

CITY OF TUCSON
NOTICE OF REQUEST FOR QUALIFICATIONS NO. 100421

**ARRA DESIGN BUILD SERVICES FOR
CITY OF TUCSON SOLAR PROJECTS**

Notice is hereby given that the City of Tucson, (hereinafter referred to as "City") is soliciting Statements of Qualifications from Design-Build Firms, in accordance with Arizona Revised Statutes Title 34, for the design and construction of **City of Tucson Solar Projects, photovoltaic systems at ten (10) City sites**. A two-step selection process will be utilized.

The City invites interested firms to submit written Statements of Qualifications relating to this project. A Selection Committee will then evaluate the firms' qualifications and experience with similar projects (Step 1). The City will select up to **THREE (3)** Offerors from those submitting Statements of Qualifications for Interviews (Step 2). The City will enter into negotiations/award phase with top ranked Offeror as determined by Step 2. The City's budget for design and construction is estimated at \$656,250 for Phase I and \$7,707,000 for Phase II. The final budget amount will be dependent on the size of the systems. The award of a contract for Phase II pursuant to this RFQ is specifically contingent upon the sale of new Clean Renewable Energy Bonds (CREBs) by the City of Tucson. Construction is scheduled for 2010 and 2011. Federal Congressional Direct Project Funding will partially fund the project. American Recovery and Reinvestment Act (ARRA) funds will also be utilized.

A complete copy of this RFQ may be obtained from our website at: www.tucsonaz.gov/procure. Internet access is available at all public libraries. Any interested offerors without internet access may obtain a copy of this solicitation by calling **(520) 791-4217**, or a copy may be picked up during regular business hours at the Department of Procurement, 255 W. Alameda, 6th Floor West, Tucson, AZ. Respondents are invited to review the information and to submit their Statements of Qualifications in accordance with the criteria established within this RFQ. Written questions regarding this RFQ must be received by the Department of Procurement no later than five days prior to the due date. Questions may then be responded to by written amendment to this document. **Oral statements or instructions shall not constitute an amendment to the RFQ.**

All submittals must be received by the due date and time assigned at the submittal location specified herein. **Any response received at the specified submittal location after the due date and time assigned will be returned unopened.** The City of Tucson reserves the right to reject any or all submittals, or to withhold the award for any reason it may determine, and to waive or not to waive any informalities in any submittal. All information regarding the content of the specific submittals will remain confidential until a contract is finalized or all proposals are rejected.

SUBMITTAL DUE DATE:
SUBMITTAL LOCATION:

Thursday, July 01, 2010 AT 4:00 P.M. Local AZ Time
Department of Procurement
255 W. Alameda, 6th Floor, Tucson, AZ 85701
P.O. Box 27210, Tucson, AZ 85726-7210

PRE-SUBMITTAL CONFERENCE DATE:
TIME:
LOCATION:

Wednesday, June 23, 2010
10:00 A.M. LOCAL AZ TIME
City of Tucson, Information Technologies Department.
Pueblo Conference Room, 481 W. Paseo Redondo
Tucson, AZ 85701

QUESTIONS SHALL BE DIRECTED TO:

Dan Longanecker, CPPB
Senior Contract Officer
City of Tucson Department of Procurement
255 West Alameda, 6th Floor - P.O. Box 27210
Tucson, AZ 85726-7210
520.837.4125
Dan.Longanecker@tucsonaz.gov

Wednesday, June 9, 2010 & Tuesday, June 16, 2010
Publish Dates

SCOPE OF SERVICES

I. INTRODUCTION

The City of Tucson requests submittal of qualifications for the design and installation of up to 1,593 kilowatts (kW) direct current (dc) of grid-tied photovoltaic (PV) solar systems at ten City sites. The objective of this Request for Qualifications (RFQ) is to identify a short list of up to three (3) qualified providers for these renewable energy installations. One provider will be selected to design and install all ten systems in two phases. Funding for the Phase I installation will be provided through Congressional Direct Project (CDP) Award #DE-EE000324 and Tucson Electric Power (TEP) rebates. Funding for the Phase II installations will also be provided through TEP rebates and the City's New Clean Renewable Energy Bonds (CREBs) allocation, pending successful placement of the bonds. Any contract awarded for Phase II is subject to and explicitly contingent upon the successful sale of those bonds to provide funds to finance this project. To the extent possible, the City prefers that the equipment used at each site be similar to simplify maintenance and replacement parts. The sites are described more fully below and include installations on rooftops or shaded parking structures. The Design Build Team shall be appropriately licensed to perform design and construction services in the state of Arizona.

II. DETAILED SERVICES

A. Project/Program Requirements:

The project budget includes engineering analysis, design, site preparation, installation of photovoltaic modules at ten city-owned sites, installation of a web-based display of power production, commissioning and training of City personnel to operate and maintain the facilities, as well as all incident administrative and project management costs.

B. Project Scope:

The project consists of the following components:

- Engineering analysis,, surveying and site preparation as needed.
- Design (final programming through construction documents) and permitting.
- Installing photovoltaic systems at each site, including solar modules, inverters, transformers, etc.. Final inspection and sign off by the City and TEP at each site.
- Installing and coordinating a web-based system for reporting power production with the City's Energy Management Control System (EMCS).
- Commissioning each site as it becomes operational.
- Guaranteeing electrical output (kW-ac) at each site over a minimum 5-year term.
- Training City personnel in operation and maintenance of systems.
- Providing a system operation & maintenance service agreement over a minimum 10-year term.

C. Timeline:

- Award contract for Phase I by September 15, 2010.
- Award contract for Phase II contingent on bond sales.

- Construction in two phases to begin immediately after design and permitting completed.
- Phase I project to be completed by December 31, 2010; the Phase II projects to be completed by September 30, 2011, contingent on bond sales.

D. Site Information:

#	Site Name	Address/Zip Code	Estimated Size (kW-dc)	Estimated kWh-ac/year	Estimated Site Budget	Estimated Type of Installation
Phase I						
1	Rincon/Golf Links	9640 E. Golf Links Rd. 85730	125 kW	191,345 kWh	\$718,750	Roof or shaded parking structures
Phase II						
2	Thomas O. Price Service Center (TOPSC) Bldg. #1	4004 S. Park Ave. 85714	115 kW	176,037 kWh	\$661,250	Roof
3	TOPSC Bldg. #2	4004 S. Park Ave. 85714	200 kW	306,152 kWh	\$1,150,000	Roof or shaded parking structures
4	Evidence Property and Identification Center (EPIC)	945 E Ohio 85714	150 kW	229,614 kWh	\$862,500	Roof
6	Hardesty Center	1100 S. Alvernon Wau 85711	200 kW	306,152 kWh	\$1,150,000	Roof
7	Randolph Center	200 S. Alvernon Way 85711	115 kW	176,037 kWh	\$862,500	Roof
8	Tucson Convention Center (TCC)	260 S. Church 85701	300 kW	459,228 kWh	\$1,725,000	Roof or shaded parking structures
9	Santa Rita/Sentinel Bldgs.	310 N. Commerce Park Loop 85745	88 kW	134,707 kWh	\$506,000	Roof
10	Westside Police	1310 W. Miracle Mile 85705	150 kW	229,614 kWh	\$862,500	Roof or shaded parking structures
11	Crime Lab	1316 W. Miracle Mile 85705	150 kW	229,614 kWh	\$862,500	Roof or shaded parking structures
New CREBs Subtotal			1,468 kW	2,247,156 kWh	\$8,441,000	
Phase I & II Totals			1,593 kW	2,438,501 kWh	\$9,159,750.	

Based on previous solar installations and CREBs funding, the City of Tucson is seeking solar technology which will deliver electricity for less than \$5,250 per kW-dc (average, assuming PV Watts2, 20 degree fixed panels equivalent production). Goal – lowest \$/kWh over the systems' life. The estimated area, site budget and type of installation information are all subject to verification by contractor. Aerial site pictures and electrical load data can be found in Attachments A & B.

Each of the ten sites offers unique issues for installation. The TOPSC Bldg. #2, for example, has a large roof area and electrical load, but minimal roof structure. Several sites offer good opportunities for PV mounted on shaded parking structures. The Crime Lab is a new building, currently under design. Each Offeror should independently verify all aspects of each site to determine the optimal solar installation at that site.

The City of Tucson is interested in creative approaches to maximizing the electric energy production from these ten sites to capture maximum revenues from TEP under its Renewable Energy Standard

& Tariff (REST) Program. The use of design, components or materials that are novel but fully tested, proven and certified is encouraged.

For safety reasons, all roof top installations must be made in accordance with California Department of Forestry and Fire Protection, Office of the State Fire Marshall Solar Photovoltaic Installation Guideline (4/22/08 or later version at <http://osfm.fire.ca.gov/pdf/reports/solarphotovoltaicguideline.pdf>). These guidelines require marking of conduit, junction boxes, etc. so information is readily available to firefighters. In addition, a walkway is required around the perimeter of the installation, in the center of the installation, and to provide access to roof hatches. See Guidelines for detailed information.

All installations must also meet Tucson Electric Power Company's Interconnection Requirements for Distributed Generation which can be found on TEP's website at <http://www.tep.com/> (conforming to ACC Docket No. E-00000A-99-0431 approved 10/02/08 and all other permitting requirements).

E. Commissioning

Each installation shall go through a full commissioning procedure including PV USA Test Conditions (PTC) rating, coordination with the City EMCS system, and establishing the web- based data collection system.

F. Training

After initial start-up, the Contractor shall provide training at each site to the City's facility personnel and/or facility occupants in the operation and maintenance of the PV system. Training will include what to do in the event of emergencies, how the system interconnects to existing electrical systems, routine maintenance issues, warranty information and contact information for warranty questions.

A current operations and maintenance manual (5 hard copies and an electronic version) shall be provided for each facility that outlines essential maintenance and warranty information.

III. SELECTION PROCEDURE:

Selection of a Design Build Firm will follow a two-step process. Step 1 will be the submittal of a "Statement of Qualifications" which presents the Firm's qualifications, understanding and approach to the Project, and the resources available to perform the work. Specific directions for preparing this submittal are found in the Request for Qualifications, *Instructions to Offerors* section.

