimated quantities or specifications. In the event the Contractor discovers such an error or omission after contract award, the Contractor shall immediately notify the City Contract Representative. The City Contract Representative shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the contract.

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 City 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 include all utility fees, permits, licenses, etc. including sewer connection fees in each estimate or proposal submitted.

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 City 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 City.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.1 Lines of Authority and Communications

3.1.1 The City's Director of Procurement is the City official with overall authority and responsibility for the award and administration of City Contracts. The Director of Procurement or his/her designated Procurement Department representative after consultation with the City 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 City Contract Representative is the designated representative of the particular City department for which the Work is being constructed (the “user department”) or the City 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 City Contract Representative. The City Contract Representative is the City’s representative during the prosecution of the Work and shall act as surveillant and technical advisor for the City. The City 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 City Contract Representative.

3.2 **City Contract Representative’s General Authority and Responsibilities**

- 3.2.1** Unless the Contractor is responsible for the design of the Work, the City Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, up to three copies of drawings, specifications and instructions available for the execution of the Work. The City 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 City Contract Representative are City 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 City Contract Representative at the completion of the Work.
- 3.2.2** The City Contract Representative shall make general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the City 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 City 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 City 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. The City Contract Representative's failure during the progress of work to

discover or reject materials or work not in accordance with the plans, specifications or contract documents shall not be considered an acceptance of the work or materials or a waiver of defects. Neither the failure of the City Contract Representative to properly perform inspections, tests or approvals required by the contract documents nor the activities or duties of the City Contract Representative in the administration of this contract shall relieve the Contractor from the contractor's responsibility for the means, methods, techniques, sequences or scheduling of the construction or the obligation to perform the work in strict accordance with the contract documents.

- 3.2.5** The City 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 Director of Procurement or designee prior to any work being done. However, in emergencies endangering life or property, the City Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.
- 3.2.6** The City Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Contract Officer as to all claims of the Contractor.
- 3.2.7** The City 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 City 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 City 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. Failure of the City Contract Representative to note unsafe working conditions or conditions dangerous to the general public, or to stop work on account of such conditions, shall not relieve the Contractor of sole responsibility for such conditions.

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 City Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the City Contract Representative or the Public Inspectors, the Contractor shall advise the City Contract Representative of the date fixed for such inspection.

3.3.3 All tests, inspections or approvals required to be performed by the City 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, will 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 City Contract Representative.

3.4.2 The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the City Contract Representative. Except as provided in subsection 3.4.3, the City 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 City shall be paid for by the City.

ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES

4.1 **Contractor's Review of Contract 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 City Contract Representative. If the Contractor performs any construction activity knowing it involves an error, inconsistency or omission in the Contract without such notice to the City Contract Representative, the Contractor shall assume full responsibility for such performance and shall pay a proportionate share of the attributable costs for correction.

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 City 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 City 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 City 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 City 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 City 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 provide an experienced and capable superintendent/project manager who shall be in attendance at the project site at all times during performance of the Work and who shall be acceptable to the City Contract Representative. The superintendent/project manager shall not be changed except with the concurrence of the City Contract Representative, unless they cease to be in the Contractor's employ. The superintendent/project manager shall represent the Contractor in their absence and all notifications given to them shall be as binding as if given to the Contractor.

4.2.3 The Contractor agrees that it is as fully responsible to the City 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 City that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all of the Work will 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 furnish all materials required to complete the work, except those specified to be furnished by the Agency. The Contractor shall receive, inventory, store, inspect, protect, distribute, and install Agency furnished material unless otherwise specified. The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used. The Contractor shall be held responsible for all material delivered to the contractor. Deductions shall be made from any monies due the Contractor to make good any shortages or deficiencies, from any cause whatsoever and for any damage which may occur after such delivery, and for any late delivery charges.

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

4.3.6 Materials not conforming to the requirements of the specifications, whether in place or not, shall be rejected and shall be promptly removed from the site of the work, unless otherwise directed by the City Contract Representative. No rejected material, the defects of which have been corrected, shall be returned to the work site until such time as approval for its use has been given by the City Contract Representative.

4.4 Construction Schedules and Submittals

4.4.1 Before commencing the Work, the Contractor shall provide the City 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.

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

4.4.3 After review, the City 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 City Contract Representative and re-submit such corrected materials to the City 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 City's Director of Procurement or 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 City Contract Representative, and shall not deviate from such submittals after final approval by the City Contract Representative.
- 4.4.6. When re-submitting shop drawings, product data, samples or similar submittals containing requested revisions requested by the City Contract Representative on previous submittals, the Contractor must direct specific attention to any revisions they have independently made in such shop drawings, product data, samples or other submittals over and above those revisions specifically requested by the City Contract Representative.
- 4.4.7 Approval by the City Contract Representative of shop drawings, product data or other submittals shall not relieve the Contractor of responsibility for deviations from requirements of the Contract unless the Contractor has specifically informed the City Contract Representative in writing of such deviation at the time of submittal and the City Contract Representative has given a written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the City Contract Representative's approval thereof.
- 4.4.8 As-builts documents must be provided to the City by the Contractor within in thirty days of substantial completion. The City reserves the right to withhold final payment until complete as-builts have been received in good order by the City Contract Representative.

4.5 Documents and Samples at the Work Site

- 4.5.1 Unless otherwise directed by the City's Contract Representative, the Contractor shall maintain at the Work site a complete file of the drawings, specifications, amendments, 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 City Contract Representative and Public Inspectors upon request.

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

- 4.6.1 The City will provide land, rights-of-way and easements for all work specified in the Contract. The Contractor shall confine their apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the City Contract Representative, and shall not unreasonably encumber the premises with their material and equipment.
- 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 City 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. The Contractor shall maintain sufficient barricades, flares, signs, etc., as outlined in the Traffic Control Plan or "Street Barricading and Channelization Manual for Temporary Traffic Control" prepared by the City's Department of Transportation. If it becomes necessary to close a street entirely during certain phases of the work permission shall be obtained from the City Contract Representative and City or County Traffic Engineer, as the location of the Work may require. Police and Fire Departments must be notified twenty-four (24) hours in advance of the closing and opening of said street and the Contractor must furnish and place all necessary detour signs.
- 4.6.4** The Contractor shall supply safe drinking water for all Contractor employees at the Work site. Water from existing fire hydrants may be made available to the Contractor upon his request to the City's Water Department through the City's Contract Representative. In such cases where the City elects to provide hydrant water, the Contractor will be provided a meter for the fire hydrant and will be charged the City's current rate for all water used. A deposit for the meter will be required by the City's Water Department.
- 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 City 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 City Contract Representative. Extensions in the Completion 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 **Cutting and Patching**

- 4.7.1** The Contractor shall do all cutting, fitting or patching of the Work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed project.
- 4.7.2** The Contractor shall not endanger any work by cutting, patching, digging or otherwise, and shall not cut or alter the work of any other contractor except with the prior written consent of the City Contract Representative and the other contractor.
- 4.7.3** Any cost incurred by reason of endangered, defective, ill fitted or ill timed work shall be borne by the contractor responsible therefore as determined by the City Contract Representative.
- 4.7.4** Each section of the specifications includes all cutting and patching for that trade section as required for the proper accommodation of all work by other trades, unless

specifically stated to the contrary. In the event that the specifications are inadequate in this respect, the City Contract Representative shall issue needed written clarifications.

4.8 Cleaning Up

4.8.1 The Contractor shall at all times 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 City Contract Representative.

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

4.9 Emergencies

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

4.9.2 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 City unless such work has been specifically requested and approved by the City Contract Representative.

4.9.3 The Contractor shall file with the City Contract Representative the names, addresses and telephone numbers of their representatives 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 City or the Public Inspectors.

4.10 Permits, Fees and Notices

4.10.1 The Contractor shall, at their 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.

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

4.11 Royalties and Patents

4.11.1 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 noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

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

4.12 **Protection of Persons and Property**

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

4.12.2 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.

4.12.3 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.

4.12.4 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.

4.12.5 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 City Contract Representative.

4.12.6 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, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

4.12.7 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 recodified 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 recodified 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 Section 4.13.

4.13 Indemnification and Insurance

4.13.1 To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees. . If Contractor or any of Contractor's employees are certified to receive a premium tax credit or cost sharing reduction which triggers a §4980H (a) or (b) penalty against the City, the Contractor shall indemnify the City from and shall pay any assessed tax penalty. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. The Contractors agrees to waive all rights of subrogation against the City of Tucson, it's agents, representatives, officers, directors, officials, employees and volunteers for losses arising from the work performed by the Contractor for the City of Tucson.

4.13.2 Insurance: Contractor agrees to provide insurance as follows:

COVERAGE	LIMITS OF LIABILITY
I. Commercial General Liability: Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability Each Occurrence General Aggregate Per Project Products & Completed Operations Aggregate	 \$1,000,000 \$2,000,000 \$2,000,000

Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
II. Commercial Automobile Liability	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement. Combined Single Limit	\$1,000,000
III. Workers' Compensation (applicable to the State of Arizona)*1	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
IV. Professional Liability (Errors & Omissions) - In addition to I, II, III (Licensed, registered or certified individuals expected to follow usual and customary standards of their profession i.e., Architects, Construction Managers @ Risk, Financial Services, Engineers, Physicians, Attorneys, Insurance Agents, Interpreters, consultants)	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
Single Loss Limit to Include theft of third party property	\$1,000,000

VII. CONSTRUCTION: (in addition to I, II, & III) *2	
Builder's "All Risk" Property Insurance (replacement cost basis)	Contract Value
a. Coverage to include personal property of others in the care, custody and control of the contractor. Coverage should be written for 100% of the completed value.	
b. For additions or repairs of existing building structures, coverage to include contractor's interest in improvements, repairs, additions, alterations to completed buildings and subject to items described in "a."	
Umbrella (Excess) Liability	\$4,000,000
a. Policy must follow form of the underlining General Liability Policy, but may also cover additional risk and all insurance together for general liability must total at least a minimum of \$5,000,000. Any form of underlying and excess policies may satisfy such requirement.	
b. Policy shall contain a waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor.	

*1 Independent Contractor/Sole Proprietor designation is given to those who desire to waive their rights for worker compensation coverage and benefits as outlined in ARS§ 23-901and specifically ARS § 23-961 (O). Please use the Sole Proprietor/Independent form.

*2 Performance and Payment Bond standard language typically not on service contracts; however, if potential exist for use of subcontractors to procure services—include standard language.

A. ADDITIONAL INSURANCE REQUIREMENTS: All policies shall include, or be endorsed to include, the following provisions:

1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor.

2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

B. NOTICE OF CANCELLATION: With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Tucson. Such notice shall be sent directly to **the Procurement Department** and shall be sent by certified mail, return receipt requested.

C. ACCEPTABILITY OF INSURERS: Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

D. VERIFICATION OF COVERAGE: Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance 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 Procurement Department**. The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.

E. SUBCONTRACTORS: Contractors' certificate(s) shall include all subcontractors as insureds under its policies **or** Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

F. APPROVAL: Any modification or variation from the *insurance requirements* in this Contract shall be made in consultation with the Procurement Contracting Officer and Risk Manager. Such action will not require a formal Contract amendment, but may be made by administrative action.

G. EXCEPTIONS: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance.

ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS

5.1 Subcontracts

- 5.1.1** The Contractor shall ensure that the subcontractors 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 City 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 City for its consideration and approval prior to substitution taking place.
- 5.1.2** 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.
- 5.1.3** Contractor shall ensure that each subcontract shall preserve and protect the rights of the City 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 will be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.
- 5.1.4** Each subcontract will 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 City 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 City.
- 5.1.5** The Contractor further agrees:
- .1 To be bound to the subcontractor by all the obligations that the City assumes to the Contractor under this Contract, and by all provisions thereof affording remedies and redress to the Contractor from the City.
 - .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 City 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 City, any fire insurance money 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 that 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.

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

5.1.7 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

- .1 Assignment is effective at the sole option of the City 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 City determines to accept by notifying the subcontractor in writing, and
- .2 Assignment 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 City reserves the right to perform construction or operations related to the Work with the City'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 City Contract Representative shall coordinate the activities of the City'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 City 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 City 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 City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall defend such proceedings and, if any judgment against the City arises therefrom, 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 City 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; LIQUIDATED DAMAGES

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 City Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.
- 6.1.4** The term "day" as used in the Contract shall mean calendar day.
- 6.1.5** By execution of the Contract documents, 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 Liquidated Damages

- 6.2.1** The amount of liquidated damages shall be as specified in the Contract.
- 6.2.2** The Contractor has been put on notice that the City shall enforce the liquidated damages set forth in the Contract.

6.2.3 The Contractor agrees that the City will incur damages if the Contractor fails to complete the Work within the Completion time or any approved extensions thereof and that the liquidated damages specified in the Contract represents a fair and equitable approximation of the City's damages.

Each calendar day that the Contractor shall fail to achieve Substantial Completion after the calendar date agreed to for the completion of the Work provided for in the Contract, the sum set forth in the Contract documents will be deducted from any monies due the Contractor, not as penalty, but as liquidated damages; provided however, that due account will be taken of any adjustments of the Completion time for the completion of the work allowed under the Contract.

Permission allowing the Contractor to continue and finish any part of the Work after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Once substantial completion is granted, the Contractor shall achieve final completion within thirty (30) calendar days, unless otherwise agreed upon. If final completion does not occur within the agreed upon number of days, liquidated damages will commence on the first day after the agreed days at half the specified rate, until final completion occurs.

6.3 Delays and Time Extensions

6.3.1 It is agreed that the City'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 City. There is no other obligation, express or implied, on the part of the City to the Contractor for delay from any cause.

6.3.2 Force Majeure

6.3.2.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the parties affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a sub-contractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

6.3.2.2 If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

- 6.3.3** 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.
- 6.3.4** Time extensions shall only be granted for delays caused by the City, changes authorized in accordance with Article 8 of this agreement, or delays pursuant to sections 6.3.2 and 6.3.3.
- 6.3.5** Should a dispute arise between the Contractor and the City 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 stated in the Contract plus or minus any authorized adjustments is the amount payable by the City to the Contractor for performance of the Work under the Contract.

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 City or a City approved form submitted by the Contractor. Completed forms shall be submitted to the City Contract Representative. An updated project schedule shall accompany all requests for payment.

7.1.3 With each request for Payment, the Contractor shall submit a schedule of values, project payrolls, invoices, receipts and any other supporting documentation required by the Owner to substantiate payment being requested for the current time period.

7.2 *Certification and Payment; Retainage; Substitute Securities*

7.2.1 The City by mutual agreement may make progress payments on Contracts of less than ninety 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 City 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 days from the date of submission unless before that time the City or the City'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 City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after

the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the City on submission to any person designated by the City 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 amount 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 City 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 City as a guarantee for complete performance of the Contract, to be paid to the Contractor within sixty days after completion or filing notice of completion of the Contract. Retention of payments by the City longer than sixty days after final completion and acceptance requires a specific written finding by the City of the reasons justifying the delay in payment. The City may not retain any monies after sixty days that are in excess of the amount necessary to pay the expenses the City reasonably expects to incur in order to pay or discharge the expenses determined by the City in the finding justifying the retention of monies. In lieu of the retention provided in this section, the City, 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 all estimates that are retained by the City as a guarantee for complete performance of the Contract. if the City accepts substitute security 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 City within sixty days after final completion and acceptance of all material, equipment and work covered by the Contract if the Contractor has furnished the City 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 City 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 setoff against either the City or the Contractor in relationship to the certificates or shares assigned.