Statement of Qualifications submittals will be forwarded to the Selection Committee. The committee will then review the "Statement of Qualifications" submittals and rate them in accordance with the published evaluation criteria contained herein. Up to three (3) of the highest ranked firms from Step 1 will be short-listed and invited to participate in oral interviews and presentations to the Selection Committee in Step 2. Detailed interview criteria will be provided to the firms prior to the interview step. The firms will be ranked based upon the established interview criteria. The City of Tucson will then enter into a negotiation process with the highest ranked firm.

IV. NEGOTIATED PRICE PROCEDURE

The highest ranking short-listed firm at the conclusion of the interview stage shall be notified of that position and shall be invited to negotiate with the City for a contract to design and build these ten projects. The offeror will be asked to submit a Guaranteed Maximum Price (GMP) Proposal containing the proposed costs including a detailed schedule of values, applicable certifications, affidavits, surety bond, etc. If negotiations are successful, a contract with that offeror will be entered into. If not successful, negotiations will be terminated and the next highest ranked offeror on the short list will be asked to enter into negotiations for a price for these projects. The City intends to spend no more than its project budget and will seek the maximum power production for the project budget. The City intends to award Phase I with the initial contract. Award of Phase II, via contract amendment, is contingent on successful placement of CREBs.

INSTRUCTIONS TO OFFERORS

1. **PRE-SUBMITTAL CONFERENCE:** The date and time of a pre-submittal conference is indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstanding. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and may issue a written amendment to the solicitation. Oral statements or instructions will not constitute an amendment to this solicitation. Persons with a disability may request a reasonable accommodation by contacting the Department of Procurement at (520) 791.4217. Requests for accommodations must be made forty-eight (48) hours in advance of the event.
2. **SUBMITTAL FORMAT:** **Original and 5 copies (6 total) of each submittal** should be turned in to the Procurement Department, on any required forms and in the format specified in the solicitation. The original copy of the submittal should be clearly labeled "Original" and shall be unbound and single-sided. The format as outlined in the Evaluation Criteria shall be followed. Material shall be in sequence and related to the solicitation. **The sections of the submittal shall be tabbed and clearly identifiable.** The City will not provide any reimbursement for the cost of developing or presenting submittals in response to Step One of the selection process. Failure to include any requested information may have a negative impact on the evaluation and/or may result in the rejection of the offeror's submittal.
3. **WHERE TO SEND SUBMITTALS:** In order to be considered, the offeror must complete and send their Statement of Qualifications to the City of Tucson Department of Procurement at the 6th Floor, 255 West Alameda, Tucson, Arizona 85701 (mailing address: P.O. Box 27210, Tucson, AZ 85726-7210), by no later than the specified opening date and time. The offeror's submittal shall be presented in a sealed envelope with the **OFFEROR'S NAME** and **RETURN ADDRESS** written on the envelope. The words **"SEALED SUBMITTAL"** with **SERVICE DESCRIPTION, SOLICITATION NUMBER, DATE, TIME**, and **SUBMITTAL OPENING DATE** shall be written on the envelope.
4. **INQUIRIES:** Any question related to this solicitation shall be directed to the Contract Officer whose name appears on the front side of this document. **The offeror shall not contact or ask questions of the department for whom the requirement is being procured.** Questions should be submitted in writing when time permits. The Contract Officer may require any and all questions to be submitted in writing at the Contract Officer's sole discretion. Any correspondence related to a solicitation should refer to the appropriate Solicitation number, page and paragraph number. However, the offeror must not place the number on the outside of an envelope containing questions since such an envelope may be identified as a sealed submittal and may not be opened until after the official submittal due time and date. Oral interpretations or clarifications will be without legal effect. Only questions answered by formal written solicitation amendment will be binding.
5. **CONTRACT NEGOTIATIONS:** At the completion of the selection process, the City may enter into negotiations with the top ranked Offeror to determine fee, and to negotiate any other portion of the Contract deemed by the City to be necessary. In the event that the City is not able to negotiate successfully with the top ranked Offeror, the City shall cease negotiations with that Offeror and either begin negotiations with the next ranked Offeror or may choose to cancel the solicitation in its entirety. In the event that the City is not able to negotiate successfully with the next ranked Offeror, the City shall cease negotiations with that Offeror and either begin negotiations with the third ranked Offeror or may choose to cancel the solicitation in its entirety. Award shall be made by the Procurement Director to the Offeror whose submittal and subsequent negotiation is most advantageous to the City.
6. **AWARD OF CONTRACT:** Notwithstanding any other provision of the solicitation, the City reserves the right to:
 - (1) waive any immaterial defect or informality; or
 - (2) reject any or all offers, or portions thereof; or
 - (3) reissue the solicitation.
7. **FAMILIARIZATION OF SCOPE OF WORK:** Before signing a contract, each Offeror shall familiarize itself with the Scope of Services, laws, regulations and other factors affecting performance of work. It shall carefully correlate its observations with requirements of the solicitation and negotiated contract and otherwise satisfy itself as to the expense and difficulties attending the performance of the work. The signing of a Contract will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the Contract, for lack of such familiarization.

- 8. LATE PROPOSALS:** In accordance with Tucson Procurement Code, Article III. Sec. 28-17(4). *Late Bids*. Late submittals shall not be considered.
- 9. WITHDRAWAL OF SUBMITTAL:** At any time prior to a specified solicitation due time and date an offeror (or designated representative) may withdraw their proposal by submitting a written request to the responsible Contract Officer stating the reason for withdrawal.
- 10. AMENDMENT OF SOLICITATION:** The Offeror shall acknowledge receipt of a solicitation amendment by signing and returning the document by the specified due time and date.
- 11. SUBMITTAL:** The offer and any solicitation amendments must be signed and returned with the offeror's submittal.
- 12. CONFIDENTIAL INFORMATION:** If an individual believes that any portion of a submittal, offer, specification, protest, or correspondence contains information that should be withheld, then the Procurement Director should be so advised in writing. The City shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the "Protest" provision.
- 13. SUBCONSULTANTS/SUBCONTRACTORS:** Offeror should disclose in writing any sub-consultant or subcontractor to be utilized in performance of services herein. For each sub-consultant, detail on respective qualifications should be included.
- 14. PROPOSAL REJECTION:** Submission of additional terms, conditions, and/or agreements with the submittal may result in submittal rejection.
- 15. VENDOR APPLICATION:** Prior to the award of a contract, the successful offeror shall have a completed vendor application on file with the Department of Procurement. Information may be obtained by contacting the Department of Procurement at **(520) 791-4217**.
- 16. EXCEPTIONS TO CONTRACT PROVISIONS:** A response to any Request for Qualifications is an offer to contract with the City based upon the contract provisions contained in the City's Request for Qualifications, including but not limited to, the specifications, scope of services and any terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language in their submittal. However, the provisions of the Request for Qualifications cannot be modified without the express written approval of the Director of Procurement or his designee. Proposed modifications or exception to the indemnification language herein shall not be considered. If an offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director of Procurement or his designee, the contract provisions contained in the City's Request for Qualifications shall prevail.

17. PREPARATION OF SUBMITTAL:

A. EVALUATION REQUIREMENTS: The evaluation will be conducted in accordance with the following plan:

- 1) Screening Phase:** The criteria for screening firms in this selection process is as follows:
 - Experience & Qualifications of the D-B Project Team (35%)
 - Long Term Service Experience (25%)
 - Technical Conceptual Approach (20%)
 - Project Innovation and Creativity (15%)
 - Subcontractor Selection Plan (5%)

Points shall be assigned according to the above listed criteria. The Offerors will then be ranked accordingly and the top three (3) ranked firms will then be invited to participate in Step 2 Presentations/Interviews.

2) Interview Phase: The criteria for interviewing firms in this selection process is as follows:

- Technical Conceptual Approach - 30%
- Long Term Service Experience - 25%
- Experience & Qualifications of the D-B Project Team - 20%
- Project Innovation and Creativity - 10%
- Questions & Answers - 10%
- Subcontractor Selection Plan - 5%

Detailed interview criteria to be provided to the shortlisted firms prior to the interviews.

Experiences with the City, entities that evaluation committee members represent, and any other owner may be taken into consideration when evaluating qualifications and experience. Experience in other forms of contracting may also be considered by the committee in determining competence. The City reserves the right to make such additional investigations as it deems necessary to establish the competency and financial stability of any party submitting a proposal.

B. INSTRUCTIONS FOR SUBMITTAL:

All submittals shall include any and all forms provided in this solicitation package. It is permissible to copy these forms as required. Facsimiles, telegraphic proposals, or mailgrams shall not be considered. The offer form shall be submitted with an original ink signature by the person authorized to sign the submittal. Erasures, interlineations, or other modifications in the submittal shall be initialed in original ink by the authorized person signing the Consultant offer. Periods of time, stated as a number of days, shall be in **consecutive calendar days**. It is the responsibility of all offerors to examine the entire RFQ package, to seek clarification of any requirement that may not be clear, and to check all responses for accuracy before sending in a submittal.

Statements of Qualifications shall be limited to the information specifically requested. Submittals failing to follow the section format instructions outlined below may be rejected. The Offeror will be notified in writing of the reason(s) for rejection. A page is one side of an 8 1/2" x 11" sheet (minimum font size is 11 pt).

1. COVER LETTER - Shall contain the following information:

- An expression of the firm's interest in being selected for this Project.
- The name and registration number of the principal or officer, properly registered with the Arizona Board of Technical Registration at the time of submittal, who will be responsible for the design work included in this contract.
- The name, Arizona Registrar of Contractors category, and permit number of the person who will be primarily responsible for the construction work.
- A single individual as the City's point of contact for any future correspondence

2. EVALUATION CRITERIA - The format as outlined in the EVALUATION CRITERIA SECTION shall be followed.

3. SUPPORTIVE INFORMATION - Supportive information may include organizational charts, capacity charts, graphs, photographs, maps, additional resumes, references, etc., and is totally discretionary to the Offeror.

EVALUATION CRITERIA

1. **EXPERIENCE & QUALIFICATIONS OF THE DESIGN-BUILD (D-B) PROJECT TEAM – 35%**

Offerors shall submit a brief explanation of why their firm and subcontractors/sub-consultants are qualified for this particular project and how their project team's workload can accommodate adding this type of contract. Of special interest to the City of Tucson are clear answers to the following questions:

- a. Identify the legal structure of the firm and/or consortium of firms preparing the Statement of Qualifications. Describe the business experience of the firm(s) as it relates to carrying out projects of this type and scale.
- b. Provide audited financial records of the firm which indicate the firm's financial ability to undertake a project of this size.
- c. Describe the organizational structure of the firm, the management approach, and how each partner and major subcontractor fit into the structure, including names and roles. Describe your procedures to track the performance of subcontractors and sub-consultants.
- d. Describe your quality assurance procedures to be used during the field investigation, design and construction phases to insure constructability and minimize design and construction change orders.
- e. Furnish examples of three similar Design Build projects in which participants have completed their tasks ahead of schedule and/or below budget, including an explanation of how this was accomplished and contact information for reference checks on these projects. Similar PV projects your firm has completed and their detailed history, total cost, and schedule/timeline for design and for construction.
- f. For these similar projects, describe the solar technologies used, mounting methodologies, total kW size, annual kWh output, whether you utilized trackers, and if so, what type, new technologies being planned at present for new projects, and lessons learned.
- g. Describe the methods the firm has in place for addressing claims, contract modifications, and schedule recovery to maintain the completion date.
- h. Describe your internal procedures for developing, monitoring, and maintaining project budgets and schedules. Identify your internal policies/procedures to assure designing and completing construction on schedule and within budget.
- i. Indicate the resources that will be made available, and from what source, to perform the work for this Project. Demonstrate that appropriate resources will be committed to perform the work and complete the Project on schedule.

- j. Discuss quantitatively how this Project would impact the current and anticipated workload of the office(s) that will perform this work. If staffing up will be necessary, discuss in which areas it will be necessary, and how it will be accomplished.
- k. Describe any equipment or any other resources the Firm has which will enhance their ability to accomplish this project and any relationship with suppliers of equipment likely to be used which will assist in meeting deadlines, avoiding equipment shortages, etc. .
- l. Describe any notable expertise, or other special capabilities of members of the Design-Build project team that are critical to your proposal.
- l. Describe your in-house engineering design experience with roof-mounted and solar shade structure installations.
- m. Identify the primary firm, the Design-Build Project Manager, the Construction Project Manager/Engineer, key staff, and other members of the Project Team, their qualifications and experiences, and address the role each member will perform in this Project. Provide a current resume for the following personnel:
 - **Design-Build Project Manager.** The person (or persons) who will be responsible for ensuring that adequate personnel and other resources are made available for this project; handle all contractual matters; be ultimately responsible for the quality, costs and timeliness of the Design-Build team's performance; and be responsible for all design aspects of the project.

State the person's position and authority within the Design-Build firm. Discuss previous projects similar in nature for which this person has performed a similar function. Discuss relevant experience, professional registrations, education, awards, and other components of qualifications applicable to this project.

- **Construction Project Manager/Engineer.** The person who will actively manage the construction of this project. Identify all projects that this person will be involved with concurrently with the construction of this project and the anticipated time commitment to each. List recent similar projects for which this person has performed a comparable function. Discuss relevant experience, professional registrations, education, awards, and other components of qualifications applicable to this project.
- n. Identify other members of the project team including subcontractors/sub-consultants that provide special expertise or will perform key tasks. Describe their anticipated roles. Identify and describe projects where team members have collaborated in the past and if the contractor intends to utilize sub-consultants or subcontractors in the performance of the proposed work. Provide a brief statement of qualifications for each of the proposed sub-consultant(s) and/or subcontractor(s) that identifies the work to be performed, experience and qualifications of the firms, project manager for the proposed work and any relevant licenses, registrations or certifications that the subcontractor(s) bring to the project.

- o. Describe how you will recruit and train workers on the construction team and assure the quality of their work.
- p. Indicate if you intend to hire some or all workers locally or bring in a full work crew of installers. Indicate the anticipated size of the design team and the build team.

2. LONG-TERM SERVICE EXPERIENCE– 25%

- a. Describe the manufacturer’s warranties recently provided for your panels, inverters and other critical components.
- b. Provide an example of your commissioning protocol and checklist to verify that the installed PV systems are working as designed for a recent and comparable project.
- c. Provide an example of your long-term service agreement for a recent and comparable project.
- d. Describe your organizational structure and procedures to implement a long-term service agreement with direct customer service, regular maintenance and warranty follow-up work after construction.
- e. Describe your existing procedures to minimize system down-time (e.g. “uptime” inverter warranties, minimum “return-to-service” time guarantees, etc.).
- f. Provide an example of your electrical production guarantee for a recent and comparable project.
- g. Describe your existing procedures to monitor actual system performance and provide examples of corrective measures you’ve implemented to meet the minimum performance guarantee.
- h. Provide an example of your web-based data monitoring system for a recent and comparable project.
- i. Describe your procedures to reconcile any differences between the web-based data monitoring system, utility grade solar meter and inverter output readings.
- j. Describe the critical performance indicators that you track to ensure optimal system performance and your procedures for sharing that information with customers.

3. TECHNICAL CONCEPTUAL APPROACH - 20%

- a. Provide a brief description of your preliminary plan for each site, explaining what size PV system you believe can be installed at each site, the annual output in kWh, and the size inverters you plan to use.
- b. Provide a brief description of the types of solar system components, including panels, racking system, trackers (if applicable), inverters, shade structures (if applicable) likely to be used and your basis for selecting these components.

- c. Project the degradation rates over the useful life of the panels.
- d. Describe how you will provide the 20-year minimum panel warranties and the 10-year minimum inverter warranties.
- e. Provide a brief overview of your proposed system web-based output performance verification methodology and how this system would interface with the City's Energy Management Control System (EMCS).
- f. Briefly describe your overall plan for managing the design and construction at the ten sites (e.g. simultaneously, batched, sequentially, etc).
- g. Include a preliminary schedule in Microsoft Project or an equivalent planning software program.

4. PROJECT INNOVATION AND CREATIVITY – 15%

- a. Describe innovations on previous projects that demonstrate your ability to design and build creative solar installations in difficult applications.
- b. Demonstrate any innovative ways your project will reduce the City's cost per kW or cost per kWh.
- c. Demonstrate any innovations in your proposed installations that could be replicated by the City of Tucson in future projects to reduce costs or increase visibility.
- d. Explain how your installations could be used to generate additional interest in PV in Tucson.
- e. Describe how your plans will positively impact the Tucson economy (e.g. establish or expand a local office, buy local products and hire local workers).

5. SUBCONTRACTOR SELECTION PLAN – 5%

- a. Submit a proposed Subcontractor Selection Plan pursuant to ARS §34-603. The plan must describe procedures to be used in selecting subcontractors, and selection shall be based on a combination of qualifications and price.
- b. The resultant contract is subject to the City of Tucson's SMWBE requirements. The plan must describe how the Offeror intends to ensure that established goals will be met
- c. Identify the criteria under which qualifications and price will be evaluated, and describe whether a one-step or two-step selection process will be employed, including detail on the process.

ADDITIONAL DOCUMENTATION

6. SUPPORTIVE INFORMATION

Supportive information may include organizational charts, capacity charts, graphs, photographs, maps, additional resumes, references, etc., and is totally discretionary to the Offeror.

7. DESIGN-BUILD FIRM'S INFORMATION FORM

Complete the form as provided (**see next pages**).

DESIGN-BUILD FIRM'S INFORMATION FORM

CONTACT PERSON: _____

DESIGN-BUILD FIRM: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE/FAX: _____

CONTACT PERSON: _____

PRIMARY CONTRACTOR: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE/FAX: _____

AZ. CONTRACTOR

LICENSE NUMBER: _____

CONTACT PERSON: _____

PRIMARY DESIGNER: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE/FAX: _____

AZ. REGISTRATION No.: _____

SPECIAL TERMS AND CONDITIONS

1. INSURANCE PROVISIONS

COVERAGE AFFORDED

Worker's Compensation

Commercial General Liability
Insurance
Including:

- A. Products & Completed Operations
- B. Blanket Contractual
- C. Premises-Operations-Personal Injury

Professional Liability
Insurance (Errors and Omissions)
(See Special Conditions)

Comprehensive Automobile Liability
Insurance including: non-owned, and
Hired vehicles

LIMITS OF LIABILITY

Statute

\$1,000,000 – Bodily Injury
Combined Single Limit
\$100,000 Property Damage

\$1,000,000 (Minimum)
Combined Single Limit

\$1,000,000 - Bodily Injury
Combined Single Limit
\$100,000 Property Damage

[☒] Checked If applicable:

Builder's Risk Insurance Contract Value
(Less site preparation)
Including: Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft.

Builder's Risk insurance shall be required on all vertical construction.

SPECIAL CONDITIONS:

1. THE CITY OF TUCSON WILL BE ADDED AS ADDITIONAL INSUREDS UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES. AN ENDORSEMENT SHOWING THE CITY AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY POLICY SHALL BE SUBMITTED PRIOR TO CONTACT AWARD.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the City of Tucson, Department of Procurement, Design & Construction Contracts Division, P.O. Box 27210, Tucson, Arizona 85726-7210.
3. Deductibles MUST be stated on the certificate of insurance and are subject to the review and approval of the City.
4. Professional liability insurance limits will be increased for projects or contracts based upon the degree of risk to which the City is exposed.
5. Professional liability insurance carried by the consultant must cover all elements of the project including professional services performed by subcontractors. If the consultant's professional liability insurance does not provide coverage for work performed by subcontractors, separate project insurance will be required to comply with the professional liability insurance requirement. The City may require a copy of the professional liability insurance policy to verify coverage.

2. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) REQUIREMENTS

Pursuant to the American Recovery and Reinvestment Act, the special terms and conditions in Attachment C are applicable to this project and will be incorporated into any resulting contract.

3. FEDERAL LABOR STANDARDS

Davis-Bacon Labor Standards Provisions

Pursuant to the American Recovery and Reinvestment Act, Division B, section 1601, Davis-Bacon labor standards must be applied to projects financed with the proceeds of the following tax-favored bonds:

1. Any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after February 17, 2009,
2. Any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after February 17, 2009,
3. Any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after February 17, 2009,
4. Any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and
5. Any recovery zone economic development bond (as defined in section 1400U-2 of the Internal Revenue Code of 1986).

The Department of Labor, Wage and Hour Division has issued guidance in [All Agency Memorandum No 208](#), concerning applicability of Davis-Bacon labor standards to construction financed with the proceeds of these tax-favored bonds under ARRA Division B, section 1601.