- 7.2.5** In any instance where the City 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** 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 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. Any diversion by the Contractor or subcontractor of payments received for work performed on a 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 City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.
- 7.2.7** A subcontractor may notify the City in writing requesting that the subcontractor be notified by the City in writing within five 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.
- 7.2.8** Nothing in this section prevents the Contractor or subcontractor, at the time of application and certification to the City or Contractor, from withholding the application and certification to the City 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 City.
- 7.2.9** 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.
- 7.2.10** If any periodic or final payment to a subcontractor is delayed by more than seven 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.

7.2.11 The City 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 City has received full value, certify the estimate and submit it through normal channels for payment.

7.2.12 Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work.

7.3 Payment Withheld

7.3.1 If the City 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 City Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the City Contract Representative shall promptly notify the Contractor. If the City Contract Representative and the Contractor cannot agree on a revised amount, the City Contract Representative will promptly issue a certificate for payment in an amount they determine is justified.

7.3.2 The City Contract Representative or other City 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 City 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 Completion 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 City.
- .6 Damage to the real or personal property of another and failure to repair or replace the same.
- .7 Persistent failure 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 City Contract Representative or other City official concerned, the City 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 City has agreed to accept separately, is ready for its intended use, it shall notify the City Contract Representative in writing that the Work, or the agreed upon portion thereof, is substantially complete and request the City Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the City Contract Representative will 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 City Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the City Contract Representative will prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the City and Contractor, pending final payment by the City, 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 two years, 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 City Contract Representative will determine that all items on the punch list have been completed or corrected and the City 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 City may occupy or use any portion of the Work which the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City 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 City 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 City 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 City 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 City Contract Representative.

8.1.2 If a portion of the Work not designated by the City Contract Representative or the Contract for inspection has been covered and the City 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 City or a separate Contractor.

8.1.3 The City 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 City 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 City, 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 City may remove it and may store the materials at the expense of the Contractor. If the Contractor does not pay the expenses of such removal within ten (10) days time thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or private sale and credit the Contractor for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor. Any omission on the part of the City to condemn defective work or material at the time of construction shall not be deemed an acceptance, and the Contractor shall be required to correct defective work or material for which claim is made by the City at any time before the final completion date and within two (2) years thereafter.

8.2.2 Correction of Work After Final Payment: If, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof, or within two (2) years after acceptance by the City of designated equipment, or within such longer period as may be prescribed by law or by the terms of any applicable special warranty required by the Contract, any of the Work is found to be defective or not in accordance with the Contract, the Contractor shall correct it promptly after receipt of a written notice from the City to do so, unless the City has previously given the Contractor a written acceptance of such condition. The City shall give notice

promptly after discovery of the condition. The two (2) year period for discovery shall be extended as to any portion of the Work first performed after Substantial Completion and the actual performance of the Work. The obligation contained in this subsection shall survive acceptance of the Work under the Contract and/or termination of the Contract. Nothing contained in this Article 8 shall be construed to establish a period of limitations with respect to other obligations which the Contractor might have under the Contract. Establishment of the two (2) year discovery time period relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

8.2.3 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 City, it is agreed that the City 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 City 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 If, instead of requiring corrections or removal of work not conforming to the requirements of the contract, the work is determined to be acceptable with diminished value in the sole judgement of the City Contract Representative, a change order shall be issued incorporating the necessary revisions in the contract, including an appropriate reduction in the contract price. Such a change order does not require the signature or approval of the Contractor. Such acceptance of non-conforming work shall not constitute a waiver of any other work required under this contract.

8.3.3 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; City'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 City 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 City may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the City 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 City for such deficiency.

9.2 Termination by the City for Cause

- 9.2.1** The City, upon certification by the City Contract Representative, without prejudice to any other right or remedy of the City 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 persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractor.
- .3 If the Contractor fails to 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 City.

- 9.2.2** Upon termination of the Contract for any of the above reasons, the City, 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 assignment of subcontracts pursuant to Subsection 5.1.8 of Article 5 of these General Conditions.
- .3 Finish the Work by whatever reasonable method the City may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the City

may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the City's possession and may make all necessary repairs and replacements thereto.

9.2.3 If the City 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 City 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 City 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 City's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the City 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 City for Convenience

9.3.1 The City 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 City may determine whenever such suspension or interruption would be in the best interest of the City.

9.3.2 If the City 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 City.

9.4 Termination by the City for Convenience

9.4.1 The performance of the Work under this Contract may be terminated by the City, in whole or in part, in accordance with this clause whenever the City reasonably determines that such termination is in the best interest of the City. 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 City 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 City 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 City 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 City has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the City Contract Representative, or
- .3 If repeated suspensions or interruptions ordered by the City 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 one hundred twenty (120) 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 City Contract Representative, stop Work and terminate the Contract and recover payment from the City for all Work executed and accepted by the City and any loss sustained upon any plant or materials and reasonable profit and damages.

ARTICLE 10 CLAIMS AND DISPUTES

10.1 City Contract Representative's Resolution of Claims and Disputes; Review by Contract Officer

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 City Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

- 10.1.3** Claims by the Contractor 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 City shall continue to make payments in accordance with the Contract.
- 10.1.5** The City Contract Representative shall, within twenty-one (21) days of receipt of a claim, issue 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 Contractor indicating when they expect to be able to take action, which shall be within a reasonable time.
- 10.1.6** The City Contract Representative may require the submission of additional documentation from the Contractor to facilitate a decision.
- 10.1.7** The Contractor shall have ten (10) days from the date of the City 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 the Contractor to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Contract Officer for de novo review.
- 10.1.8** The Contract Officer shall have sixty (60) days from receipt of a written objection by the Contractor to the City 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 Tucson Procurement Code. During such period, the Contract Officer 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 Tucson City Code and 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**

11.3.1 The City shall also have the right to terminate this Contract pursuant to the conflict-of-interest provisions of A.R.S. Sec. 38-511 and to exercise any and all remedies provided in such statute. The City may cancel this Contract if any person significantly involved in negotiating, drafting, securing or obtaining this Contract for or on behalf of the City of Tucson becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Contract

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX B

CONSTRUCTION AGREEMENT

ARTICLE 12. CONSTRUCTION SERVICES AGREEMENT

12.1 Project and Contract Price

12.1.1 Contract Name: JOC FOR INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER NETWORK

Contract Number: 212710

12.1.2 Pricing: See Appendix F

12.2 Contract Time:

12.2.1 Notice to Proceed: It is agreed that the City Representative will issue the Notice To Proceed with the Work to be performed under this Contract within twenty (20) consecutive calendar days after the date of execution of this Agreement, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

12.2.2 Completion Time 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. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Tucson area.

12.2.3 Liquidated Damages. Completion times will be specified in the Notice to Proceed. Applicable liquidated damages shall be assessed for each day the Work remains incomplete after the scheduled completion date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the City will sustain on account of late completion.

12.3 Miscellaneous

12.3.1 Guarantee. The Contractor shall guarantee all Work under this Agreement against defects of material and Workmanship for a minimum of two years from the date of Final Completion.

12.3.2 Assignment. Neither party to this Contract shall assign the Contract 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 City.

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

1. Any and all Amendments.
2. The Contract, including this Agreement.
3. Construction Specifications, including all standard, special, technical and supplementary specifications included herein.
4. The approved Drawings.
5. SBE Plan if Applicable

- 6. Bonds
- 7. Insurance

12.3.4 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. 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 Contract shall be a part of the Contract between the parties and shall take precedence over all of the other Contract Documents.

IN WITNESS THEREOF, the parties hereto have executed three (3) identical counterpart copies of this Agreement on the date and year first written above, each of which copies shall for all purposes be deemed an original hereof.

City of Tucson, A Municipal Corporation

By: Nathan Daon
As Procurement Director, or his/her designee,
and Not Personally

Sturgeon Electric Company, Inc.
Contractor

By: Jesse Towle
Digitally signed by Jesse Towle
DN: C=US, E=JTowle@myrgrroup.com,
O="Sturgeon Electric Company, Inc.",
OU=Operations Manager / Tucson
Business Unit, CN=Jesse Towle
Date: 2022.03.29 13:41:12-07'00'

Title: Operations Manager

APPROVED AS TO FORM this 4th
day of April, 20 22.

Eugene Hlasse
As City Attorney and not personally

NOTE: The Contract Representative is

City of Tucson

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX C

FTA TERMS AND CONDITIONS

**FEDERAL TRANSIT ADMINISTRATION
TERMS, CONDITIONS, AND CERTIFICATIONS**

FEDERAL TRANSIT ADMINISTRATION TERMS, CONDITIONS AND CERTIFICATIONS

Requirements/Conditions For All FTA Assisted Contracts:

- Federal Disclaimer to Third Parties
- Program Fraud and False or Fraudulent Statements and Related Acts
- Access to Third Party Contract Records
- Prohibitions Against Exclusionary or Discriminatory Specifications
- Changes to Federal Requirements
- Termination Provisions (Contracts exceeding \$10,000)
- Civil Rights Requirements
- Requirements for Disadvantaged Business Enterprises (DBEs)
- Incorporation of FTA Terms

Requirements for Contracts Exceeding \$25,000 Threshold:

- Debarment and Suspension Requirements

Requirements for Contracts Exceeding Small Purchase Threshold (\$100,000):

- Report, record retention, and access provisions
- Buy America requirements
- Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation
- Lobbying Requirements
- Bonding Requirements for Construction Activities; (may be imposed for nonconstruction activities)
- Clean Water Requirements
- Clean Air Requirements

Cargo Preference

- Acquisition of Property Shipped by Ocean Vessel
- Acquisition of Property Shipped by Air (Fly America)

Construction Activities:

- Equal Employment Opportunity (Except for supplies/raw materials)
- Construction Employee Protection Requirements: (except for contracts < \$2,000, or for supplies/raw materials)
- Davis Bacon Act (for contracts exceeding \$2,000)
- Contract Work Hours & Safety Standards Act (contracts exceeding \$100,000)
- Copeland Anti-Kickback Act (for all construction contracts)
- Siesmic Safety (for new buildings/additions only)

Non Construction Activities

- Non Construction Employee Protection Requirements (Except for supplies/raw materials) (for all turnkey, rolling stock and operational contracts (excluding transportation services) in excess of \$100,000)

Transit Operations

- Transit Employee Protective Arrangements
- Charter Service Operation
- School Bus Operations
- Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

Planning, Research, Development and Demonstration Projects

Patent Rights Requirements

Rights in data and copyrights requirements

Turnkey and Other Acquisitions Made by a Third Party Contractor Assuming the Role of the City of Tucson

Bus Testing

Pre-Award and Post-Delivery Audit Requirements

Miscellaneous Special Requirements

Environmental Protection

Energy Conservation Requirements

Metric System Requirements

National ITS Architecture

Requirements for Recycled Products (for items designated by EPA)

Seat Belt Use

Text Messaging While Driving

Federal Davis-Bacon Wage Rates

(If Applicable)

Certifications

Buy America

Transit Vehicle Manufacturer's DBE Certification

Lobbying

Bus Testing Requirements

Protest Procedures For Federal Transit Administration Funded Projects

City Of Tucson Protest Procedures For Federal Transit Administration (FTA) Funded Projects

Requirements/Conditions For All FTA Assisted Contracts

This Contract is Subject to Federal Financial Assistance/Application of Provisions and Clauses

This contract is funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the City of Tucson and the U.S. Department of Transportation.

The Contractor is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA). If FTA requires any change to this Contract to comply with its requirements, both parties agree to amend the Contract as required by FTA. If such changes cause an increase or decrease in the work to be performed by the Contractor or the time for such performance, then the compensation to be paid the Contractor and time of performance shall be equitably adjusted.

The required contract clauses, which are identified below as applicable to this solicitation, will be incorporated by reference in any contract resulting from this solicitation issued by the City Of Tucson. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this solicitation which may also be incorporated by reference in any resulting contract. If there is any discrepancy in the language between this document and the General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures and Bid or Proposal Forms set forth in other sections of this solicitation, the stricter of two shall govern.

Some provisions and clauses require the bidder/proposer to execute and submit certain required certifications with the bid or proposal, which are included herein. Failure to execute and submit required certifications with the bid or proposal documents may render a bid or proposal non-responsive.

Federal Disclaimer to Third Parties

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements and Related Acts - 31 U.S.C. § 3801 et seq., 49 CFR Part 31, 18 U.S.C. § 1001, 49 U.S.C. 5307

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Third Party Contract Records (*Form FTA Master Agreement MA (18) dated October 1, 2011*)

All contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). All contractors further agree to require its third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

Prohibitions Against Exclusionary or Discriminatory Specifications – 49 U.S.C. § 5323(h)(2)

1. Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Tucson agrees that it will comply with 49 U.S.C. § 5325 (h) by not expending or otherwise using any Federal assistance FTA has made available for the Project to support a procurement using exclusionary or discriminatory specifications.

Changes to Federal Requirements - 49 CFR Part 18

1. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (*Form FTA MA (18) dated October, 2011 between the City of Tucson and FTA*), as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements, unless modified by the FTA.

Termination Provisions - 49 U.S.C.Part 18, FTA Circular 4220.1F

1. **Termination for Convenience (General Provision):** The City Of Tucson may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City Of Tucson to be paid the Contractor. If the Contractor has any property in its possession belonging to the City Of Tucson, the Contractor will account for the same, and dispose of it in the manner the City Of Tucson directs.
2. **Termination for Default [Breach or Cause] (General Provision):** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City Of Tucson may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City Of Tucson that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City Of Tucson, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. **Opportunity to Cure (General Provision):** The City Of Tucson in its sole discretion may, in the case of a termination for breach or default, allow the Contractor to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the City Of Tucson's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract after receipt of written notice from the City of Tucson setting forth the nature of said breach or default, the City of Tucson shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City of Tucson from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. **Waiver of Remedies for any Breach:** In the event that the City of Tucson elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of Tucson shall not limit the City of Tucson's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Convenience (Professional or Transit Service Contracts):** The City of Tucson, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City of Tucson shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
6. **Termination for Default (Supplies and Service):** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Tucson.

7. **Termination for Default (Transportation Services):** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the City of Tucson, protect and preserve the goods until surrendered to the City of Tucson or its agent. The Contractor and the City of Tucson shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Tucson.

8. **Termination for Default (Construction):** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the City of Tucson may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City of Tucson resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City of Tucson in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

- a. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the City of Tucson, acts of another Contractor in the performance of a contract with the City of Tucson, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. the contractor, within ten [10] days from the beginning of any delay, notifies the City of Tucson in writing of the causes of delay. If in the judgment of the City of Tucson, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Tucson shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Tucson.