The Davis-Bacon contract clauses stated in 29 CFR 5.5(a)(1) through (10) must be incorporated into covered contracts for construction, alteration, or repair work. Additional information regarding the application of Davis-Bacon labor standards is available at the U.S. Department of Labor Wage and Hour Division website at www.dol.gov/whd/recovery/

Successful Design Build Firm/Team will be provided appropriate wages schedule(s) prior to negotiation of GMP.

4. BONDING: Design Builder will be required to provide payment and performance bond equal to 100% of the value of the construction component of the contract. A dual obligee rider will may also be required if requested by the City's bond counsel.

5. SMWBE PROGRAM REQUIREMENTS: The Design-Builder shall be required to comply with SMWBE Program requirements, if goals are applicable, on this project. Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Design-Builder shall submit *to the Procurement Department, after the bidding phase*, either a completed bidder's statement of proposed SBE/MBE/WBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The SMWBE Plan must include:

1. The names and addresses of the SMWBE subcontractors/suppliers;
2. The type and scope of work or service each SMWBE will perform; and,
3. The percentage of each SMWBE subcontract of the total contract.
4. The dollar value of work as a percentage of the total contract value.

STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THIS SOLICITATION:

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of submittal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the offeror fails to provide recommended information, the City may, at its sole option, ask the offeror to provide the information or evaluate the submittal without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions shall apply:

- A. **City** - The City of Tucson, Arizona, 255 W. Alameda, Tucson, AZ 85701
- B. **Agency or User Department** – Used interchangeably to mean the City department or division responsible for managing the project.
- C. **Design-Build** -- The process of entering into and managing a contract between the City and a contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services, and pre-construction services.
- D. **Contractor or Firm** – Used interchangeably in referring to the person, firm or corporation with whom the City has entered into the Contract.
- E. **Evaluation Committee** – The committee established to formally evaluate Statements of Qualifications according to the evaluation criteria listed herein.
- F. **Joint Venture** – Two or more persons or entities combining their property, money, skills, and knowledge to form a distinct legal entity to carry out a single business enterprise for profit, pursuant to a written agreement.
- G. **Contract** - The legal agreement executed between the City of Tucson, AZ and the Consultant/Firm.
- H. **City Project Manager** - The City employee specifically designated as responsible for monitoring and overseeing the performance under this Contract. Also referred to as City Designated Contract Representative.
- I. **Director of Procurement** - The contracting authority for the City of Tucson, AZ, authorized to procure contracts and amendments thereto.

2. **PROTEST PROCEDURE:** Should a firm believe that the City has not properly followed the selection procedures as outlined, the firm may file a protest as described in the Tucson Procurement Code, Article IX, Section 28 - 78.

A protest shall be in writing and shall be filed with the Director of Procurement. A protest of a Request for Qualification and/or Request for Proposal shall be received at the Department of Procurement before the solicitation opening date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protestor knows or should have known the basis of the protest. A protest shall include:

- A. The name, address, and telephone number of the protestor;
- B. The signature of the protestor or its representative;
- C. Identification of the solicitation number;
- D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and,
- E. The form of relief requested.

3. CERTIFICATION: By signature in the offer section of the Offer page, your firm certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
- C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
- D. The Offeror submitting the offer hereby certifies that the individual signing the offer is an authorized agent for the Consultant and has the authority to bind their firm to a Contract.

4. HUMAN RELATIONS: Offeror agrees to abide by the provisions of the Tucson Code Chapter 28, Article XII, Section 28-138, Provision against discrimination required in all City contracts.

5. AFFIRMATIVE ACTION: Contractor agrees to abide by the provisions of the Tucson Code Chapter 28, Article XII Sections 28-137 to 28-144, Affirmative Action by City Contractors. Contractor, your subcontractor(s) and supplier(s) agree to adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, promote and upgrade the position of employees regardless of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status, or marital status and who agree and are responsive to the City's goals.

Specifically, the Contractor agrees to submit the following reports to the City's Equal Opportunity Office before contract award:

- i. A copy of their Federal EEO-1 Report, if Contractor was ever required to file one with the Federal Government;
- ii. A completed City of Tucson Affirmative Action Questionnaire;
- iii. An Affirmative Action Plan.

All such reports on file with the Equal Employment Opportunity Office will be updated at least annually. The Equal Employment Opportunity Office may for good cause recommend to the City's Director of Procurement that failure to comply with the requirements of this subsection be waived and that the bid be accepted **contingent** upon receipt of the required reports before a notice to proceed is issued.

6. AMERICANS WITH DISABILITIES ACT: The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act, Public Law 101-336, 42 U.S.C. 12101-12213, and applicable federal regulations under the Act.

7. CONFIDENTIALITY OF RECORDS: The Offeror 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 RFQ shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties of Evaluating Statements of Qualifications. Persons requesting such information should be referred to the City. Offeror also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed under the RFQ, unless otherwise agreed to in writing by the City.

8. GRATUITIES: The City may, by written notice to the Consultant, cancel this solicitation if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant, to any officer or employee of the City amending. In the event this solicitation is canceled 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 Consultant the amount of the gratuity.

9. APPLICABLE LAW: This RFQ shall be governed by the law of the State of Arizona, and suits pertaining to this RFQ shall be brought only in Federal or State courts in the State of Arizona.

10. LEGAL REMEDIES: All claims and controversies shall be subject to the Tucson City Charter and Code.

11. 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.

The contract shall only be modified with the approval of the Department of Procurement. Except in the case of documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Department of Procurement 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.

- 12. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the RFQ 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 RFQ shall forthwith be physically amended to make such insertion or correction.
- 13. **SUBCONTRACTS:** No subcontract shall be entered into by the Consultant with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Procurement Director. 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 sub-consultant were the Consultant referred to herein. The Consultant is responsible for contract performance whether or not sub-consultants are used. The City shall not unreasonably withhold approval and shall notify the Consultant of the City's position within fifteen (15) days of receipt of written notice by the Consultant.
- 14. **ADVERTISING:** Consultant shall not advertise or publish information concerning this selection process without the prior written consent of the City.
- 15. **RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of a Consultant/Contractor or sub-consultant/subcontractor which is related to the performance of any contract to be awarded.
- 16. **BUSINESS LICENSES AND PERMITS:** Offeror shall maintain in current status all Federal, State, and local registrations, licenses and permits required for the operation of the business conducted by the Consultant as applicable to this Contract.
- 17. **PROJECT LICENSES AND PERMITS:** Offeror shall ensure that all licenses and permits, applicable to the work as specified herein, are maintained and current. Some examples of permits that may apply are:
 - A. Army Corp of Engineers 404 Permit
 - B. ADOT Permits
 - C. Southern Pacific Railroad permits
 - D. Arizona Department of Water Resources dewatering permit
 - E. City of Tucson permits
 - F. Federal, State and City authorizations
 - G. ADEQ Permits
 - H. Agricultural and Horticultural permits
 - I. FAA permits
- 18. **COST OF PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing, presenting, or providing any response to Step One of the selection process.
- 19. **PUBLIC RECORD:** All Statements of Qualifications submitted in response to this request shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.
- 20. **SUBSEQUENT EMPLOYMENT:** The City may cancel this solicitation 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 RFQ or any extension of the RFQ is in progress, an employee of, or a Consultant to any other party to this solicitation with respect to the subject matter of the RFQ.

21. **MINORITY/WOMAN BUSINESS ENTERPRISE:** Consultant agrees to give Minority/Woman Businesses the maximum practical opportunity to participate.
22. **PROJECT COMPLIANCE:** At a minimum, the Consultant should be aware that any of the following may apply to this project. Compliance with these is required and it shall be the responsibility of the Design-Build team to alert the City of any deviation from this requirement. **(Note: It is the Design-Build project team's sole responsibility to ensure that they comply with all applicable Federal, State and Local regulations. The inclusion of this list is for informational purposes only and is not intended to be all inclusive).**

FEDERAL:

1. The Hazard Communication Act, CFR 1910-1200- handling hazardous materials
2. Resource Conservation and Recovery Act, 42 USC 6901 et. Seq.- Hazardous waste disposal
3. 36 CFR 800 – Protection of Historical and Cultural Properties
4. National Historic Preservation Act of 1966
5. 23 CFR 771 – Environmental Impact and Related Procedures
6. Americans with Disabilities Act (ADA), PL 101-336
7. Section 4(f) of the Department of Transportation Act
8. Executive Order 11988 (Floodplain Management)
9. FHPM 7-7-3 - Procedures for Abatement of Highway Traffic Noise and Construction Noise
10. FHPM 7-7-9 – Air Quality Guidelines
11. National Environmental Policy Act of 1969, 1973 and supplements
12. Executive Order 11990 (Protection of Wetlands)
13. Wild and Scenic Rivers Act of 1968
14. Section 404 of the Clean Water Act of 1977
15. Federal Farmlands Act of 1981
16. FHWA Technical Advisory T6640.8m, “Guidance Material for the Preparation of Environmental Documents”
17. Section 1424 (e) of the Safe Drinking Water Act (Sole Source Aquifer Review).
18. 36 CFR 60 – Determinations of Eligibility for Inclusion in the National Register of Historic Places
19. Public Law – 91-646 – Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
20. Wilderness Act of 1964, Public Law 88-577
21. Arizona Desert Wilderness Act of 1990, Public Law 101-628
22. Resource Conservation and Recovery Act (RCRA)
23. Comprehensive Environmental Response, Compensation and Recovery Act of 1980 (CERCLA)
24. Superfund Amendments and Reauthorization Act (SARA)
25. United States Forest Service, Integrated Resource Management (3rd Edition), August 1990
26. Endangered Species Act
27. Other Authorities: OSHA, Occupational Safety & Health Administration
28. Other governmental authorities having jurisdiction over the design or implementation of the Project.

STATE:

1. Arizona Revised Statutes (ARS) Title 34 Section 34-104 - Use of proprietary specifications
2. ARS Title 41 Section 41-844 - Findings of subsurface archaeological remains
3. ARS Title 34 Section 34-401 - Designing for the physically disabled
4. Arizona Native Plant Law
5. Arizona Historic Preservation Law
6. State Water Quality Law
7. ADOT Action Plan
8. ADOT Highways Division Policy and Implementation Memorandum 89-05, “Preservation of Arizona’s Wetlands,” August 1, 1989
9. Noise Abatement Policy for State Funded Projects
10. Arizona Environmental Quality Act (EQA)

11. Hazardous Waste Management Act (HWMA)
12. Underground Storage Tank Act of 1986

LOCAL:

1. The Building Code of the City of Tucson
2. Drainage Report and/or Grading Permit
3. Industrial Wastewater Discharge Permit
4. Native Plant Preservation Ordinance
5. Local codes and ordinances relating to air quality, noise, dust abatement, light, etc.