9. **Termination for Convenience or Default (Architect and Engineering):** The City of Tucson may terminate this contract in whole or in part, for the City of Tucson's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the City of Tucson, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the City of Tucson may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City of Tucson.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Tucson.

10. **Termination for Convenience or Default (Cost-Type Contracts):** The City of Tucson may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Tucson or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Tucson, or property supplied to the Contractor by the City of Tucson. If the termination is for default, the City of Tucson may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Tucson and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Tucson, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the City of Tucson determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City of Tucson, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Civil Rights Requirements - 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Requirements for Disadvantaged Business Enterprises (DBE's) - 49 CFR Part 26

1. The Federal Fiscal Year goal has been set by the City Of Tucson in an attempt to match projected procurements with available qualified disadvantaged businesses. The City Of Tucson goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City Of Tucson as set forth by the Department of

Transportation Regulations 49 C.F.R. Part 26, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in the Legal Documents and Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

- a. Policy - It is the policy of the Department of Transportation and the City Of Tucson that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 and Section 106(c) of the STURAA of 1987 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or any such other remedy as the recipient deems appropriate.

It is further the policy of the City Of Tucson to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the City Of Tucson procurement activities are encouraged.

- b. DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- c. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the contractor noncompliant and in breach of contract.
- d. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the City Of Tucson DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City Of Tucson and will be submitted to the City Of Tucson upon request.
- e. The City Of Tucson will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

* Identification of qualified DBE

* Available listing of Minority Assistance Agencies

* Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

a. Disadvantaged business "means a small business concern":

- i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

or

- iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
- iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

b. "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

c. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

- i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
- ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
- v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

3. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made by the City of Tucson to the prime contractor. If applicable, the Prime contractor is to pay all retainage owed to the DBE subcontractor within 30 days of satisfactory completion of the contracted work. For the purposes

of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented by the prime contractor as required by the City of Tucson. The City of Tucson will continue to hold full retainage as provided for under the Arizona Revised Statutes. Prime contractors must provide notice to DBE firms that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project.

Incorporation Of Federal Transit Administration (FTA) Terms - FTA Circular 4220.1F

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of the City Of Tucson's requests which would cause the City Of Tucson to be in violation of the FTA terms and conditions.

Requirements for Contracts Exceeding \$25,000

Debarment and Suspension Requirements - 49 CFR Part 29, Executive Order 12549

Debarment, Suspension, and Other Responsibility Matters - (Third Party Contracts over \$25,000).

The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management FTA Master Agreement MA(16), 10-1-2009 17 and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.

Requirements for Contracts Exceeding \$100,000

Access To Records And Reports - 49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17

Record Retention

During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, subagreements, leases, third party contracts, and supporting materials related to the Project as the Federal Government may require.

Access to Records of Recipients and Subrecipients

The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g), 18 CFR 18.36(i), 49 CFR 633.17

Buy America Requirements - 49 U.S.C. 5323(j), 49 CFR Part 661

Buy America Provision: Steel and Manufactured Products Other than Buses, Rolling Stock and Associated Equipment

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (see Certification section) with all bids on FTA-funded contracts, of \$100,000 and above, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation - 49 CFR Part 18, FTA Circular 4220.1F

Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City Of Tucson. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the City Of Tucson. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the City Of Tucson shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by the City Of Tucson, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City Of Tucson and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City Of Tucson is located.

Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City Of Tucson, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Lobbying Requirements - 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City Of Tucson.

Bonding Requirements for Construction Activities; may be imposed for non-construction activities

Refer to the Special Terms & Conditions of this Solicitation for

Bid Bond Requirements (Construction)
Performance and Payment Bonding Requirements (Construction)
Performance and Payment Bonding Requirements (Non-Construction)
Advance Payment Bonding Requirements
Patent Infringement Bonding Requirements (Patent Indemnity)
Warranty of the Work and Maintenance Bonds

Clean Water Requirements - 33 U.S.C. 1251

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

Clean Air Requirements - 42 U.S.C. 7401 et seq., 40 CFR 15.61, 49 CFR Part 18

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

Requirements for Recycled Products - 42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Cargo Preference

Cargo Preference - 46 U.S.C. 1241, 46 CFR Part 381

Acquisition of Property Shipped by Ocean Vessel:

Pursuant to 46 C.F.R. Part 381, the following clauses must be inserted in all contracts under which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project.

The contractor agrees to:

- a. use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Acquisition of Property Shipped by Air (Fly America):

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Construction Activities

Equal Employment Opportunity (Does not apply for supplies/raw materials procurements)

Equal Employment Opportunity

All construction contracts in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). The following clauses shall be included:

Nondiscrimination

During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.
- c. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of Labor and the FTA for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations or orders, this agreement may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Federal or Federally assisted contracts in accordance with procedures authorized in Executive No. Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The contractor will include the provisions of paragraphs (a) through (g) of this subsection in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that if a contractor

becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Specifications

The following clauses must also be included in all construction contracts and subcontracts over \$10,000, in geographical areas designated pursuant to 41 C.F.R. 60-4.3:

"Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order No. 11246):

1. As used in these specifications:
 - a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer Identification Number" means the federal social security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 C.F.R. 60-4.5) in a hometown plan approved by the U.S. Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such hometown plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Federal Contract Compliance Program Office or from Federal Procurement Contracting Officers. The contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order No. 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notice to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notice to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth, both on the site and in other areas of the contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations set forth in paragraphs (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs (7)(a) through (p) of these specifications, provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (even though the contractor has achieved its goal for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order No. 11246.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the equal opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as

may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the extent that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program)."

Notice

Contractor agrees to include the following notice in all construction subcontracts over \$10,000, in geographical areas designated pursuant to 41 C.F.R. 60-4.2:

"Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246):

1. The offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. a. The goals and the timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for Minority Participation for Each Trade	Goals for Female Participation in Each Trade
	Insert Goals for Each Year	Insert Goals for Each Year

- b. These goals are applicable to all the contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its Federally involved and nonfederally involved construction.
- c. The contractor's compliance with the Executive Order and the regulations at 41 C.F.R. Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth at 41 C.F.R. Part 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in C.F.R. Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice, and in the contract resulting from this solicitation, the "covered area" is miscellaneous sites within the city limits of Tucson, Pima County, State of Arizona."

Construction Employee Protection Requirements: (except for contracts < \$2,000, or for supplies/raw materials)

Davis Bacon Act - 40 USC §§ 3142(a), 29 CFR § 5.5(a)

Copeland Anti-Kickback Act - 18 U.S.C. § 874, 29 C.F.R. § 3, 29 C.F.R. § 5.5(a)(1) through (10)

Contract Work Hours & Safety Standards Act - 40 U.S.C. §3701, 29 C.F.R. § 5.5(b)

Federal Labor Standards Provision

[Code of Federal Regulations]
[Title 29, Volume 1, Parts 0 to 99]
[Revised as of July 1, 1998]
From the U.S. Government Printing Office
via GPO Access
<http://www.access.gpo.gov/nara/cfr/index.html>
[CITE: 29CFR5.5]

[Page 110-116]

TITLE 29--LABOR

PART 5--LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A--Davis-Bacon and Related Acts Provisions and Procedures

Sec. 5.5 Contract provisions and related matters.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more

than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their

representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards

of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The City of Tucson shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this

contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City of Tucson may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Tucson for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be

purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department

of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the

journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in

accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The City of Tucson shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or

any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

ATTACHMENT TO FEDERAL LABOR STANDARDS PROVISIONS
SO CALLED "ANTI-KICKBACK ACT" AND REGULATIONS PROMULGATED
PURSUANT THERETO BY THE SECRETARY OF LABOR.
UNITD STATES DEPARTMENT OF LABOR

TITLE 18, U.S.C., section 874

(June 25, 1948, ch. 645, 62 Stat. 740; Pub. L. 103-322, title XXXIII,
Sec. 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

KICKBACKS FROM PUBLIC WORKS EMPLOYEES

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both.

TITLE 29 – LABOR

Subtitle A - Office of Secretary of Labor

PART 3 – CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR
PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM
THE UNITED STATES

Sec. 3.1 Purpose and scope.

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Sec. 3.2 Definitions.

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without

limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping.

Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

Sec. 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982; 73 FR 77511, Dec. 19, 2008]

Sec. 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under Sec. 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215-0017)

[29 FR 97, Jan. 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

Sec. 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents:

Provided, however, That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under Sec. 516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

Sec. 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Sec. 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is

To be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

Sec. 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under Sec. 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of Sec. 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Sec. 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

Sec. 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of Sec. 3.6; and shall notify the applicant in writing of his decision.

Sec. 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under Sec. 3.6 are prohibited.

Sec. 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Sec. 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see Sec. 5.5(a) of this subtitle.

Seismic Safety - 42 U.S.C. 7701 et seq. 49, CFR Part 41

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation

Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project

Non Construction Activities

Non Construction Employee Protection Requirements (Except for supplies/raw materials)

The Contractor agrees to comply with and assures compliance by other Project participants with any applicable employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

Transit Operations

Transit Employee Protective Arrangements - 49 U.S.C. § 5310, § 5311, and § 5333; 29 CFR Part 215

The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

- a. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Charter Service Operation - 49 U.S.C. 5323(d), 49 CFR Part 604

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

School Bus Operation - 49 U.S.C. 5323(f) or (g), 49 CFR Part 605

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations - 49 U.S.C. §5331, 49 CFR Part 655

The contractor agrees to establish an anti-drug use and alcohol misuse program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Arizona, or the City of Tucson, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the contractor's testing process. The contractor agrees further to certify annually its compliance with Part 655 thirty days before July 1st of each year and to submit the Management Information System (MIS) reports thirty days before March 15 each year to John Zukas, Transit Services Coordinator, P.O. Box 27210 Tucson, AZ 85726.

If the Contractor performs functions under the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), the contractor must comply with such applicable regulations. The Contractor's Drug Free Workplace Policy and the Contractor's Drug and Alcohol Policy/Program must clearly delineate the Contractor's responsibilities under their own Company policy, the FHWA's regulations, and the FTA's regulations respectively.

Privacy Act - 5 U.S.C. 552

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Planning, Research, Development and Demonstration Projects

Patent And Rights In Data - 37 CFR Part 401, 49 CFR Parts 18 and 19

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

- A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:
1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
 2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course

of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

- B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:
1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,"
 3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**Turnkey and Other Acquisitions Made by a Third Party Contractor
Assuming the Role of the City of Tucson**

Bus Testing - 49 U.S.C. 5323(c), 49 CFR Part 665

The Contractor or Manufacturer agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the City of Tucson at a point in the procurement process specified by the City of Tucson which will be prior to the City of Tucson's final acceptance of the first vehicle.
2. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
3. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the City of Tucson prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
4. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the City of Tucson of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award and Post-Delivery Audit Requirements - 49 U.S.C. 5323, 49 CFR Part 663

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

1. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists:
 - a. component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and;
 - b. the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
2. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
3. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit:
 - a. manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or;
 - b. manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

Miscellaneous Special Requirements

Environmental Protection 42 U.S.C. 4321 et seq., 49 U.S.C. 5324(b) et seq., 40 CFR Part 1500 et seq., 23 CFR Part 771, 49 CFR Part 622

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622

Energy Conservation Requirements - 42 U.S.C. 6321 et seq., 49 CFR Part 18

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Metric System Requirements – 15 U.S.C. 205a et seq.

As required by U.S. DOT or FTA, the City of Tucson agrees to use the metric system of measurement in its Project activities, as may be required by 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the City of Tucson agrees to accept products and services with dimensions expressed in the metric system of measurement.

National ITS Architecture

The Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and to any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

Recycled Products (for items designated by the EPA)

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Seat Belt Use

In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar document in connection with the Project.

Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the contractor is encouraged to comply with the terms of the following Special Provision.

a. Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not

include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b. Safety. The Grantee is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-

(a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;

(b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(c) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Grantee's size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

Federal Davis-Bacon Wage Rates

The Federal Wage Rates applicable to this
Contract are set forth in the following
Document.



INSERT MOST RECENT WAGE DECISION INFORMATION HERE

Certifications

**BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED
PRODUCTS**

**(To be submitted with each bid or offer exceeding \$100,000)
(To be signed and submitted by the bidder/offeror)**

Certification requirement for all procurements except buses, other rolling stock and associated equipment.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED PRODUCTS

Certification requirement for procurement of buses, other rolling stock and associated equipment.
(To be submitted with each bid or offer exceeding \$100,000)
(To be signed and submitted by the bidder/offeror)

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

**TRANSIT VEHICLE MANUFACTURER'S DBE CERTIFICATION
Certificate of Compliance with 49 CFR part 26.**

**CERTIFICATION REQUIREMENT FOR PROCUREMENT OF TRANSIT VEHICLES ONLY
(To be submitted with all bids or offers for transit vehicles)
(To be signed and submitted by the manufacturer of the product offered)**

This procurement is subject to the provisions of 49 CFR Part 26. Accordingly, as a condition of permission to bid, the following certification must be completed and submitted with the bid. A bid that does not include the certification must be rejected as non-responsive and not considered for evaluation and award.

I hereby certify that the offeror has complied with the requirements of 49 CFR part 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have been approved, or not disapproved, by the Federal Transit Administration.

_____ Name of Offeror

_____ Signature of the Offeror's Authorized Official

_____ Name and Title of the Offeror's Authorized Official

_____ Date

**CERTIFICATION REGARDING LOBBYING
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE
AGREEMENTS**

(To be submitted with each bid or offer exceeding \$100,000)

(To be submitted by the bidder/offeror)

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

**(Pertains only to the acquisition of Turnkey Rolling Stock over \$100,000))
(To be signed and submitted by the manufacturer of the product offered)**

The undersigned Manufacturer certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

**Protest Procedures For Federal Transit Administration Funded
Projects**

City Of Tucson Protest Procedures For Federal Transit Administration (FTA) Funded Projects

A protestant must exhaust all City of Tucson Procurement administrative procedures and remedies before pursuing a protest with the FTA.

1. Any and all protests shall be in writing and shall be filed with the Director of Procurement, City of Tucson, Arizona. A protest relating to the process for determining the most responsive and responsible proposer shall be filed within ten (10) calendar days after the protestor knows or should have known the basis of the determination. A protest of a proposed award or rejection shall be filed within ten (10) calendar days after the protestor knows or should have known the basis of the protest. The Contract Officer shall respond to a protest within fourteen (14) calendar days after the receipt of the protest. The Procurement Director may grant the Contract Officer an extension for the response if warranted. A request for reconsideration of any and all determinations by the Contract Officer shall be filed with the Procurement Director within seven (7) calendar days after the receipt of the determination.
2. A protest shall include:
 - A. The name, address, and telephone number, including FAX number if available, of the protestor;
 - B. The signature of the protestor or authorized representative;
 - C. Identification of the contract/solicitation;
 - D. A detailed statement of the legal and/or factual grounds of protest including copies and/or citations of relevant documents, and;
 - E. The form of relief requested.
3. If any of the above information is omitted or incomplete, then the Protestor shall be notified, in writing, within two (2) calendar days after that determination, and the Protestor shall have two (2) calendar days in which to remedy the specified problem.
4. The City will not make award prior to the resolution of a protest, or open bids prior to resolution of a protest filed before bid opening unless the Procurement Director determines in writing that it is in the best interests of the City or in keeping with Item 7 of this procedure to do otherwise. Potential contractors will be advised of a pending protest if the protest is filed before award.
5. The Procurement Director may allow for an informal conference on the merits of a protest with all interested parties allowed to attend. Interested parties include all bidders/offerors, and may also include a subcontractor or supplier provided they have a substantial economic interest in a portion of the IFB or RFP.
6. The Procurement Director shall respond "in writing", in detail, to each substantial issue raised in the protest. The Procurement Director has the sole authority to make determinations for the City, and a determination shall be considered final when it is labeled as such. A request for reconsideration will be allowed by the Procurement Director if he determines that data has become available that was not previously known, or that there has been an error of law or regulation.

7. The City may proceed with a procurement when a protest is pending if the City determines that:
 - A. The items to be procured are urgently required;
 - B. Delivery or performance will be unduly delayed by failure to make the award promptly; or
 - C. Failure to make award will otherwise cause undue harm to the grantee for the Federal Government.

8. FTA will only entertain a protest that alleges:
 1. The City failed to have or to adhere to its protest procedures, or failed to review a complaint or protest; or
 2. Violations of Federal law or regulation.

A protest to FTA must be filed in accordance with FTA Circular 4220.1F, available from the Contract Officer. Specifically, protestors shall file a protest with FTA Region 9 or FTA Headquarters Office no later than five (5) days after a final decision is rendered under the City's protest procedure. In instances where the protestor alleges that the City failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) calendar days after the protester knew or should have known of the grantee's failure to render a final determination on the protest.

A protest filed with FTA shall:

- A. Include the name and address of the protestor.
- B. Identify the grantee, project number, and the number of the contract solicitation.
- C. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to have or adhere to protest procedures, failure to review a complaint or protest; or Violation of Federal law or regulation.
- D. Include a copy of the local protest filed with the grantee and a copy of the grantee's decision, if any.

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX D

SBE PROGRAM PROVISIONS

**BUSINESS SERVICES DEPARTMENT
BUSINESS ENTERPRISE & COMPLIANCE PROGRAM (BECP)
SBE PROGRAM PROVISIONS**

PROJECT GOAL

The City of Tucson's Small Business Enterprise Participation goal for this project is as follows:

% SBE – Provided by BECP

In consideration of the SBE goal on this project, the City identified the following trade areas as potential subcontracting opportunities to meet the goal, however, the Contractor may elect to meet the goal utilizing any subcontracting opportunity they deem appropriate.

List trade categories – Provided by BECP

I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Bidder - A firm who submits a bid or quote on an individual project which conforms in all material respects to the requirements set forth in the solicitation, including compliance with any SBE participation requirements.

Certified Small Business Enterprise (SBE) – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).

Commercially Useful Function - Is defined as the performance of real and actual services in the discharge of any contractual endeavor. An SBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

Contractor - The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.

Eligible Contract - Any construction, construction services or professional design services contract undertaken by the City, unless otherwise precluded by law, *provided* the estimate for construction meets or exceeds one hundred thousand dollars (\$100,000). An Eligible Contract does not include any project in which the estimated contract value is below one hundred thousand dollars (\$100,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the Tucson Procurement Code.

Joint Venture – An association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in

capital acquired by the Joint Venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the Joint Venture, may be counted towards relevant SBE participation goals.

Small Business Enterprise (SBE) – A Minority, woman or non-Minority Owned business that meets the North American Industry Classification System (NAIC) size standard adopted by the City for the purposes of qualifying for SBE certification.

Subcontractor and Subconsultant – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

B. APPLICABILITY

The SBE program and policies are codified in Chapter 28, Article XIII of the Tucson Procurement Code. It is the responsibility of all contractors, subcontractors, vendors, suppliers and others who are interested in contracting with the City of Tucson to read and become familiar with this section of the City Code.

Only firms that are certified by the City of Tucson under Chapter 28, Article XIII of the Tucson Procurement Code, *at the time of bid opening*, are eligible to fulfill SBE goals for City of Tucson projects.

In addition to subcontractors, the Prime Contractor may use their own participation towards fulfillment of the SBE participation goal if they are certified through the City of Tucson SBE program.

SBE Firms can be found by clicking on the “Search Registered Directory” button at <https://tucsonaz.diversitycompliance.com>. If the name of an SBE firm does not appear in the directory, it shall be the bidder’s responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. For any questions regarding the SBE Program and requirements, please call (520) 837-4000 or email at ContractorCompliance@tucsonaz.gov for assistance.

C. SBE PARTICIPATION

An SBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. An SBE shall be responsible for a clearly defined portion of the work to be performed.

D. SBE GOALS

To satisfy SBE goals, a certified SBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Bidders may meet the SBE project goals through the following methods:

Prime Contractor Participation – SBE prime contractors may use their own participation towards fulfillment of the SBE participation goals.

Subcontractor Participation - The bidder may utilize one or more certified SBE subcontractors to satisfy its SBE participation commitment and may claim the value of the commercially useful function to be performed by such subcontractor(s) to obtain credit toward the satisfaction of the applicable goal.

1. Bidders who utilize certified SBE firms whose participation are included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar value must be a specific amount

based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.

2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, bidders are required to identify and report the use of any second tier subcontractors on the project.
3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE's subcontractor is itself a SBE.

Supplier Participation - The bidder may contract with one or more certified SBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credit toward SBE goals. The value of the commercially useful function to be performed by such SBE's and credited toward satisfaction of the applicable SBE goals is as follows:

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.
2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer's representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.
3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

Joint Venture - Where a bidder engages in a joint venture to satisfy its SBE commitment, the SBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. The SBE joint venture partner must submit information for determining joint venture eligibility. ***The SBE joint venture must be approved as a SBE joint venture prior to bid opening.*** The Department of Procurement, Business Enterprise & Compliance Program shall determine the degree of SBE participation resulting from the joint venture which may be credited toward the applicable SBE goal of the project.

II. BID OPENING PROCEDURES

A. SUBMISSION OF THE SUBCONTRACTORS LIST AND SBE PLAN

In accordance with the Tucson Procurement Code Sections 28-48(2) and 28-150(4), all bidders must submit the City's Subcontractors List and the Proposed SBE Plan and the Affidavit of Good Faith Efforts, if applicable, with their bid. Bidders must list (1) **all** SBE subcontractors regardless of contract value and; (2) all first tier subcontractors with a contract value at or above \$5,000.

The Subcontractors List and Proposed SBE Plan must include:

1. SBE Firms
 - a. The name of the SBE firm
 - b. The trade/industry (scope of work) of the SBE subcontractors/suppliers
 - c. The dollar value of SBE's subcontract
 - d. Include the prime contractor as an SBE, if applicable
 - i. The dollar value of the prime contractor's self-performed work if claiming SBE credit

- e. The total dollar value of SBE work performed and percentage of contract value
 - f. If the contract goal is not met, evidence of good faith efforts.
2. First Tier Subcontractors with contract value at and above \$5,000
 - a. The name of the Subcontractor
 - b. The trade/industry (scope of work) the subcontractor will perform on the project

B. REVIEW OF SBE PLANS

The Procurement Director may determine that the bidder is nonresponsive where the bidder: (1) failed to provide a completed Subcontractors List and a Statement of Proposed SBE Plan form; (2) failed to identify SBEs by name, the scope of work and value of work as a percent of the total bid sufficient to meet the applicable SBE goal for that project; (3) failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the SBE goal.

C. PRIME CONTRACTOR REPORTING OF SUBCONTRACTOR UTILIZATION

Prior to commencement of work, the Contractor is required to identify all subcontractors proposed to perform work on the project utilizing the City of Tucson's Contract Compliance Reporting System. Prior to contract closeout, Prime Contractor shall provide subcontractors performance ratings in accordance with Paragraph **IV. Miscellaneous Provisions; C. Contractor Performance Evaluation**, below.

III. GOOD FAITH EFFORT

If the SBE plan does not meet the project goals, the bidder may seek a good faith effort waiver. The application for a waiver shall be in writing and **must be completed and submitted with the bid documents**. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought, the scope of such waiver must be indicated and an SBE plan must also be submitted. The bidder must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals. Evidence of the good faith efforts shall include, but is not limited to the following:

- a. Documentation of communication with the Department of Procurement seeking technical/professional assistance identifying available SBE's.
- b. Copies of written notification to Certified SBE's regarding subcontracting opportunities on a project.
- c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
- d. Documentation of efforts to assist and negotiate with SBE's for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE's who were contacted and reason for the rejection.
- e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.
- f. Written quotes or records of verbal quotes solicited from all SBE's seeking subcontract work with bidders at the time of the proposal submittal.
- g. Verification that the offeror rejected available SBE's because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City's Procurement Director shall review the waiver and approve the waiver where the bidder has demonstrated good faith efforts or deem the bidder nonresponsive where they failed to meet the good faith efforts and the bid shall be rejected.

Right to Appeal Good Faith Effort Waiver or Plan Decision An aggrieved party has a right to protest a good faith waiver request or plan decision made by the Procurement Director as follows:

1. An aggrieved party may submit a protest in writing to the Procurement Director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.
2. Within five (5) days of receipt of the protest, the Procurement Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
3. The decision of the Director is final and not appealable.

General Waiver or Reduction of SBE Goals The Procurement Director may waive or reduce the project goals if it is determined that the SBE availability is less than projected. In such circumstances, the Procurement Director shall certify that SBE's are not in fact available or that the amount of work, which occurred under the contract, was insufficient to support the established goals.

The City may waive a project goal, at least in part, if the bidder requesting a waiver receives from all qualified SBE's, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-SBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars (\$250,000). In such circumstances, the Procurement Director shall certify that SBE's are not ready, willing and able to provide the needed labor and materials at competitive prices.

A bidder may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a proposal.

The Procurement Director may verify and / or clarify information as it relates to the affidavit of good faith efforts, and / or the bidders' subcontractors list and statement of proposed SBE plan.

IV. MISCELLANEOUS PROVISIONS

A. SUBCONTRACTOR PERFORMANCE & SUBSTITUTION REQUESTS:

The contractor's distinct contract items of work to be awarded to SBE's shall be performed by the designated SBE. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

All subcontractor modifications (addition, substitution, deletion) pursuant to the Tucson Procurement Code Section 28-48(2), may only be allowed at the sole discretion of the Procurement Director. Approval must be obtained prior to the subcontractor beginning the work.

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor shall immediately notify the Procurement Department's Business Enterprise & Compliance Program, the Contract Officer and the Project Manager. The SBE firm can only be terminated for good cause. The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE firm to perform an equal or greater dollar value of the work. The contractor shall provide all pertinent information regarding the SBE substitution request including but not limited to:

1. The name of the original SBE firm, the description of work, the dollar value, the reason for the substitution request and a statement from the original SBE firm explaining why they can't perform the work.;
2. The name of the proposed substitute SBE's, description of proposed work and estimated dollar value of the work and any relevant information such as a written quote, etc.

SBE contract work items shall not be performed by the contractor in lieu of subcontracting, without obtaining prior approval as outlined above.

Contract items eliminated from the project, with the approval of the Project Manager, may not reduce the contractor's obligation for SBE participation.

B. SBE PROGRAM COMPLIANCE

The contractor and all SBE subcontractors must comply with all aspects of the SBE Program. By submitting a bid to the City of Tucson; bidders bind themselves to make every good faith effort to meet the City's SBE goal. The contractor must also include a copy of the SBE contract provisions in every subcontract. An executed subcontract with all SBE subcontractors shall be completed prior to commencement of work, and available to the City of Tucson.

Failure by the contractor to comply with the SBE provisions is a material breach of the contract which may result in remedies as deemed appropriate by the City, including but not limited to the following:

- (1) Withholding monthly progress or final payments;
- (2) Withholding 10% of future payments;
- (3) Contract termination;
- (4) Disqualifying the contractor from future bidding as non-responsible.

The contractor must comply with applicable Prompt Payment regulations, Tucson Code Section 11-38 and Arizona Revised Statutes Title 32-1183. The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The prime contractors must provide notice to all subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson, Procurement Operations, Business Enterprise & Compliance Program, 255 W. Alameda, 8th floor Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Department of Procurement, Business Enterprise & Compliance Program with the complaint process as detailed in the City of Tucson Ordinance No. 9158 comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to provide subcontractors performance ratings. Reporting will include a section to rate the performance of **all** project subcontractors from 1 – 5, based on industry standards. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 of a subcontractor will require the prime contractor to complete a Substandard Performance Report documenting the cause for the substandard performance rating. The City of Tucson Project Manager must concur with all poor performance ratings.



**BUSINESS SERVICES DEPARTMENT
BUSINESS ENTERPRISE & COMPLIANCE PROGRAM
SUBCONTRACTORS LIST AND STATEMENT OF PROPOSED SBE PLAN**

Solicitation/Contract No. _____ Project Name: _____

Enter your SBE subcontractors for this project in the following table per submission requirements contained in the applicable Tucson Procurement Code Section 28-150(4), 28-150(5) or 28-151.1(3). Any addition, deletion or substitution to the listed SBE subcontractors requires approval from and is at the sole discretion of the Procurement Director.

ALL PROPOSED SBE FIRMS		
Subcontractor's Name	Trade/Industry	Dollar Value of Contract

Enter your committed subcontractors for this project in the following table per submission requirements contained in Tucson Procurement Code Section 28-48(2). Any addition, deletion or substitution to the listed subcontractors requires approval from and is at the discretion of the Procurement Director.

FIRST TIER SUBCONTRACTORS WITH CONTRACTS VALUED AT AND ABOVE \$5,000		
Subcontractor's Name	Trade/Industry	Dollar Value of Contract

Bidder's Base Bid Amount \$ _____

Total Claimed SBE Participation \$ _____ %

I hereby certify by signing below that the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project. The information shown above is a true reflection of the proposed subcontracts expressed as a percentage of the base bid.

Company Name: _____

Signature: _____

Phone No. _____

Date: _____

Name & Title: _____



**BUSINESS SERVICES DEPARTMENT
BUSINESS ENTERPRISE & COMPLIANCE PROGRAM
AFFIDAVIT OF GOOD FAITH EFFORTS**

SOLICITATION/CONTRACT NO: _____ PROJECT

NAME:

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A BIDDER FAILS TO EXERCISE “GOOD FAITH” EFFORTS TO MEET SBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the apparent low bidder in soliciting and utilizing SBE firms to meet the City of Tucson’s SBE goal. This certificate will assist the City of Tucson’s Department of Procurement, Business Enterprise & Compliance Program in determining whether the apparent low bidder has implemented comprehensive good faith efforts. The burden of proof rests with the bidder.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.