23. INDEMNIFICATION: To the fullest extent permitted by law, Consultant, 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, 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 Consultant relating to work or services in the performance of this Contract, 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.

24. PRINCIPAL CONSULTANT'S RESPONSIBILITY: The Design Build Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Contract. The Consultant shall without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. Additionally, when modification to a construction contract is required because of an error or deficiency in the services provided under this architectural-engineering Contract, the City shall consider the extent to which the Consultant may be reasonably liable.

Neither the City's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the Consultant's negligent performance of any of the services furnished under this Contract.

If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

The Consultant agrees that the work to be performed pursuant to this agreement shall be under the full authority and responsible charge of the undersigned principal of the firm or officer of the corporation who must be the holder of a current Arizona Certificate of Registration issued by the Board of Technical Registration for the practice of architectural and/or engineering in the State of Arizona.

Any drawings, plans, specifications, and estimates to be prepared pursuant to this agreement shall be prepared by or under the personal direction of the undersigned qualified holder of an Arizona Certificate of Registration issued by the Arizona Board of Technical Registration.

The Consultant shall be responsible for the completeness and accuracy of all services rendered and correction of all errors of omission or commission on the drawings, specifications, and other documents notwithstanding prior approval by the City.

By signing the Contract, the Consultant affirms that it has the ordinary skill, knowledge, and judgement possessed by members of its profession, and that it will use reasonable and ordinary care and diligence in performing the work.

25 EXCLUSIVE POSSESSION: All work of authorship, including but not limited to calculations, designs, drawings, specifications, graphics, text, and all copyrightable works resulting from this Contract shall become property of the City.

Additionally, all services, information, computer program elements, reports, plans, specifications, and other deliverables which may be created under this Contract are the sole property of the City. Property of the City shall not be used or released by the Consultant or any other person except with prior written permission by the City.

All designs, inventions, or other intellectual property, and any refinement, modification, or improvement on any design, invention, or other intellectual property, conceived, created, or first reduced to practice as part of, or a result of, and activity undertaken by the Consultant pursuant to this agreement, shall become the exclusive property of the City. It is the intent of this paragraph that the City shall have exclusive ownership of all intellectual property created as a result of this Contract. The Consultant shall cooperate with the City in securing patents, or other certificates of property rights, and shall make such assignments to the City as are needed to effect the purposes of this paragraph.

26. CITY OF TUCSON BUSINESS LICENSE: Prior to the award of a Contract, the successful offeror must obtain a City of Tucson Business License or a written determination that a business license is not required issued by the City's Business License Section. The business license must remain valid throughout the life of this contract. Contractor must provide a valid copy of the business license or a written determination that a business license is not required prior to award and at contract renewal. Application for a City Business License can be completed at <http://www.tucsonaz.gov/etax>. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.

27.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.

28.CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-393 ET SEQ.: By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-393 et seq. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.

29. SEE ALSO: Attached Design Build Terms and Conditions and Sample General Conditions-Construction Services Agreement.

OFFER PAGE

TO THE CITY OF TUCSON:

The Undersigned hereby offers and agrees to enter into negotiations with the City to provide the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the solicitation.

For clarification of this offer, contact:

Company Name

Address

City State Zip

Signature of Person Authorized to Sign

Printed Name

Title

Name: _____

Phone: _____

Fax: _____

Email: _____

DESIGN BUILD TERMS AND CONDITIONS

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 to clarify, correct or change the Solicitation or Contract.

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

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

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

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

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

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

Contract - the written agreement and all associated attachments, drawings, addenda and change orders executed between the 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, or, in the case of a job-order contract, in the Notice to Proceed.

Contract Officer - is the City official 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.

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

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

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.

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

Guaranteed Maximum Price or GMP - means the sum of the maximum cost of the Work; the Design Builder’s construction fee; general conditions fee; taxes, bonds, insurances costs; and bid contingency as proposed and approved pursuant to this Contract. The approved GMP will be made part of this Contract by executing an amendment or additional amendments for phased construction.

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

Liquidated Damages – a sum set forth in the Contract documents that will be deducted from any monies due to the Contractor, not as a penalty, but as damages incurred by the City.

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

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

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

Preconstruction Services – is defined as advice during the design stage of the Work.
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 or Contract Services - the entire completed design and 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 - DESIGN-BUILDER'S SERVICES AND RESPONSIBILITIES

2.0 The following Sections prescribe the services and responsibilities required for the proper execution and completion of the Work by the Design-Builder. They are not organized in any specific order and may pertain to all phases of the work.

2.1 General Services

2.1.1 Design-Builder shall through personnel employed by Design-Builder, or procured from qualified, subconsultants or subcontractors perform all Contract Services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from this Contract.

2.1.2 The City hereby acknowledges its acceptance of the key personnel of the design-build team as submitted by Design-Builder in his proposal or amended subsequently during the selection process. At any time hereafter that the Design-Builder desires to reassign or change key personnel while performing under this Contract, the Design-Builder shall submit a request to reassign or change key personnel and the qualifications of the proposed new key personnel to the City for prior approval.

2.1.3 Design-Builder's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with City and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of City and Design-Builder.

2.1.4 The parties will meet within fourteen (14) days after execution of the Contract to discuss issues affecting the administration of the Contract Services, the project schedule as prescribed in Division 2.1.5 and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents. The Notice to Proceed date prescribed in Section 4.1 will be established.

2.1.5 Design-Builder shall prepare and submit, at least three (3) Days prior to the meeting contemplated by Division 2.1.4, a Project Schedule and Construction Management Plan (CMP) for the execution of the Contract Services for City's review and response.

2.1.6 Design-Builder shall provide City with a monthly status report detailing the progress of the Contract Services, including whether (i) the Contract Services are proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Contract Services for the Contract Price and within the Completion time(s).

2.2 Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required

drawings, specifications and other design submittals to permit Design-Builder to complete the Contract Services consistent with the Contract Documents. The Design-Builder and its design professionals shall seal with an Arizona registered professional seal all plans, works, and deliverables prepared by them for this Contract as required by state law.

- 2.2.2** The Design-Builder will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Contract. If the City objects, with reasonable cause, to any of the Design-Builder's design professionals, the Design-Builder shall take prompt corrective action acceptable to the City and, if required, remove such persons from the Project and replace with new design professionals agreed to by the City.
- 2.2.3** The Design-Builder understands and agrees that the City's authorized Contract Representative shall be the sole contact for administering this Contract. The Design-Builder is not precluded from discussing the Project, or its requirements with the Tenants or other entities which will ultimately use the facility, but all specific direction to or requests of the Design-Builder must be authorized by the City Contract Representative.
- 2.2.4** All work of authorship, including but not limited to calculations, designs, drawings, specifications, graphics, text, and all copyrightable works resulting from this Contract shall become property of the City. Additionally, all services, information, computer program elements, reports, plans, specifications, and other deliverables which may be created under this Contract are the sole property of the City of Tucson. Property of the City shall not be used or released by the Consultant or any other person except with prior written permission by the City.

All designs, inventions, or other intellectual property, and any refinement, modification, or improvement on any design, invention, or other intellectual property, conceived, created, or first reduced to practice as part of, or a result of, and activity undertaken by the Consultant pursuant to this agreement, shall become the exclusive property of the City. It is the intent of this paragraph that the City shall have exclusive ownership of all intellectual property created as a result of this Contract. The Consultant shall cooperate with the City in securing patents, or other certificates of property rights, and shall make such assignments to the City as are needed to effect the purposes of this paragraph.

2.3 Standard of Care for Design Professional Services and Corrections

- 2.3.1** The standard of care for all design professional services performed to execute the Contract Services shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Contract Services, which standards are to be set forth in an exhibit entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.
- 2.3.2** The Design-Builder shall be responsible for the completeness and accuracy of his plans, specifications, supporting data, and other work prepared or compiled under his obligation for this Project and shall correct, at his expense, all willful or negligent errors, omissions and acts therein which may be discovered. Correction of willful or negligent errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design-Builder. The cost of the design necessary to correct those errors attributable to the Design-Builder shall be charged to the Design-Builder. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the Design-Builder to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the City has accepted or approved the Design-Builder's work shall in no way relieve the Design-Builder of any of his responsibilities.

2.4 Project Schedule

- 2.4.1** The Project Schedule shall be initially submitted at the start of this Contract pursuant to Division 2.1.5 and updated and maintained throughout the Contract Services.
- 2.4.2** The Project Schedule shall be revised as required by conditions and progress of the Contract Services, but such revisions shall not relieve Design-Builder of its obligations to complete the Contract Services within the Completion Time(s), as such dates may be adjusted in accordance with the Contract Documents.
- 2.4.3** Updated Project Schedule shall be submitted monthly to the City five (5) Days prior to the Design-Builder's monthly payment request as prescribed in Article 7.

2.4.3.1 Design-Builder shall provide City with a monthly status report with each Project Schedule detailing the progress of the Contract Services, including whether (i) the Contract Services are proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, and (iii) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Contract Services for the Contract Price(s) and within the Completion Time(s).

2.4.3.2 With each Project Schedule submitted, the Design-Builder shall include a transmittal letter including the following.

- Description of problem tasks (referenced to field instructions, requests for information (RFIs), change order or claim numbers) as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
 - o Cause of the delay
 - o Corrective action and schedule adjustments to correct the delay
 - o Known or potential impact of the delay on other activities, milestones, and project completion date
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
 - o Pending change orders
 - o Time extension requests
 - o Other items
- Contract completion date status:
 - o If ahead of schedule, the number of Days ahead.
 - o If behind schedule, the number of Days behind.
- Other project or scheduling concerns

2.4.4 City's review of and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not relieve the Design-Builder from compliance with the requirements of the Contract Documents or be construed as relieving the Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Contract Services.

2.4.4.1 Upon the City's request, the Design-Builder shall participate in the review of the Design-Builder's Project Schedule submissions. The City may request the participation of Subconsultants and/or Subcontractors in these reviews, as determined necessary by the City.

2.4.5 The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the path of critical activities.

2.4.5.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates, and float times for all activities except critical activities and shall be presented in a time scaled graphical format for the Project as a whole.