2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to SBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for SBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which SBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to SBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact		Telephone #	

6. Was the City of Tucson's Department of Procurement, Business Enterprise & Compliance Program technical or professional staff contacted for assistance? (Note that it is the policy of the Department of Procurement to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the SBE goal.) Attach necessary documentation.

Yes _____ No _____ Date of Contact _____ Contact Person _____

7. Describe any efforts undertaken to provide SBE firms with information about the project plans, specifications and requirements of the contract.

8. Describe any additional efforts undertaken to assist SBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which SBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of SBE Firm	Explanation for Rejecting Quotes
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

10. Were any bids from SBE Subcontractors that were no more than 15% or \$250,000 greater than the accepted Non-SBE Subcontractor rejected? If so, describe in detail

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.



Business Enterprise and Compliance Program (BECP)
Subcontractor Modification Form

The modification of **any** subcontractor after contract award requires prior approval by the
 Business Services Director

TYPE OF REQUEST _____ADDITION _____REMOVAL _____REPLACEMENT
 _____INCREASE _____REDUCTION

ARE ANY SBE / DBE FIRMS AFFECTED? ____ YES ____ NO If yes, please explain: _____

Contract # _____ Contract Name: _____

Prime Contractor: _____ Contact Name: _____

Email: _____ Phone: _____

	CURRENT SUBCONTRACTOR	PROPOSED SUBCONTRACTOR
SUBCONTRACTOR NAME		
SUBCONTRACT VALUE		
CONTACT NAME		
EMAIL		
PHONE		
ADDRESS		
DUNS		

SBE / DBE ?	SBE / DBE (circle one, if applicable)	SBE / DBE (circle one, if applicable)
SIGNATURE	By signing below, the Current Subcontractor indicates their understanding of, and agreement with, this modification and the explanation provided by the Prime Contractor in the "Reason for Request" field on this form: <hr/> Signature of Current Subcontractor (required)	

REASON FOR REQUEST: (Note: Prime Contractor must explain why the subcontractor that was identified in the Prime Contractor's bid is now being modified. Reason must demonstrate that this modification does not violate City of Tucson Ordinance 9158 as well as Section 28-48(2), Section 28-150(6)(5), Section 28-151.4(1), and Section 28-151.4(2) of the Tucson Procurement Code. The City seeks to ensure that this request is not being made as a result of "bid shopping" on the part of the Prime Contractor.)

_____ (attach supporting documentation as necessary)

Signature of Prime Contractor: _____ Date: _____

*****COT Use Only*****

APPROVAL

BUSINESS ENTERPRISE _____ DATE _____

BUSINESS SERVICES DIRECTOR _____ DATE _____

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX E

DBE PROGRAM PROVISIONS

DBE CONTRACT PROVISIONS

CITY OF TUCSON – DEPARTMENT OF PROCUREMENT
Business Enterprise and Compliance
255 W. Alameda, 6th floor
Tucson, Arizona 85701
(520) 837-4000

INVITATION FOR BID NO. 212710

RESPONSIBLE CONTRACT OFFICER: ANDREW KLOS

DISADVANTAGED BUSINESS ENTERPRISES:

0.0 City of Tucson's DBE Requirements:

The City of Tucson (COT), in partnership with the Arizona Department of Transportation (hereinafter the Department), in accordance with the Local Public Agencies Agreement (LPA), is required to utilize the Department's Business Engagement and Compliance Office (BECO) procedures, including the utilization of the LPA Contract Management System. The bidders on this project are required to submit the DBE Assurances Affidavit (form BECO 302S) with their Bid in order to be considered responsive. Bidders shall also be required to complete and submit all other required DBE forms, as detailed herein, to be considered responsive for contract award. The contractor awarded this project shall also participate in the LPA Contract Management System in accordance with the Department's policies and procedures. The City of Tucson will also participate in the requirements of the LPA Contract Management System and will serve as the first point of contact for the contractors regarding these DBE requirements.

1.0 Policy:

The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program.

Local Public Agencies (LPA) and or Sub-recipients of Federal financial assistance will administer and manage the contracts from advertising, consultant/contractor selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy

as the state deems appropriate. The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

- (1)** Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
- (2)** Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(B) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1)** Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2)** Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i)** "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii)** "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii)** "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv)** "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v)** "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi)** "Women;"
 - (vii)** Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

(C) Joint Venture: an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

(D) Non-DBE: any firm that is not a DBE.

(E) RACE-CONSCIOUS: a measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

(F) RACE-NEUTRAL: a measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All bidders should contact the City of Tucson – Department of Procurement Business Enterprise and/or the ADOT Business Engagement and Compliance Office as provided for below for assistance in their efforts to use DBEs in the construction program of the Department:

City of Tucson - Department of Procurement
Business Enterprise and Compliance
255 W. Alameda, 6th floor
Tucson, Arizona 85701
Phone (520) 791-4593
FAX (520) 791-5140

Arizona Department of Transportation
Business Engagement and Compliance Office
1135 N. 22nd Avenue (second floor), Mail Drop 154A
Phoenix, AZ 85009
Phone (602) 712-7761
FAX (602) 712-8429

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs where the contractor uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract, is awarded a subcontract on a project without DBE goals, and is awarded a subcontract from a prime contractor that did not consider the firm's DBE status.

The contractor shall meet the goal specified herein with DBEs, or establish that it was unable to meet the goal despite making good faith efforts to do so. Prime contractors are encouraged to obtain DBE participation above and beyond any goals that may be set for this project.

The provisions are applicable to all bidders including DBE bidders.

6.0 Certification:

Certification as a DBE shall be predicated on:

- (1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.

- (3) The submission of any additional information which the Department or City of Tucson may require to determine the firm's eligibility to participate in the DBE program.
- (4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed with the Department or the City of Tucson – Department of Procurement Business Enterprise and Compliance at any time. Assistance is available at Business Enterprise and Compliance, 255 W. Alameda, 6th Fl., Tucson, Arizona 85701, (520) 837-4000 at any time. Both hardcopy submission and online submission is available.

For hardcopy submissions, applications for certification are available at the Department's Business Engagement and Compliance Office, 1135 N. 22nd Avenue (second floor), mail drop 154A, Phoenix, Arizona 85009, phone (602) 712-7761. Hardcopy applications may also be obtained through the internet at www.azdbe.org. Hardcopy applications must be filed through the Business Engagement and Compliance Office at the above address.

For online submissions, the online application process may be accessed through the internet at www.azdbe.org.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

Arizona is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at www.azdbe.org. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification is not a representation of qualifications and/or abilities. The contractor bears all risks that the firm may not be able to perform its work for any reason.

7.0 General:

Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Each contractor shall also designate a full time employee who shall be responsible for the administration of the contractor's DBE program.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

8.0 DBE Subcontractor Payment Reporting:

The Department is required to collect data on DBE and non-DBE participation to report to FHWA on Federal-aid projects. The contractor is notified that such record keeping is required by the Department for tracking DBE participation.

The contractor shall submit a report on a monthly basis indicating the amounts earned by and paid to all DBEs and non-DBEs working on the project. In addition, the contractor shall require that all DBE and non-DBE subcontractors verify receipt of payment.

The contractor shall provide all such required information for the current month by the 5th of the following month. The required information shall be submitted electronically through the Department's web-based payment tracking system (<https://arizonalpa.dbesystem.com>).

9.0 Goals:

The minimum goal for participation by DBEs on this project is as follows:

5.67 Percent

The percentage of DBE participation shall be based on the total bid.

10.0 Crediting DBE Participation Toward Meeting Goals:

10.01 General Requirements:

Only the value of the work actually performed by the DBE can be credited toward DBE participation. Credit towards the contractor's DBE goal is given only after the DBE has been paid for the work performed.

The contractor bears the responsibility to determine whether the DBE possesses the proper contractor's license(s) to perform the work. If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the contractor bears the responsibility to immediately request approval to replace the DBE with another DBE and notify the Engineer and the Business Engagement and Compliance Office.

The Department's certification is not a representation of qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. DBE credit for any individual item of work performed by the DBE shall be the lesser of the amount to be paid to the DBE or the prime contractor's bid price. If the amount bid by the DBE on any item exceeds the prime contractor's bid amount, the prime contractor may not obtain credit by attributing the excess to other items.

Where more than one DBE is engaged to perform parts of an item (for example, supply and installation), the total amount payable to the DBEs will not be considered in excess of the prime contractor's bid amount for that item.

Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

If a DBE performs part of an item (for example, installation of materials purchased by a Non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's contract or (2) the prime contractor's bid for the item, less a reasonable deduction for the portion performed by the Non-DBE.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be credited toward the DBE goal.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a first-tier DBE subcontract.

All DBE and non-DBE subcontracting activity must be reported by the contractor and counted toward participation. This includes lower-tier subcontracting regardless of whether or not the DBE is under contract with another DBE.

DBE prime contractors must meet the DBE participation goal or demonstrate good faith efforts. This is determined by counting the work the DBE has committed to performing with its own forces, as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

A prime contractor may credit the entire amount of that portion of a construction contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE goal.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

10.02 Police Officers:

DBE credit will not be permitted for procuring public safety officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

10.03 Commercially Useful Function:

As a prime contractor, a DBE shall perform a significant portion of the contract work with its own work force in accordance with normal industry practices and Subsection 108.01 - Subletting of Contract of the Standard Specifications.

A prime contractor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. Decisions on commercially useful function matters are subject to review by FHWA, but are not administratively appealable to USDOT.

10.04 Trucking:

The City of Tucson will use the following factors in determining whether a DBE trucking company is performing a commercially useful function. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract on every day that credit is to be given for trucking.

The contractor will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees results in credit only for the fee or commission paid to the DBE as a result of the lease agreement.

Example: DBE Firm X uses two of its own trucks on contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would only be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

10.05 Materials and Supplies:

The City of Tucson will credit expenditures with DBEs for material and supplies towards the DBE goal as follows. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of

business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the City of Tucson will credit the entire amount of the fees or commissions charged by the DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted toward the DBE goal.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks. Leases for trucks must be long term (extending for a fixed time period and not related to time for contract performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

11.0 Joint Checks:

11.01 Requirements:

A DBE subcontractor and a material supplier (or equipment supplier) may request permission for the use of joint checks for payments from the prime contractor to the DBE subcontractor and the supplier. Joint checks may be issued only if all the conditions in this subsection are met.

1. The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.
2. The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.
3. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
4. There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.
5. Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.
6. The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.
7. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.

8. The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

11.02 Procedure and Compliance:

1. The City of Tucson Department of Procurement Business Enterprise and Compliance must approve the agreement for the use of joint checks in writing.
2. After obtaining authorization for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement.
3. Copies of canceled checks must be submitted with the payment information for the period in which the joint check was issued. Certificates of payment must indicate whether or not joint checks were used.
4. The prime contractor, DBE, and supplier each have an independent duty to report to the City of Tucson Department of Procurement Business Enterprise and Compliance in the case of any change from the approved joint check arrangement.
5. Any failure to comply will be considered by the City of Tucson Department of Procurement Business Enterprise and Compliance to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, reduction or loss of prequalification, debarment, or other remedies which may prevent future participation by the offending party.

12.0 Submission with Bids:

All bidders are required to certify in their bid proposal on the "Disadvantaged Business Enterprise Assurances" certificate (BECO Form 302S) either:

- (1) The established goal for DBE participation has been met and arrangements have been made at the time of bid with certified DBEs or
- (2) The bidder has been unable to meet the goal prior to the submission of the bid and has made good faith efforts to do so.

BIDS SUBMITTED WITH ALTERED, INCOMPLETE, OR UNSIGNED CERTIFICATES WILL BE CONSIDERED NON-RESPONSIVE.

Certifications on forms other than those furnished by the City of Tucson Department of Procurement Business Enterprise and Compliance will be considered non-responsive.

13.0 Bidder Meeting DBE Goal:

13.01 General:

If the bidder indicates in the bid that it has met or exceeded the DBE goal, the DBE Intended Participation Affidavit, (BECO Form 305S) its attachments, and a written confirmation from each DBE (BECO Form 304S) that it is participating in the contract as provided on the affidavit, shall be submitted as follows:

- (1) The DBE Intended Participation Affidavit, its attachments, and the confirmations must be received by the City of Tucson Department of Procurement no later than 4:00 P.M. on the fifth working day following the bid opening. Copies of this affidavit and the attachments are available from the Department's Business Engagement and Compliance Office, 1135 N. 22nd Avenue (second floor), mail drop 154A, Phoenix, Arizona 85009, phone (602) 712-7761, or on the internet at:

<http://azdot.gov/docs/default-source/beco-library/fhwa-subrecipient-and-lpa-compliance-checklist.pdf?sfvrsn=2>

This affidavit and its attachments shall indicate that the bidder has met or exceeded the DBE goal if this was indicated on the submittal with the bid.

(2) The affidavit and attachments must be accurate and complete in every detail and must be signed by an officer of the contractor(s).

(3) The DBE Intended Participation affidavit must be submitted listing the DBEs used and the creditable amounts.

(4) A separate DBE Intended Participation affidavit attachment must be submitted for each DBE used to meet the goal of the project. The bidder shall indicate each DBE's name, the bid items the DBE will perform, and proposed subcontract amount. All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item.

(5) A written confirmation from each DBE used to meet the goal indicating that it is participating in the contract, as provided on the affidavit, must also be submitted at this time.

(6) A bidder must determine DBE credit in accordance with Section 10 above, entitled "Crediting DBE Participation Toward Meeting Goals." The affidavit will be reviewed by the City of Tucson Department of Procurement Business Enterprise and Compliance.

(7) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) at the time of the bid opening will be considered. It shall be the bidder's responsibility to ascertain the certification status of designated DBEs.

(8) The bidder bears the risk of late delivery by the postal service or a delivery service. Late-filed affidavits will not be accepted.

13.02 Failure to Comply:

If the apparent low bidder fails to submit the required information by the stated time and in the manner herein specified, or if the submitted information reveals a failure to meet the requirements of the specifications, the apparent low bidder shall be ineligible to receive award of the contract and the bid will be rejected. The proposal guarantee (bid bond) shall be forfeited if no submission is made or if the City of Tucson finds the submission was made in bad faith.

14.0 Documented Good Faith Effort:

14.01 General:

If the apparent low bidder has stated in its bid proposal that it has been unable to meet the DBE goal, that bidder must demonstrate, through detailed and comprehensive documentation, that good faith efforts have been made to solicit, assist, and use DBE firms to meet the DBE goal prior to the bid. The bidder cannot change its bid proposal after submission.

Failure to demonstrate good faith efforts to the satisfaction of the City of Tucson and/or ADOT will result in the rejection of the bid.

The apparent low bidder who cannot meet the DBE goal at the time bids are opened must submit its documentation of good faith effort to the City of Tucson's Procurement Office. The bidder's documentation

must be received by the City of Tucson's Procurement Office by 4:00 P.M. on the fifth working day after the bids are opened.