2.4.5.2 The CPM diagram schedule shall indicate all relationships between activities.

2.4.5.3 The activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

2.4.5.4 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.

2.4.5.5 The schedule shall show milestones, including milestones for Owner-furnished information, and shall include activities for Owner-furnished equipment and furniture when those activities are interrelated with the Design-Builder's activities.

2.4.5.6 The schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service or other approved source.

2.4.5.7 The Project Schedule shall consider the City's and the Tenants' occupancy requirements showing portions of the Project having occupancy priority, and duration of the Work.

2.4.6 Float time shall be as prescribed below;

- 2.4.6.1** Float, slack time, or contingency within the schedule (i.e., the difference in time between the project's early completion date and the required contract completion date), and total float within the overall schedule, is not for the exclusive use of either the City or the Design-Builder, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the contract completion date.
- 2.4.6.2** The Design-Builder shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Completion Time.
- 2.4.6.3** Since float time within the construction schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in a savings of time to the Design-Builder, etc.). In such an event, the Design-Builder shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Completion Time is also exceeded.

2.5 Construction Management Plan

- 2.5.1** The CMP shall be initially submitted at the start of this Contract pursuant to Division 2.1.5 and updated and maintained throughout the Contract Services.
- 2.5.2** The CMP shall include:
- Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project,
 - Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities,
 - Alternate strategies for fast-tracking and/or phasing the construction,
 - Goal Compliance Strategy,
 - The number of separate sub-agreements to be awarded to Subcontractors and Suppliers for the Project construction,
 - Permitting strategy,
 - Safety and training programs,
 - Construction quality control,
 - Matrix summarizing each Project Team member's responsibilities and roles.
- 2.5.3** The Design-Builder shall add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of Work.

2.6 Design Services

- 2.6.1** Design-Builder and City shall agree upon any interim design submissions, as shown on the Project Schedule, that City may wish to review.
- 2.6.1.1** Within 7 Days after a scheduled submission, the Design-Builder and City shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or previously submitted design submissions.
- 2.6.1.2** The Design-Builder shall submit and distribute 10 (ten) hard copy sets of plans and specifications and one set of plans in AutoCAD format compatible with City of Tucson CADD technology.
- 2.6.1.3** Minutes of the meetings will be maintained by Design-Builder and provided within 5 Days following the design review meeting to all attendees for review.
- 2.6.1.4** City shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's Project Schedule.

- 2.6.1.5** Design-Builder shall not cause the design to proceed until City approves the interim design submissions as prescribed in this Division. The Design-Builder may allow the design to proceed at its own risk.
- 2.6.1.6** City's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Work. Neither City's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability to the City.
- 2.6.2** The Project design must meet all applicable Tucson and Pima County Standard Specifications for Public Improvements (2003 edition).
- 2.6.3** The Design-Builder shall avoid specification of construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof unless specifically approved in writing by the City.
- 2.6.4** The Project specifications must include applicable City supplemental conditions and special provisions as provided for in Division 3.2.2
- 2.6.5** The Design-Builder shall coordinate with private, public and City utilities (i.e., Information Technology Department, Utility Services Department) regarding standard utility issues and incorporate pertinent information in the plans.
- 2.6.6** The Design-Builder shall be responsible for scheduling, submitting, obtaining approval and retrieving of all required Construction Documents to the various required reviewing agencies.
- 2.6.7** Design-Builder (if applicable) shall be responsible for scheduling, preparing necessary exhibits and making presentation to any and all public groups and/or City Council.
- 2.6.7.1** The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting.
- 2.6.7.2** The Design-Builder shall provide the drawings in AutoCAD format compatible with City of Tucson standards.
- 2.6.7.3** The drawing format will be a 24" x 36" sheet size unless otherwise authorized in writing by the City.
- 2.6.7.4** The parties shall have a design review meeting to discuss, and City shall review and approve, the Construction Documents in accordance with the procedures set forth this Division.
- 2.6.7.5** Prior to commencement of Work, Design-Builder shall submit to the City the following.
- One set of approved Construction Drawings in AutoCAD format on electronic media (CD-ROM);
 - Five (5) print sets of approved Construction Drawings and ten (10) half-size sets; and
 - Five sets of specifications.
- 2.6.8** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.7 SMWBE Utilization

- 2.7.1** The Design-Builder agrees to meet the goals as set forth in the Design-Builder's Proposal by making available opportunities for the Small Minority and Woman-Owned Business Enterprises (SMWBEs), for utilization in the Work set forth within this Contract.

2.8 Government Approvals and Permits

2.8.1 Design-Builder shall obtain all necessary permits, approvals, and licenses, required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. **The Design-Builder is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

2.8.2 Copies of these permits and notices must be provided to the City's Contract Representative prior to starting the permitted activity.

2.8.3 Design-Builder is responsible for the cost of all other permits and review fees.

2.8.4 Design-Builder is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until the project is accepted. Arrangements for construction water are the Design-Builder's responsibility.

2.9 General Construction Services

2.9.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, taxes, inspection, testing, start-up, material, equipment, machinery, arrangements for temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents

2.9.2 **The Design-Builder shall completely and totally construct the Project and install the material therein for the City, in a good and workmanlike and substantial manner. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Contract Documents as amended.**

2.9.3 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.10 Pre-construction Conference

2.10.1 Prior to the commencement of any Work, the City's Representative will schedule a Pre-construction conference.

2.10.2 The purpose of this conference is to establish a working relationship between the Design-Builder, utility firms, and various City agencies. The agenda will include critical elements of the construction schedule, submittal schedule, cost breakdown of major lump sum items, Design-Builder Payment Requests and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.

2.10.3 The construction Notice to Proceed date will be established.

2.10.4 The Design-Builder shall provide a schedule of values based on the categories used in the buy out of the Work and identifying the construction contingency. The schedule of values will subdivide the Work into all items comprising the Work.

2.10.5 Minimum attendance by the Design-Builder shall be the Design-Builder's Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and the Design-Builder's safety officer

2.11 Supervision of Construction

2.11.1 Design-Builder's Representative shall at all times be present at the Site when construction activities are taking place.

2.11.1.1 All elements of the Work, such as concrete work, pipe work, etc., shall be under the direct supervision of a foreman or his designated representative on the Site, who shall have the authority to take actions required to properly carry out that particular element of the Work.

2.11.1.2 In the event of noncompliance of this Division, the City may require the Design-Builder to stop or suspend the Work in whole or in part. Such suspension, due to the Design-Builder's noncompliance shall not be considered a basis for an increase in the Contract Price or extension of Completion time.

- 2.11.2** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. City may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Completion time(s) shall be adjusted to the extent that City's decision impacts Design-Builder's cost and/or time of performance.
- 2.11.3** Any person employed by the Design-Builder or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the City, be removed from the Work by Design-Builder or Subcontractor employing such person, and shall not be employed again in any portion of Work without the written approval of the City. The Design-Builder or Subcontractor shall keep the City harmless from damages or claims which may occur in the enforcement of this section.
- 2.11.4** Design-Builder assumes responsibility to City for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.11.5** Design-Builder shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.12 Control of Construction Site

- 2.12.1** Throughout all phases of construction, including suspension of Work, Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or a portion of the Project for its intended use.
- 2.12.2** Design-Builder shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City.
- 2.12.3** Design-Builder shall maintain ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Design-Builder shall be responsible for the coordination of all Work to minimize disruption to building occupants and facilities.
- 2.12.4** In the event of abnormal weather conditions, such as windstorms, rainstorms, etc., the Design-Builder shall immediately inspect the Site and take all necessary actions to insure public access and safety are maintained.
- 2.12.5** Only materials and equipment, which are to be used directly in the Work, shall be brought to and stored on the Site by the Design-Builder. When equipment is no longer required for the Work, it shall be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of the Design-Builder.

2.13 Shop Drawings, Product Data and Samples

- 2.13.1** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents.
- 2.13.2** The Design-Builder shall review, approve, verify, and submit to the City three copies of each Shop Drawing, Product Data, Sample, and similar submittal required by the Contract Documents in accordance with the approved construction schedule as prescribed in Section 4.2 as to cause no delay in the Work or in the activities of the City or of separate contractors.

2.13.3 By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

2.13.4 The Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents unless the Design-Builder has specifically informed the City in writing of such deviation at the time of submittal and the City has given written approval to the specific deviation.

2.13.5 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.14 Quality Control, Testing and Inspection

2.14.1 All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

2.14.2 All construction materials to be used on the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection of the City.

2.14.3 The procedures and methods used to sample and test material will be determined by the City..

2.14.4 The City will select a pre-qualified City or Independent Testing Laboratory and will pay for initial City Acceptance Testing.

2.14.4.1 When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance will be paid for by the Design-Builder. Construction contingency cannot be utilized for the cost of re-testing.

2.14.4.2 When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

2.14.5 The Design-Builder will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the work and shall provide them access to the Work at all times.

2.14.6 At the option of the City, materials may be approved at the source of supply before delivery is started.

2.14.7 Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, shall be the responsibility of and shall be paid by the Design-Builder, unless otherwise provided in the Contract Documents.

2.14.8 Design-Builder's convenience and quality control testing and inspections shall be the sole responsibility of the Design-Builder and paid by the Design-Builder.

2.15 Trade names and Substitutions. Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number, unless indicated that no substitutions are permitted, substitute or alternate items may be permitted, subject to the following:

2.15.1 The substitution shall be submitted by Design-Builder in writing to the City.

2.15.2 The Design-Builder shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

2.15.3 The submittal shall state any required changes in the Construction Documents to adapt the design to the proposed substitution.

2.15.4 The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include

any adjustment in the Completion time created by the substitution. Substitutions will only be considered if they do not extend Completion time.

2.15.5 The Design-Builder if requested by the City shall submit Samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

2.15.6 The City will make the final decision and will notify the Design-Builder in writing as to whether the substitution has been accepted or rejected. If accepted, the Design-Builder will cause the construction documents to be revised as approved at the Design-Builder's cost.

2.15.7 The Design-Builder shall continue to perform the Work in accordance with the Contract Documents unless the City accepts the substitution and there is no extension of Completion time.

2.16 Project Record Documents

2.16.1 During the construction period, the Design-Builder shall maintain at the jobsite a set of blueline or blackline prints of the Construction Drawings and shop drawings for project record document purposes.

2.16.1.1 The Design-Builder shall mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Drawings. Give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings
- Depths of foundations below first floor
- Locations and depths of underground utilities
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order.
- Details not on original Construction Drawings.