Bidders are encouraged to review Appendix A of 49 CFR Part 26.

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

In order to be awarded a contract on the basis of good faith efforts, a bidder must show that it took all necessary and reasonable steps to achieve the DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The City of Tucson Department of Procurement Business Enterprise and Compliance will consider the quality, quantity, and intensity of the different kinds of efforts the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to make if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goal. Mere pro forma efforts are not sufficient good faith efforts to meet the DBE contract requirements.

The contractor shall, as a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors for a given project. If the contractor cannot meet the goals using DBEs from this geographic area, the contractor, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

The following is a list of types of efforts a bidder must address when submitting good faith effort documentation.

- (1) Soliciting through all reasonable and available means (e.g., attendance at pre-bid meeting, advertising, written notices, and other means) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.
- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to the DBE subcontractors and suppliers, and to select those portions of work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform work.

A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. However, prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, must be submitted.

- (5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested DBEs in obtaining necessary equipment supplies, materials, or related assistance or services.
- (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a bidder has made good faith efforts, the City of Tucson Department of Procurement Business Enterprise and Compliance and the Department will take into account the ability of other bidders to meet the DBE goal.

The bidder will not be considered to have made good faith efforts if the bidder failed to contact the City of Tucson Department of Procurement Business Enterprise and Compliance prior to the letting, either in writing, by e-mail, or by telephone, to inform the City of Tucson Department of Procurement Business Enterprise and Compliance and the ADOT Business Engagement and Compliance Office of the firm's difficulty in meeting the DBE goals on a given project, and to request assistance. If the bidder contacts the City of Tucson Department of Procurement Business Enterprise and Compliance and the ADOT Business Engagement and Compliance Office by telephone, the contact must be documented in a telephone log indicating the date and time of call, and name of the person to which he spoke. The telephone number for the City of Tucson Department of Procurement Business Enterprise and Compliance is (520) 837-4000 and the ADOT Business Engagement and Compliance Office is (602) 712-7761. The contact must be made in sufficient time to allow the ADOT Business Engagement and Compliance Office to provide assistance.

The City of Tucson Department of Procurement Business Enterprise and Compliance will analyze the submittal to determine if in fact good faith efforts have been demonstrated consistent with ADOT procedures and the Federal regulations, 49 CFR 26, Appendix A and will forward their recommendation to ADOT Business Engagement and Compliance Office for determination.

The bidder may appeal the determination of the City of Tucson Department of Procurement Business Enterprise and Compliance and the ADOT Business Engagement and Compliance Office to the State Engineer. That appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. The protest must be received by the State Engineer no later than seven calendar days after the decision of the City of Tucson Department of Procurement Business Enterprise and Compliance and the ADOT Business Engagement and Compliance Office. Copies of the protest shall be sent by the protestant to every bidder, at the same time the protest is submitted to the State Engineer. Any other interested party may submit a response to the appeal no later than seven calendar days after the appeal is requested. Responses from other interested parties must also be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. Any interested party submitting such response shall also provide a copy of its response to every bidder, at the same time the protest is submitted to the State Engineer. The State Engineer shall promptly consider any appeals under this subsection and notify all bidders of the State Engineer's findings and decision.

Any interested party may protest the State Engineer's decision to the State Transportation Board, pursuant to the requirements of Subsection 103.10 of the Standard Specifications.

14.02 Failure to Comply:

If the apparent low bidder fails to submit the required information by the stated time and in the manner herein specified, or if the submitted information reveals a failure to meet the requirements of the specifications, the apparent low bidder shall be ineligible to receive award of the contract and the bid will be rejected. The proposal guarantee (bid bond) shall be forfeited if no submission is made or if the State Transportation Board finds the submission was made in bad faith.

15.0 Rejection of Low Bid:

If, for any reason, the bid of the apparent low bidder is rejected, there will be a new apparent low bidder. The Agency will notify the new apparent low bidder, and this bidder shall submit its subsequent detailed submission as set forth in paragraph 12 or 13 above.

16.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

17.0 Contract Performance:

Contract items of work designated by the contractor to be awarded to DBEs shall be performed by the designated DBE or a Department-approved DBE substitute. DBE contract work items shall not be performed by the contractor, or a non-DBE subcontractor without prior approval by the City of Tucson Department of Procurement Business Enterprise and Compliance and the ADOT Business Engagement and Compliance Office. The DBE must perform a commercially useful function; that is, the DBE must manage, perform, and supervise a distinct element of work.

The City of Tucson and the Department reserves the right to inspect all records of the contractor and all records of the DBEs concerning this contract.

The contractor shall provide to the Engineer, at the pre-construction conference, copies of completed and signed subcontracts purchase orders, invoices, etc., with the appropriate DBEs.

Within five working days of the preconstruction conference, the contractor shall also provide electronic copies of signed subcontract agreements to the Agency through the Department's web-based payment tracking system (<https://arizonalpa.dbesystem.com>). As part of this submittal, contractors shall be required to log into the system and enter the name, contact information, and subcontract amounts for all subcontractors and vendors performing on the project as verification that scopes of services and commitments made through the DBE Intended Participation Affidavits are being met.

Subcontract agreements shall include all required assurances, including FHWA Form 1273, and the prompt payment and return of retention requirements specified in Subsection 109-7 of the Special Provisions. Each page of each required attachment must be dated and initialed by the DBE in order for the subcontract to be considered valid. Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes, or prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the Engineer deems appropriate.

Use of a DBE named on the DBE Intended Participation Affidavit is a condition of award. Substitution will not be allowed without written evidence from the prime contractor and DBE that the DBE is unable or unwilling to perform. Contractors may not terminate a DBE subcontract for convenience, in whole or in part, except to the extent that the Agency has eliminated items of work subcontracted to the DBE. All terminations, substitutions, and reductions in scope must be approved by the City of Tucson Department of Procurement Business Enterprise and Compliance.

18.0 Non-Performance by DBEs:

In the event a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor will immediately notify the Engineer and provide all facts surrounding the matter. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE goal on the contract. The contractor shall immediately make reasonable good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of work to the extent needed to meet the DBE goal. The substitute DBE's name, description of work, and dollar value of work shall be submitted to the Engineer and the City of Tucson Department of Procurement Business Enterprise and Compliance. Approval of the City of Tucson Department of Procurement Business Enterprise and Compliance must be obtained prior to the substitute DBE beginning work.

In the event a prime contractor is unable, after a substantial good faith effort, to obtain another certified DBE, the City of Tucson Office of Equal Opportunity Programs may lower the DBE goal on the project. However, the City of Tucson Department of Procurement Business Enterprise and Compliance must approve this in writing prior to a Non-DBE starting the work which had been subcontracted to the DBE.

19.0 Compliance:

The contractor's achievement of the goal is measured by actual payments made to the DBEs. The contractor shall submit at the completion of the project the "Certification of Payments to DBE Firms" affidavit for each DBE firm working on the project. This affidavit shall be signed by the prime contractor and the relevant DBE, and submitted to the City of Tucson Department of Procurement Business Enterprise and Compliance. At that time, a copy of each completed affidavit shall also be submitted to the Engineer.

Acceptance and final payment to the contractor, in accordance with Standard Specification Subsections 105-17 and 109-11, as may be amended herein, will not be made until all "Certification of Payments to DBE Firms" affidavits are received and deemed acceptable by the Engineer and the City of Tucson Department of Procurement Business Enterprise and Compliance.

20.0 Sanctions:

If the City of Tucson Department of Procurement Business Enterprise and Compliance determines that the contractor has failed to make sufficient reasonable efforts to meet contract DBE goals, or to otherwise carry out these DBE special provisions, such failure shall constitute a breach of contract and may result in termination of the contract, or any other such remedy as the City of Tucson Department of Procurement Business Enterprise and Compliance deems appropriate.

If the City of Tucson Department of Procurement Business Enterprise and Compliance determines that such failure is not cause to terminate the contract, an amount equal to the value of the DBE goal that was not obtained will be deducted from the payment due the contractor. However, if the failure is the first by the contractor, and the City of Tucson Department of Procurement Business Enterprise and Compliance determines the failure was an unintentional error or oversight, the amount to be deducted may be reduced up to one-half (1/2) of the value of the unobtained DBE goal. In addition to any other sanctions, willful failure of the contractor or a DBE to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in COT projects.

MENTOR-PROTEGE PROGRAM

DESCRIPTION

Purpose:

The Mentor-Protege program is an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program will permit contractors to provide certain types of assistance to certified Disadvantaged Business Enterprise (DBE) subcontractors on highway construction projects.

The program is intended to increase legitimate DBE activities and is not intended to diminish nor circumvent existing DBE rules or regulations. Abuse of this program may be used as the basis for actions against both categories of firms including suspension or debarment.

Policy:

It is the policy of the City of Tucson (COT) and ADOT that contractors and certified DBE subcontractors may engage in a Mentor-Protege agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and COT/ADOT in fulfilling requirements of 49 Code of Federal Regulations Part 23.

Definitions:

DBE: The definition, status, and requirements of DBE firms are defined by 49 CFR Part 23. Please also refer to the special provision entitled "Disadvantaged Business Enterprises".

Mentor: A designated contractor who oversees the development of a designated DBE subcontractor by training, counseling, assisting, and sponsoring the DBE firm in an ADOT approved Mentor-Protege Program.

Protege: An ADOT-certified DBE subcontractor who is guided by a mentor through training and specialized assistance to gain experience, develop expertise in highway construction, and attain general business growth in an approved Mentor-Protege program.

Mentor-Protege Development Plan: A detailed plan outlining a management agreement between a contractor (who agrees to serve as a mentor) and a DBE subcontractor (who agrees to serve as a protege).

IMPLEMENTATION

Approval Process:

- (1) When a contractor and DBE agree to engage in a Mentor-Protege Development Plan Agreement, the City of Tucson Department of Procurement Business Enterprise and Compliance will be notified by either party for the purpose of (a) reviewing requirements of STAA, 49 CFR part 23, and Mentor-Protege program; (b) establishing timeline for processing Agreement; (c) preliminary review of Agreement objective(s) and duration; and (d) reporting requirements. (A copy of the suggested form of agreement is included in these special provisions).
- (2) A completed Mentor-Protege Development Plan will be submitted to the City of Tucson Department of Procurement Business Enterprise and Compliance within 30 days following the initial review. Approval of the Agreement by the City of Tucson Department of Procurement Business Enterprise and Compliance:
 - a) General approval of Agreement by the City of Tucson Department of Procurement Business Enterprise and Compliance within 15 working days following submission of Agreement.

- b) Approval of working plan for the designated project where a Mentor-Protege Development Plan will be implemented.
- (3) Duration of a Mentor-Protege Development Plan may exceed that of a single project, not to exceed three years. Duration of a working plan may exceed that of a single project. However, the continued use of an existing working plan must be approved by the City of Tucson Department of Procurement Business Enterprise and Compliance prior to beginning work on a new project.
- (4) The Mentor-Protege program is not intended to provide DBE firms with a means to avoid management and operational responsibilities. Mentors cannot be responsible for the management of DBE proteges. Under the program, all administrative functions must be performed by personnel responsible to or employed by protege. The protege must retain final decision making responsibilities.
- (5) Mentor and protege shall agree to an interview by the City of Tucson Department of Procurement Business Enterprise and Compliance and/or the ADOT Business Engagement and Compliance during the development of the Mentor-Protege Development Plan.
- (6) Mentor and protege shall agree to evaluations by the City of Tucson Department of Procurement Business Enterprise and Compliance and/or ADOT. The frequency and method will depend on the project.

Content of Mentor-Protege Development Plan:

A Mentor-Protege Development Plan Agreement shall address the following:

- (1) Areas of Assistance: Identify the specific areas in which the protege requires assistance.
- (2) Schedule of Assistance: Develop an Action Plan which defines the types and scope of assistance the mentor will provide to meet the protege's needs.
- (3) Responsibilities: Define the responsibilities of the mentor and the protege in each of the activities.
- (4) Benchmarks: Include measurable benchmarks to be reached by the protege at successive stages of the plan.
- (5) Evaluation: Provide formal evaluations of the protege's attainment of benchmarks. Evaluations must be made by both the mentor and the protege and reviewed by the City of Tucson Department of Procurement Business Enterprise and Compliance and/or ADOT.
- (6) Duration: Specify the maximum time frame the development plan agreement can remain in effect not to exceed three years.
- (7) Assurances: Provide assurances that all agreements, oral and written, pertaining to the Mentor-Protege program do not improperly obtain the benefits of the DBE program.
- (8) Key Personnel: Identify mentor's representative(s) responsible for training and/or coordinating the assistance provided to the protege.
- (9) Fees: Identify any fees paid as a condition of the agreement.
- (10) Copies of agreements: Attach copies of all bonding, security, lease agreements, notes, contracts, etc., made for the duration of the Mentor-Protege Plan.

Type of Assistance:

The type of assistance provided by contractors may include, but not be limited to:

- (1) Financial:
 - a) Working Capital Secured by Time Demand Notes or Stocks. Proteges acquiring working capital through the issuance of stocks must maintain no less than 51 percent ownership to maintain DBE certification. Time demand notes may be used to secure working capital. However, any abusive use of recall features will be cause for terminating program. Where working capital is secured by stocks or demand notes, a third party such as a bank could receive progress payments for work accomplished by the protege, made out jointly to the agent and the protege and make payments, on behalf of the protege, to material suppliers or for Federal and State payroll taxes, etc. In no case can the day-to-day control of the firm be relinquished by the disadvantaged owner as a requirement of the loan.
 - b) Bonding. Mentors may bond the entire job and charge a pro-rata share of the cost to the protege. Mentors may bond the entire job and carry the protege by absorbing the cost of the bond. Arrangements of the bonding must be included in the Schedule of Assistance.
- (2) Management Technical Assistance:
 - a) Assist in conducting a Protege Self-Assessment by areas to be strengthened for long-range planning of the protege firm.
 - b) Assist in developing business plan, loan packaging, and financial counseling.
 - c) Assist the protege in setting up a cost accounting system and train the protege's personnel to assume full control.
 - d) Provide training in plan interpretation, estimating, and materials supply function.
 - e) Provide guidance in general project management and related areas to make the protege aware of techniques to improve productivity and competitiveness and broaden knowledge of industry practices.
- (3) Operation:
 - a) Equipment/Facilities Use. Equipment and facilities may be furnished by mentor, provided that separate lease agreements are made and control over the equipment and facilities are under the supervision of protege.
 - b) Training of managers and specialists of the protege in state-of-the-art methods in the contracting industry.
 - c) Mentors may provide personnel with specialized expertise for a specific purpose and duration as outlined in the Action Plan. Such personnel must be on the protege's payroll and under direct supervision of the protege. Long term, continual, or repetitive use by a protege of personnel primarily employed by the mentor will be construed as an attempt to artificially inflate DBE participation and may be cause for termination of the Mentor-Protege agreement and decertification of the DBE.