2.16.1.2 Mark completely and accurately project record drawing prints of Construction Drawings or shop drawings, whichever is the most capable of indicating the actual physical condition. Where shop drawings are marked, show cross-reference on Construction Drawings location.

2.16.1.3 Mark project record drawings sets with red erasable colored pencil.

2.16.1.4 Note RFI Numbers Change Order numbers, etc as required to identify the source of the change to Construction Drawings.

2.16.1.5 The Design-Builder shall at the time of Substantial Completion, submit project record drawing prints and shop drawings to the City or its representative for review and comment.

2.16.2 Final project record drawings: Immediately upon receipt of the reviewed project record drawings from the City, the Design-Builder shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City:

2.16.2.1 A complete set of electronic Project Record Drawings prepared in AutoCAD format compatible with City of Tucson standards. Each drawing shall be clearly marked with "As-Built Document."

2.16.2.2 A complete set of reproducible mylars from the final AutoCAD drawings in the format compatible with City of Tucson standards.

2.16.2.3 The original copy of the project record drawings (redline mark-ups).

2.17 Project Safety

- 2.17.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.
- 2.17.2** Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- 2.17.3** Design-Builder shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's safety representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.
- 2.17.4** The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.
- 2.17.5** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirement.
- 2.17.6** Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Contract Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.17.7** Design-Builder's responsibility for safety under this Section is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

ARTICLE 3 - CITY'S SERVICES AND RESPONSIBILITIES

3.1 Duty to Cooperate

- 3.1.1** City shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.
- 3.1.2** City shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.2 Furnishing of Services and Information

- 3.2.1** Unless expressly stated to the contrary in the Contract Documents, City will provide, at its own cost and expense, for Design-Builder's information the following
 - 3.2.1.1** To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
 - 3.2.1.2** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
 - 3.2.1.3** A legal description of the Site;
 - 3.2.1.4** To the extent available, as-built and record drawings of any existing structures at the Site; and

- 3.2.1.5** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site.
- 3.2.1.6** To the extent available, Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- 3.2.2** City will provide all City standards, supplementary conditions and special provisions that shall be included in the plans and specifications for the Project. These may include but are not limited to; disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, quality control testing and termite treatment requirements.
- 3.2.3** City is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. City is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.
- 3.3** **City's Contract Representative.** City's Contract Representative shall be responsible for providing City-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. City's Contract Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.
- 3.4** **City's Separate Contractors.** City is responsible for all work performed on the Project or at the Site by separate contractors under City's control. City shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

ARTICLE 4 - COMPLETION TIME

4.1 Completion Time.

- 4.1.1** Completion Time shall be the times for performance of pre-construction services and for construction services.
- 4.1.2** Design Builder agrees that it will commence performance of the Contract Services and achieve the Completion Time.

4.2 Pre-construction Services

- 4.2.1** Pre-construction services shall be completed by the date specified in the Construction Services Agreement.
- 4.2.2** Pre-construction services shall commence upon the City issuing the Notice to Proceed (NTP) for this Agreement, unless the parties mutually agree otherwise.

4.3 Duration of the Work

- 4.3.1** The City's approval of the proposal will establish the Duration of the Work and guarantee Completion Times do not exceed the established schedule for the Project.

4.4 Liquidated Damages

- 4.4.1** The Design Builder understands that if Substantial Completion is not attained within the Completion Time as adjusted, City will suffer damages which are difficult to determine and accurately specify. Design Builder agrees that if Substantial Completion is not attained within the Completion Time as adjusted, Design Builder shall pay the City an amount per day as specified in the Construction Services Agreement.

ARTICLE 5 – CONTRACT PRICE

- 5.1 Contract Price.** The City shall pay Design-Builder (D-B) in accordance with the Construction Services Agreement an amount not exceed the Guaranteed Maximum Price as agreed to and subject to adjustments made in accordance with the Construction Services Agreement. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price shall include all costs, fees and charges applicable to the Work.
- 5.2 Schedule of Values.** Prior to the execution of the Contract, Design-Builder shall submit for City’s review and approval a schedule of values for all of the Contract Services. The Schedule of Values will subdivide the Contract Services into design and construction services and its respective parts and include values for all items comprising the Work
- 5.3 Guaranteed Maximum Price (GMP)**
- 5.3.1** The Guaranteed Maximum Price (GMP) is the sum of the maximum cost of the Work including the D-B’s construction fee, general conditions costs, sales tax, bonds, project specific insurance costs, and contingency(ies). The D-B guarantees to bring the Project within the GMP or they alone will be required to pay the difference between the actual cost and the GMP. If the construction contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual project cost than anticipated by the D-B, will revert to City.
- 5.3.2** The construction fee is a negotiated percentage applied to the cost of the work for the Contractor’s home office overhead, home office staff, and profit. The fee shall be converted to a fixed dollar amount that will not change with the actual cost of the work.
- 5.3.3** General Conditions are items that are project specific but not directly associated with any component of the Work. This may include superintendents and other site-based staff, site office and storage trailers, temporary sanitary facilities, temporary utilities, fencing, traffic control, and security.
- 5.4 Markups for Changes.** If the GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to the Construction Services Agreement. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the approved GMP.

SAMPLE

CONSTRUCTION SERVICES AGREEMENT

FOR

CONTRACT TITLE

PLAN NO.

JOB NO.

CONTRACT NO.

CITY OF TUCSON

TUCSON, ARIZONA

2010

BOB WALKUP - MAYOR

CITY COUNCIL

REGINA ROMERO
PAUL CUNNIGHAM
STEVE KOZCHIK

SHIRLEY SCOTT
RICHARD FIMBRES
KARIN UHLICH

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ARTICLE 1. DEFINITIONS

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

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 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.

2.2.3 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.

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

2.2.5 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.

2.2.6 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.
- 4.11.2** 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, 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 or services 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, 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.

4.13.2 The Contractor Agrees to:

- .1 Obtain insurance coverage of the types and amounts required in this subsection and keep such insurance coverage in force throughout the life of the Contract. The Contractor will provide satisfactory certificates of the required coverage to the Contracting Officer before beginning the Work. 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.
- .2 Include the City as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies with respect to liability arising out of the performance of the Work. The Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
- .3 Provide and maintain minimum insurance coverage as follows:

<u>Coverage Afforded</u>	<u>Limits of Liability</u>
Workers' Compensation	Statute
Commercial General Liability Insurance including: (a) Products & Completed Operations (b) Blanket Contractual (c) Explosion, Collapse & Underground Hazard	\$1,000,000 Bodily Injury and property damage Combined Single Limit
Automobile Liability Insurance including: (a) Non-owned (b) Leased (c) Hired Vehicles	\$1,000,000 Bodily Injury and property damage Combined Single Limit

[☒] **Checked If applicable:**

Builder's Risk

Contract Value

Insurance

(Less site preparation)

Including:

Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft.

Builder's Risk insurance shall be required on all vertical construction.

The City reserves the right, at its sole option, to furnish the Builder's Risk Insurance at the City's expense. In the event that the City exercises such right, Contractor shall reduce General Conditions and overhead accordingly.

.4 In the event any of the Work is subcontracted, the Contractor shall require the subcontractor to provide Workers' Compensation insurance for all of the subcontractor's employees engaged in the Work, unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation insurance. In case any class of employees engaged in hazardous work under the Contract is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's general liability insurance for the protection of such of their employees as are not otherwise protected.

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

ARTICLE 12. CONSTRUCTION SERVICES AGREEMENT

12.1 Project and Contract Price

12.1.1 Contract Name:

Contract Number:

12.1.2 Pricing:

12.2 Contract Time

12.2.1 Notice to Proceed. It is agreed that the Contract Representative will issue the Notice to Proceed with the Work to be performed under this Agreement within twenty (20) consecutive calendar days, or some other mutually agreed upon time period, after execution and delivery of this Contract, except in job order contracts where a separate Notice to Proceed will be issued for each individual job order.

12.2.2 Completion Time It is agreed that the Work to be performed under this Agreement shall be substantially completed not later than «CompletionDays» **CCD** (consecutive calendar days) after the day designated by the Contract Representative as the starting date. The Contractor agrees that said 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 may 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. If substantial completion does not occur within the agreed upon number of days, liquidated damages in the amount of \$«**Liquidated Damages**»/day will commence on the first day after the agreed days, until substantial completion is granted.

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. MWBE 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: _____
As Procurement Director, or his/her designee,
and Not Personally

Contractor

By: _____

Title: _____

APPROVED AS TO FORM this _____
day of _____, 20____.

As City Attorney and not personally

NOTE: The Contract Representative is

City of Tucson

FORMS

STATUTORY PAYMENT BOND

(Penalty of Bond must be 100% of Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That a _____,

as Principal, and _____,

as Surety, are held and firmly bound unto the City of Tucson, Arizona, a municipal corporation (hereinafter called the Obligee). in the penal sum of

_____ Dollars

(\$ _____), for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain contract with said Obligee dated _____, 20__ hereinafter called the Contract, for _____

_____ which Contract shall be deemed a part hereof as fully as if set forth herein, and under the terms thereof the Principal has agreed to furnish a bond such as herein set forth;

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall promptly pay all moneys due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, or in any amendment or extension of or addition to said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provision of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions, and limitations of said Title, Chapter and Article, to the same extent as if they were copies at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety named, on the _____ day of _____, 20__.

Principal

By _____

ATTEST:

Title

Surety

By _____
Attorney in Fact

Agency of Record

Agency Address

City and State

ATTEST:

Title

Form approved this 20th day of December, 2007. (Form with original signature of approval is on file in the City Clerk's Office.)

David L. Deibel
David L. Deibel, Principal Assistant City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the City Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

STATUTORY PERFORMANCE BOND

(Penalty of this bond must be 100% of Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That the City of Tucson, Arizona, a municipal corporation, by action of the
Purchasing Agent on _____, 20__, has awarded to _____
_____ hereinafter designated as the "Principal", a
Contract for the construction of _____

_____ which Contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein; and

WHEREAS, said Principal is required under the terms of said Contract, and the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we, the Principal and _____
_____,
a corporation organized and existing under the laws of the State of _____,
with its principal office in the City of _____, (hereinafter called
the Surety), as Surety, are held and firmly bound unto the City of Tucson, a municipal
corporation, (hereinafter called the Obligee), in the penal amount of _____
_____ Dollars (\$_____), for the payment whereof, the said
Principal and Surety bind themselves, and their heirs, administrators, executors, successors and
assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, the condition of this obligation is such that is the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

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

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court of a judge thereof.