General Practice:

- (1) Agreements may not include exclusive arrangements which limit competition.
- (2) DBE firms shall have the latitude to quote bids to other contractors.
- (3) The contractor and the DBE involved in a Mentor Protege agreement must remain separate and independent business entities.
- (4) Middlemen or passive conduits which serve no commercially useful function, or subcontractors acting essentially as brokers are unacceptable.
- (5) Formal or informal agreements which limit control and management by DBE firms are unacceptable.
- (6) Part ownership in a DBE firm by a non-disadvantaged entity, including a mentor, is permitted by the regulations (49 CFR 23) and may be necessary to ensure adequate capital and technical guidance of the DBE participant. However, any financial investment by the mentor must not create a situation wherein the mentor may assume control over the DBE firm.

Modifications:

Modifications to the Mentor-Protege Development Plan shall be subject to the approval of the City of Tucson Department of Procurement Business Enterprise and Compliance and/or ADOT.

Termination:

The Mentor-Protege Development Plan may be terminated by mutual consent by both parties with notice to the City of Tucson Department of Procurement Business Enterprise and Compliance. The City of Tucson Department of Procurement Business Enterprise and Compliance may terminate approval of the Plan upon determination that:

- (1) The protege firm no longer meets the eligibility standards for certification as a DBE.
- (2) Either party has failed or is unable to meet its obligations under the Development Plan.
- (3) The DBE is not progressing or is not likely to progress in accordance with the Development Plan.
- (4) The DBE has reached a satisfactory level of self-sufficiency to compete without special treatment provided in the Development Plan.

In the event a Mentor Protege Development Plan is terminated, the contractor will remain responsible for the DBE goals established in the project Special Provisions.

ARIZONA DEPARTMENT OF TRANSPORTATION

Mentor-Protege Development Plan Agreement

PART ONE: General Agreement

This agreement entered into this ____ day of _____, 20__, in the city of _____, Arizona, by and between _____ (hereafter known as Mentor), and _____ (hereafter known as Protege), in accordance with rules and regulations of the Arizona Department of Transportation (ADOT) Mentor-Protege program, and in accordance with the requirements for increased Disadvantaged Business Enterprises (DBE) participation in the Surface Transportation Act of 1982 (STAA) and Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA).

This agreement is intended to cover the general relationship between the parties to insure compliance with STAA, STURAA, and ADOT guidelines, and to implement all provisions set forth in the Mentor-Protege Development Plan.

PART TWO: Assurances

- 2.1 Both mentor and protege will remain separate and independent business entities. Protege shall have the latitude to quote bids to other contractors.
- 2.2 Protege is an ADOT-certified DBE firm.
- 2.3 The Mentor-Protege program is not intended to provide DBEs with means to avoid management and operational responsibilities.
- 2.4 All agreements, oral and written, pertaining to this Mentor-Protege Plan Agreement do not cause the protege to improperly obtain the benefits of the DBE program.

PART THREE: Content of Plan

Both parties will agree to content of the plan which will include but not be limited to:

- 3.1 Exhibit A: Areas of Assistance--(Areas identified by both parties as the basis for providing assistance by mentor to protege.)
- 3.2 Exhibit B: Schedule of Assistance-- An Action Plan developed by both parties defining the types and scope of assistance; responsibilities of mentor and protege in each activity; resources to be utilized; and measurable benchmarks to be reached by protege.
- 3.3 Exhibit C: Key Personnel-- A list of mentor and protege representatives responsible for training and/or coordinating the Plan.
- 3.4 Exhibit D: Lease/Agreement(s)--Full copies of all lease agreements for equipment and facilities; financial agreements; and other agreements between the two parties and/or by third parties.

PART FOUR: Monitoring

- 4.1 Both parties hereby specifically consent to the monitoring of this contract by the appropriate federal and state officials or their agents, and to agree to cooperate with such agencies.
- 4.2 Both mentor and protege agree to evaluate the progress of the Plan at scheduled intervals with the results reviewed by ADOT.

Agency Name City of Tucson

AFFIDAVIT

BECO 302S R1/13

**DISADVANTAGED BUSINESS ENTERPRISE
ASSURANCES**

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of this bid for federal aid project

Contract Number 141081
ADOT (TRACS) Project # 0000 PM TUC SS736 01C
Project Name Tucson Boulevard Path – Rillito River to Prince Road
Location Tucson Arizona

(CHECK ONE)

_____ The established goal for DBE participation will be met and agreements have been made with certified DBEs, or

_____ The bidder has been unable to meet the goal prior to the submission of the bid and has made good faith efforts to do so.

THIS AFFIDAVIT MAY NOT BE REVISED OR CORRECTED AFTER SUBMISSION OF THE BID.
In accordance with the Special Provisions, the bidder shall specify its DBE participation on the "DBE Intended Participation Affidavit", or provide documentation of its good faith efforts, by 4:00 p.m. on the fifth working day following the bid opening. The apparent low bidder shall obtain the required affidavit from the Business Engagement and Compliance Office, 1135 N. 22nd Avenue (second floor), Phoenix, AZ, 85009, following the opening of bids.

Print Name of Firm

Print Name of Authorized Officer of Firm

Signature of Authorized Officer of Firm

Title

Subscribed and sworn to before me this:

_____ day of _____ 20 _____

My commission expires: _____

Notary Public

Agency Name City of Tucson

Agency BIDDERS LIST

This form must be submitted to the Agency by 4:00 p.m. on the fifth working day after the opening of bids.

BECO 303S R6/1/11

Contract No:	141081	TRACS No.	SS736 01C	Bidder:	
Firm Name	Address	Phone No.	DBE/Non-DBE (Yes/No)	CRO Vendor Registration No.	

FAILURE TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HERIN SHALL RENDER BIDDER INELIGABLE FOR AWARD.

List all companies that have submitted bids with your firm for this contract.

DISADVANTAGED BUSINESS ENTERPRISE
 INTENDED PARTICIPATION AFFIDAVIT
 SUMMARY SHEET
 BECO 305S

To be completed by Prime

ADOT (TRACS) Project # SS736 01C Contract No.: 141081

Prime Civil Rights Vendor Registration # _____

Name of Prime Firm _____

Directions:

- The form must reflect the information included on the individual affidavit attachment(s) for each DBE.
- This form must be signed by an owner/authorized party.
- The DBE must be certified within the work category they will be performing
- The affidavits must be submitted by 4:00 p.m. on or before the fifth working day after the bids are opened.
- An individual participation affidavit attachment must be submitted for each proposed DBE.

DBE information: (Attach additional sheets as necessary)

CR Vendor Reg. #	Name of DBE Firm	Scope of Work	Total Minimum Contract Amount	Adjustments	Total Amount Toward DBE Goal
(1) Sub Total (Total Dollar Value of DBE Commitment)					
(2) Contract Bid Total					
Percent of Contract Bid (Divide Line 1 by Line 2)					

 (Date)

 (Name of Firm)

 (Signature)

 (Title)

Agency Name City of Tucson

DISADVANTAGED BUSINESS ENTERPRISE

**INTENDED PARTICIPATION CERTIFICATION AND CONFIRMATION OF PARTICIPATION - ATTACHMENT
BECO 304S**

To be completed by the DBE subcontractor or supplier

Contract # 141081 TRACS No: SS736 01C

DBE Civil Rights Vendor Registration # _____

Name of DBE Firm _____

Directions:

The form must be signed by an authorized party appointed by the contractor(s).
 This form must be submitted by 4:00 p.m. on or before the fifth working day after the bids are opened
The DBE must be certified within the work category they will be performing
This form must be filled out in its entirety. Leave no blank spaces, use N/A or enter "0" if section does not apply to your services
 (Attach additional sheets as necessary.)

Intended Participation

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY UNIT PRICE OR HOURLY RATE (Trucking, Hauling, Uniformed Officers, Etc.)			
Description /Scope of Work	Unit/Hourly Estimate	Unit/Hourly Price	Total Minimum Contract Amount
			\$
			\$
			\$
			\$
Total			\$

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY UNIT PRICE OR HOURLY RATE (Trucking, Hauling, Uniformed Officers, Etc.)	
Description /Scope of Work	Total Bid Amount
	\$
	\$
	\$
	\$
Total	\$

2. The undersigned affirms that of the trucking/hauling work quoted above, the following applies:

Total Minimum Contract Amount \$ _____

Percentage Subcontracted to Non-DBE Trucking Firms _____ %

Brokerage Fee Charged to Non-DBE Trucking Firms _____ %

Percentage Subcontracted to DBE Trucking Firms _____ %

3. The Undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Unit Price Bid \$ _____ Fees/Commissions Portion of Bid \$ _____

4. The Undersigned will sublet and/or award \$ _____ of the work bid to a non-DBE firm.

5. The Undersigned will sublet and/or award \$ _____ of the work to another certified DBE firm.

Confirmation of Participation

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the prime contractor receive award of this contract from the Purchaser.

I, _____ confirm that _____
 (authorized party at DBE firm, print name and title) (name of DBE firm)

will be participating in the above project. My company will be performing the scope as described above.

for _____
 (total DBE credit dollar value)

 (Authorized Signature)

 Date

BIDDER MUST SUBMIT A COMPLETED 'INTENDED PARTICIPATION AFFIDAVIT SUMMARY' AND 'INTENDED PARTICIPATION CERTIFICATIONS AND CONFIRMATIONS OF PARTICIPATION' OR AFFIDAVIT OF GOOD FAITH EFFORTS *WITHIN 5 WORKING DAYS OF THE BID OPENING*.

**The City of Tucson Department of Procurement Business Enterprise and Compliance
AFFIDAVIT OF GOOD FAITH EFFORTS**

IFB NO: 141081 PROJECT NAME: TUCSON BLVD. PATH – RILLITO RIVER TO PRINCE ROAD

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A BIDDER'S FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET DBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the bidder in soliciting and utilizing DBE firms to meet the City of Tucson's DBE goals. This certificate will assist the City of Tucson Department of Procurement Business Enterprise and Compliance in determining whether the bidder has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the Procurement Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Bidder's Statement of Proposed DBE Plan. The burden of proof rests with the bidder.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a DBE plan must also be submitted.

2. Provide a brief summary of why the DBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to DBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for DBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which DBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to DBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted
Telephone #

Contact Person

Dates of Contact

6. Was the City of Tucson Department of Procurement Business Enterprise and Compliance technical or professional staff contacted for assistance? (Note that it is the policy of the COT to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the DBE goals.) Attach necessary documentation.

Yes _____ No _____ Date of Contact _____ OEOP Contact Person _____

7. Describe any efforts undertaken to provide DBE firms with information about the project plans, specifications and requirements of the contract.

8. Describe any additional efforts undertaken to assist DBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which DBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of DBE Firm

Explanation for Rejecting Quotes

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

10. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

CERTIFICATION OF PAYMENTS TO DBE FIRMS

Project Name: TUCSON BLVD. PATH – RILLITO RIVER TO PRINCE ROAD
COT Job No.: S01G Contract No.: 141081
Fed Job No.: STP-TUC-0(227)A State TRACS No.: 0000 PM TUC SS736 01C

The undersigned prime contractor on the above named City of Tucson project hereby, certifies that full payment was made to the firm indicated for material and/or work performed under this project's contract as follows:

DBE Vendor Registration # _____

Firm Name _____, was paid \$ _____

The subcontract was completed on _____

Full Retention has been released to the Subcontractor by the Prime Contractor Yes / No

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contracts, all documentation supporting the contractors position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Prime Contractor

By: _____

Title: _____

Date: _____

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Subcontractor/Supplier/Manufacturer

By: _____

Date: _____

Title: _____

State of: _____

County of: _____

Subscribed and sworn to before me this _____ day of _____

Signature of Notary Public

Seal

My Commission Expires _____

MUST BE SUBMITTED BY 4:00 PM ON THE FIFTH WORKING DAY FOLLOWING BID OPENING

SUBCONTRACTOR PROMPT PAYMENT REQUIREMENTS

IFB NO: 141081

PROJECT NAME: TUCSON BLVD. PATH – RILLITO RIVER TO PRINCE ROAD

DBE Contract Provisions – Section 17. Contract Performance

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than **7 days** from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay **all** retention owed to a subcontractor within **30 days** of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson.

Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is **NOT** dependent on the billing of, or payment from, the City of Tucson for the retention release.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

By signing below I acknowledge and agree to the DBE subcontractor prompt payment requirements.

Company Name: _____

Signature: _____

Name & Title: _____

Date: _____

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX F

PRICING

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
STURGEON ELECTRIC COMPANY, INC.**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Contractor will provide a written proposal, including all fees for services as needed for the installation, maintenance and repair of fiber/copper networks.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$500,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

Upon request Contractor will provide a written proposal, including all fees services, equipment and parts per the attached City of Tucson Contract No. 212710-02.

CONTRACT 212710
JOB ORDER CONTRACT FOR INSTALLATION AND
REPAIR OF FIBER /COPPER NETWORKS
PRICE PAGE

Hourly Costs

In an effort to determine reasonableness of work cost that is not specifically outlined in this contract, the City requires fixed hourly prices for equipment/services listed below.

<u>Equipment/Services</u> <u>Description:</u>	<u>Hourly</u>	<u>Overtime</u>
Aerial Lift Truck - 34 ft.	\$39.00	
Backhoe	\$80.00	
Cable Reel Hauler Truck	\$39.00	
Cable Trailer	\$18.50	
Compressor	\$15.00	
Digger Derrick Truck	\$56.50	
Six Wheel Dump Truck	\$65.00	
12-Ton Trailer	\$22.50	
Pole Trailer	\$22.50	
Arrow Board	\$35.00	
Small Trencher	\$52.00	
Large Trencher	\$85.00	
Permits	\$195 EA.	
Boring Machine	Quote per	project
Multiple bores	Quote per	project
Directional Bores	Quote per	project

Hourly (non Davis-Bacon) rates for new installs, moves, additions, and changes as needed for Monday through Sunday, excluding holidays observed (see below) by City of Tucson:

<u>Craft or Service:</u>	<u>Hourly</u>	<u>Overtime</u>
Foreman	\$59.50	\$ 77.00
Lineman	\$88.06	\$128.79
Operator	\$67.69	\$ 98.24
Laborer	\$42.50	\$ 63.75
Uniform police	\$75 2hr min	
Fiber Optic Technician (including equipment)	\$52.00	\$ 78.00
Permits	\$195 EA.	

Hourly (non Davis-Bacon) rates for new installs, moves, additions, and changes as needed for holidays observed (see below) by City of Tucson:

Craft or Service:	Hourly	Overtime
Foreman	\$119.00	
Lineman	\$169.51	
Operator	\$128.79	
Laborer	\$ 85.00	
Uniform police	\$145.00	
Fiber Optic Technician (including equipment)	\$102.00	
Permits	\$195 EA.	

Miscellaneous Costs

Function	Rate
Cost for mobilization and/or setup of equipment	\$120.00
Lash/Delash aerial fiber (per foot)	\$ 2.75
Trench and repair 4" conduit (per foot)	\$ 55.00
Enter and reseal splice case	\$140.00
Fiber splice (per splice)	\$ 35.00
Testing (per individual fiber)	\$ 18.50

Holidays observed by the City of Tucson include: New Year's Day; Martin Luther King, Jr. Day; Cesar Chavez Day; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; and Christmas Day.

Jesse Towle, Operations Manager

Name

Sturgeon Electric Company, Inc.

Name of Company



Signature

2/2/2022

Date

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX G

SUBCONTRACTOR SELECTION PLAN

4. Subcontractor Selection Plan

- a. **Submit a proposed Subcontractor Selection Plan pursuant to ARS 34-6003. The plan must describe procedures to be used in selecting subcontractors, and that selection shall be based on a combination of qualifications and price. Include information on how compliance with SBE/DBE subcontractor participation goals will be met.**

Sturgeon Electric is a full electrical service provider with both C&I and T&D capabilities. Sturgeon Electric has a strong, established network of leading firms we can team with for major projects. Our efforts to identify additional subcontractors include requests for proposals and negotiations with all potential subcontractors to ensure a full commitment to the project. As part of this process, we communicate opportunities and establish qualifications of subcontractors and suppliers.

SUPPLIER DIVERSITY PROGRAM

Commitment and Participation

Sturgeon Electric is dedicated to the fair consideration of all suppliers in its day-to-day procurement of materials, equipment, and services as required for any project. We understand the importance of supplier diversity and want to provide opportunities for Disadvantaged Business Enterprise (DBE) firms. DBE firms when referred to herein will include Minority Business Enterprises, Women Business Enterprises, Veteran Business Enterprises, Historically Underutilized Businesses, and Small, Women and Minority disadvantaged suppliers that have been certified by a federal/state/or local government. We have experience in working with a wide range of diverse suppliers to provide a competitive edge in producing high-quality, low-cost innovative products and services. All of Sturgeon's employees with purchasing responsibility and/or involved in procurement decisions for equipment, material, and services are expected to notify and give every consideration to using qualified DBE firms in a manner that is consistent with state and federal laws and regulations. We have exceeded the "expected levels" of on-site DBE participation on a number of projects and will continue to strive to exceed such levels while conducting business in the highest professional manner.

SUBCONTRACTOR SELECTION PLAN

Sturgeon reviews the safety performance, operating capabilities, and price quote of potential subcontractors prior to commencement of work.

Criteria used to select subcontractors:

1. **Safety-** Sturgeon conducts an annual safety review of all Subcontractors. The annual Safety Performance Questionnaire must be completed and reviewed by Sturgeon's Safety Department to ensure all safety standards and requirements are met prior to any new work orders being issued.
2. **Operating Capabilities-** Subcontractors are assessed based on expertise, past experience, commitment to quality and customer satisfaction, and the ability to meet the construction schedule. All subcontractors are required to have a signed contract and provide a Certificate of Insurance (COI) that meets the contract requirements prior to working on site. Sturgeon will monitor the subcontractor's safety, performance, and workmanship during the project's duration, ensuring quality standards are met.

3. **Price**-Sturgeon always strives to provide quality and safe services at a fair price for our clients. This is possible by selecting subcontractors that provide fair prices for their services as well.

Depending on the scope and excavation conditions, Sturgeon would self-perform or subcontract professional excavation companies.

Possible excavation subcontractors may include:

- ❖ R.W. Strunk Excavating, Inc.
9705 E. Giant Cacti Drive
Tucson, AZ 85749
520-631-3944



R.W. Strunk has been a local Tucson business since 1972. BBB Rating of A+ and has an AZ ROC 071793 business license. The business is focused on helping Tucson businesses such as Raytheon, Davis-Monthan Air Force Base and the University of Arizona on new developments as they expand and commercial work throughout Southern Arizona. Services include: Excavating, Trenching, Septic Tanks, Compaction, Hauling, Jackhammers, Rock Saws, Boring, Commercial pads, House pads, Grading, Paving, Sewer and Water Pipeline, Utility and Potholing Work.

- ❖ Days Excavating, Inc.
4295 E. Dawson Road.
PO Box 1249
Sahuarita, AZ 85629
520-625-2788



Days Excavating, Inc. located in Sahuarita, AZ has been in business since 1987. BBB Rating of A+ and carries an AZ ROC 291205 business license. Markets include both Public and Private Sectors, and include both New Build and Alternations/Renovations. Excavating services include: Site Development, Underground Construction, Utilities, Storm Drains, Earthwork, Underground Utility Contractors, Water Mains, Electric & Communication Conduit, Asphalt Paving, Mass Grading, Sewer Mains and more.

Please see the following Sturgeon Electric's Subcontractor Qualification Policy and required annual Safety Performance Questionnaire:

Approved By: William F. Eiseman III		Safety, Health and Environment Policy and Procedures Manual
Date Revised: 3.25.2020		
Revision No. 4	Subcontractor Qualification	Date Issued: Supersedes all others

1 Policy

The Company is committed to providing superior electrical services to our clients while being proactive in providing a safe work environment for our employees. Safety is not just a priority; it is a value that is based on the belief that every injury is preventable and guides our actions.

The policy also recognizes that in some instances it cannot provide superior service without the assistance of subcontractors. Therefore, it must take steps to ensure that its subcontractors have the same vision and commitment to safety.

2 Purpose

The purpose of this policy is to establish uniform guidelines of the evaluation of subcontractors' safety practices and policies.

3 Scope

This policy applies to companies.

4 Procedure

- a) This section identifies the company's safety requirements for subcontractors. These guidelines are applicable to all projects involving subcontractors providing construction, renovation, and support services in excess of 100 hours annually. These guidelines may be modified to include more stringent requirements of a client, local union agreement, or subsidiary, but may not be otherwise modified without approval of the Regional Vice President responsible for the project and the Vice President Safety.
 - i) The local Safety Engineer or Regional Safety Manager will review the completed Subcontractor Qualification Form. Subcontractors, who exceed the maximum allowable limits, as set below, may be considered not qualified to be awarded a subcontract until sufficient responses are received explaining the current rates and what efforts will be made to ensure acceptable project safety performance. The maximum allowable limits are as follows:
 - a) Experience Modification Rate (EMR) – cannot be greater than or equal to 1.0 (interstate or intrastate as applicable)
 - a) OSHA Recordable Incidence Rate – must be less than or equal to the BLS for the Subcontractor's NAICS code (for the most recent calendar year).
 - a) Lost Time Rate (Days Away) – must be less than or equal to the BLS for the subcontractor's NAICS (North American Industry Classification Code) code (for the most recent calendar year).
 - ii) Subsidiary field supervision shall provide subcontractor's management with project specific safety requirements.

Approved By: William F. Eiseman III		Safety, Health and Environment Policy and Procedures Manual
Date Revised: 3.25.2020		
Revision No. 4	Subcontractor Qualification	Date Issued: Supersedes all others

- iii) Subsidiary field supervision and/or Safety Supervisor will be responsible to monitor the subcontractor's safety performance during the project's duration and report deficiencies to the District Manager for correction. The subcontractor will be required to correct any deficiencies noted in violation of this program, state and federal regulations, and project specific requirements. This does not constitute control or safety oversight. **Subcontractors will be responsible for their own safety oversight.**
- iv) The Subsidiary shall identify current and possible future subcontractors. Each subcontractor that is expected to perform work on our jobsites in excess of 100 hours annually will be supplied with a Subcontractor Qualification Form.
- v) Approved subcontractors shall supply the assigned company safety representative with monthly statistics for work performed on company projects. These statistics shall include:
 - a) Number of hours worked (if no hours worked that month, a report must still be submitted to be kept on the bid list)
 - a) Total number of OSHA Recordable Incidents
 - a) Number of Lost Time cases
 - a) Number of Lost Days
 - a) Number of Restricted cases
 - a) Number of Restricted Days
 - a) Number of Medical Only cases
 - a) Number of Fatalities
- b) Subcontractors that do not meet the requirements above may be used on a probationary basis. Restrictions and requirements shall be agreed upon by Safety and Operations. All safety issues shall be resolved before award of contract.
- c) Appendix A – Process Diagram

Approved By: William F. Eiseman III		Safety, Health and Environment Policy and Procedures Manual
Date Revised: 3.25.2020		
Revision No. 4	Subcontractor Qualification	Date Issued: Supersedes all others

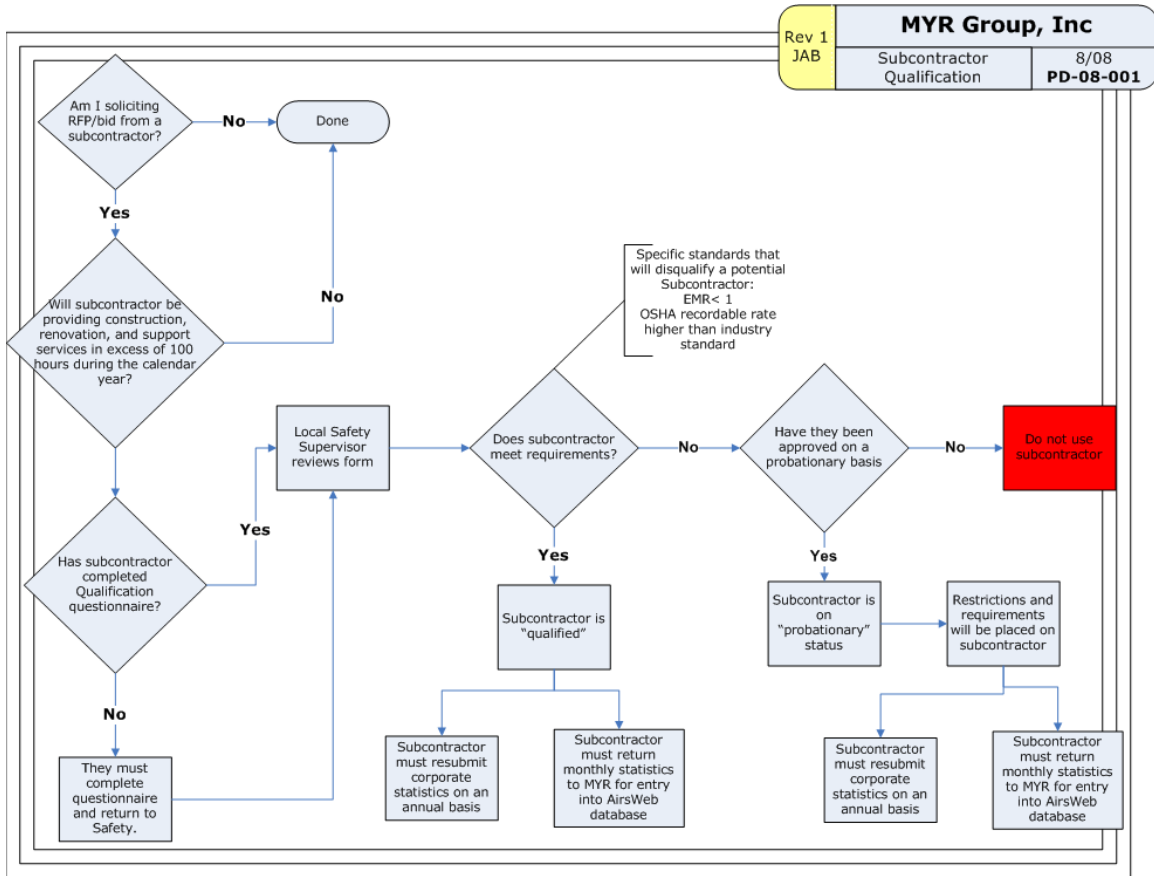




Exhibit E
SUBCONTRACTOR SAFETY PERFORMANCE QUESTIONNAIRE

Company:		
Street Address:		
City:	State:	Zip Code:
Contact:	Phone:	
Contact email:		

I. Worker’s Compensation Insurance-Experience Modification Rate (EMR)

A. Provide your company’s EMR for each of the last three (3) Years:

Policy Year	EMR

B. Furnish a letter from your insurance company verifying the EMR data listed above.

II. OSHA Recordable Incidents

A. Provide the following data from your company’s OSHA 300 and/or 300A logs for each of the last three (3) years:

1. Number of employee hours worked
2. Number of fatalities
(Total Columns 1 + 8)
3. Number of OSHA recordable injuries
(Total Columns 2+6+9+13)
4. OSHA recordable incident rate
$$\left(\text{"Line 3"} \times \frac{200,000}{\text{"Line 1"}} \right)$$
5. Number of lost workday cases
(Total Columns 3 + 10)
6. Lost work day incident rate
$$\left(\text{"Line 5"} \times \frac{200,000}{\text{"Line 1"}} \right)$$
7. Number of cases with days away from work or restricted duty
(Total Columns 2 + 9)

Year	Year	Year



Exhibit E

SUBCONTRACTOR SAFETY PERFORMANCE QUESTIONNAIRE

III. Safety and Health Program

- A. Have you had an OSHA citation in the past five (5) years? Yes No
If yes, please provide details for each citation.
-
-

- B. Do you have a written safety and health program? Yes No
If yes, please attach a copy.

If no, please explain how your company's safety requirements are communicated to your employees.

- C. Does your company have a safety officer or safety department? Yes No
If yes, please provide contact information.
-

If no, who in your company is responsible for safety and health program?

- D. Will your company assign full time supervision to this project? Yes No

- E. Will your company assign a full time safety professional to this project? Yes No

If not, who will be responsible for safety on the jobsite? _____

At what Frequency will this person visit the jobsite? _____

In this person's absence, who will be responsible for safety at the jobsite? _____

- F. Will each of your company's crew have competent persons assigned as required by OSHA for the particular work being performed? Yes No

Please attach a list of competent persons that will be assigned to this project and copies of their training records.

- G. Does your company have a Personal Protective Equipment (PPE) policy; for example, mandatory hard hats, safety glasses, etc? Yes No

If yes, what does it include?



Exhibit E

SUBCONTRACTOR SAFETY PERFORMANCE QUESTIONNAIRE

If not, what PPE will your company require on this project?

H. Does your company have a substance abuse program designed to provide a drug free workplace? Yes No
If yes, please attach a copy.

If no, would you agree to adhere to MYR Group Inc.'s Substance Abuse Policy? Yes No

If yes, does it include:

Pre-employment screening? Yes No
Random testing? Yes No
For cause testing? Yes No

If yes, who is included in the testing? _____

I. Comment on any other areas of your company's safety program and policies that you feel will be appropriate in our evaluation.

IV. Safety and Health Training

A. Do you require onsite supervision to have an OSHA 30 hours training course. Yes No

Please attach a list of all supervision with OSHA 30 hour training that will be assigned to this project and copies of their training records.

B. What type of safety orientation do you provide for new hires?

C. Do your foremen receive formal safety training? Yes No
If yes, please list training provided.

Are your foremen trained in?

First Aid CPR

D. Does your company train on environmental subjects? Yes No
If yes, please specify topics.

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX H

BONDS

JOB ORDER CONTRACT 212710-02

**INSTALLATION, MAINTENANCE, REPAIR OF FIBER/COPPER
NETWORKS**

APPENDIX I

INSURANCE