IN WITNESS WHEREOF two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed

by the Principal and Surety named, on the ____ day of _____, 20__.

Principal

By _____

ATTEST:

Title

Surety

By _____
Attorney in Fact

Agency of Record

Agency Address

City and State

ATTEST:

Title

Form approved this 20th day of December, 2007. (Form with original signature of approval is on file in the City Clerk's Office.)

David L. Deibel
David L. Deibel, Principal Assistant City Attorney

NOTE: A certified copy of Power of Attorney of the persons signing for the Surety Company must be filed with the Bond. In the event the Power of Attorney attached hereto is revoked, the Surety shall notify the City Clerk directly in writing. Said Power of Attorney shall remain in full force and effect until such direct notice is given to the City.

**CONSENT OF SURETY TO FINAL PAYMENT AND
FULL RELEASE OF CONTRACT RETAINAGE OR SUBSTITUTE SECURITIES**

The undersigned Surety (hereinafter "Surety"), having provided the City of Tucson (hereinafter "City") with a payment bond for the payment of labor and material provided to the

Contractor _____

(hereinafter "Contractor") in connection with City of Tucson Contract No. _____
(hereinafter the "Project") hereby consents to final payment and full release of all retainage or substitute securities to Contractor held by City in connection with the Project.

Surety further releases City from all claims, past, present, future, known or unknown which it may assert or could have asserted against City as a result of City's final payment and release of the retainage or substitute securities held in connection with the Project.

This release is only intended to relieve City of any liability or responsibility in connection with final payment and full release of retainage or substitute securities to the Contractor in connection with the Project and shall in no way be construed to relieve Surety of any obligation under the payment bond issued for the Project.

IN WITNESS WHEREOF, the Surety has executed this instrument this _____ day of _____, 20____.

SURETY

Authorized Representative

Title: _____

STATE OF ARIZONA)

) SS.

COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this _____ day of _____

_____, 20____, by _____

_____, on behalf of _____

NOTARY PUBLIC

MY COMMISSION EXPIRES:

1. Rincon/Golf Links

9640 East Golf Links Road
Tucson, Arizona, 85711



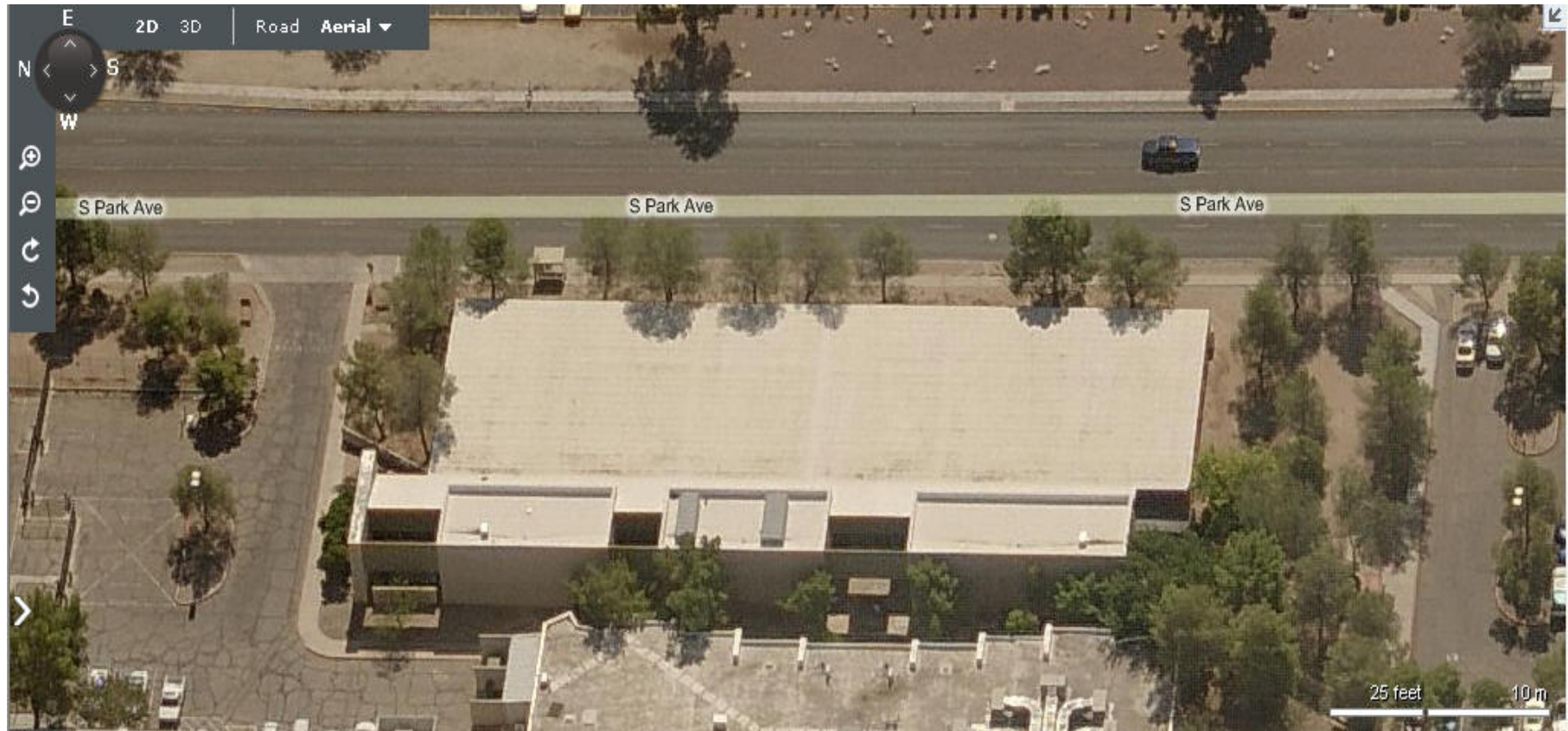
Approximate usable roof area: **15,772 SF**

(Site viewed from south to north)

2. **Thomas O. Price Service Center (TOPSC) Bldg. #1**

4004 South Park Avenue

Tucson, Arizona, 85714



Approximate usable roof area: **15,850 SF**

(Site viewed from west to east)

3. **Thomas O. Price Service Center (TOPSC) Bldg. #2**

4004 South Park Avenue

Tucson, Arizona, 85714

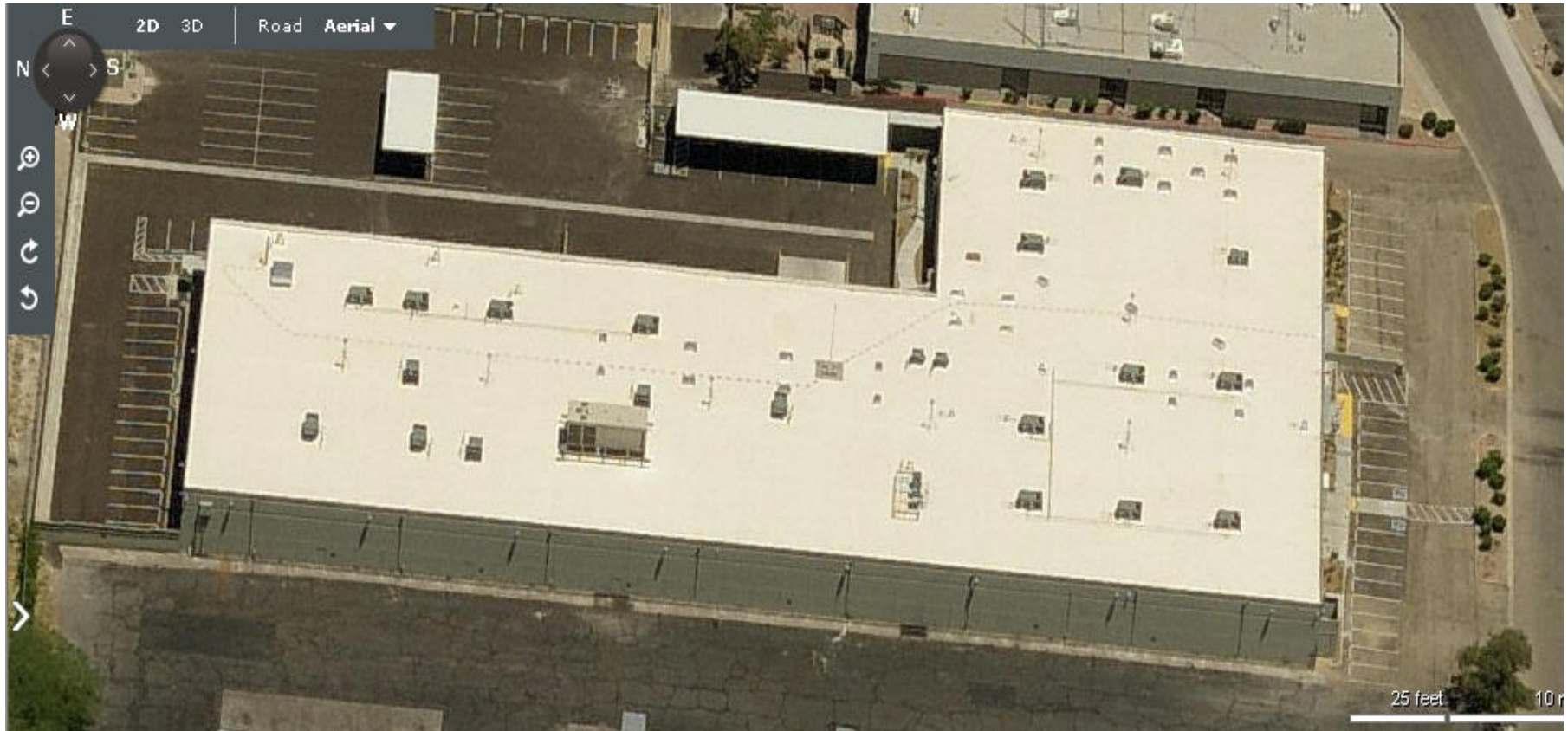


Approximate usable roof area:

(Site viewed from west to east)

4. Evidence Property & Identification Center (EPIC)

945 East Ohio St
Tucson, Arizona, 85714

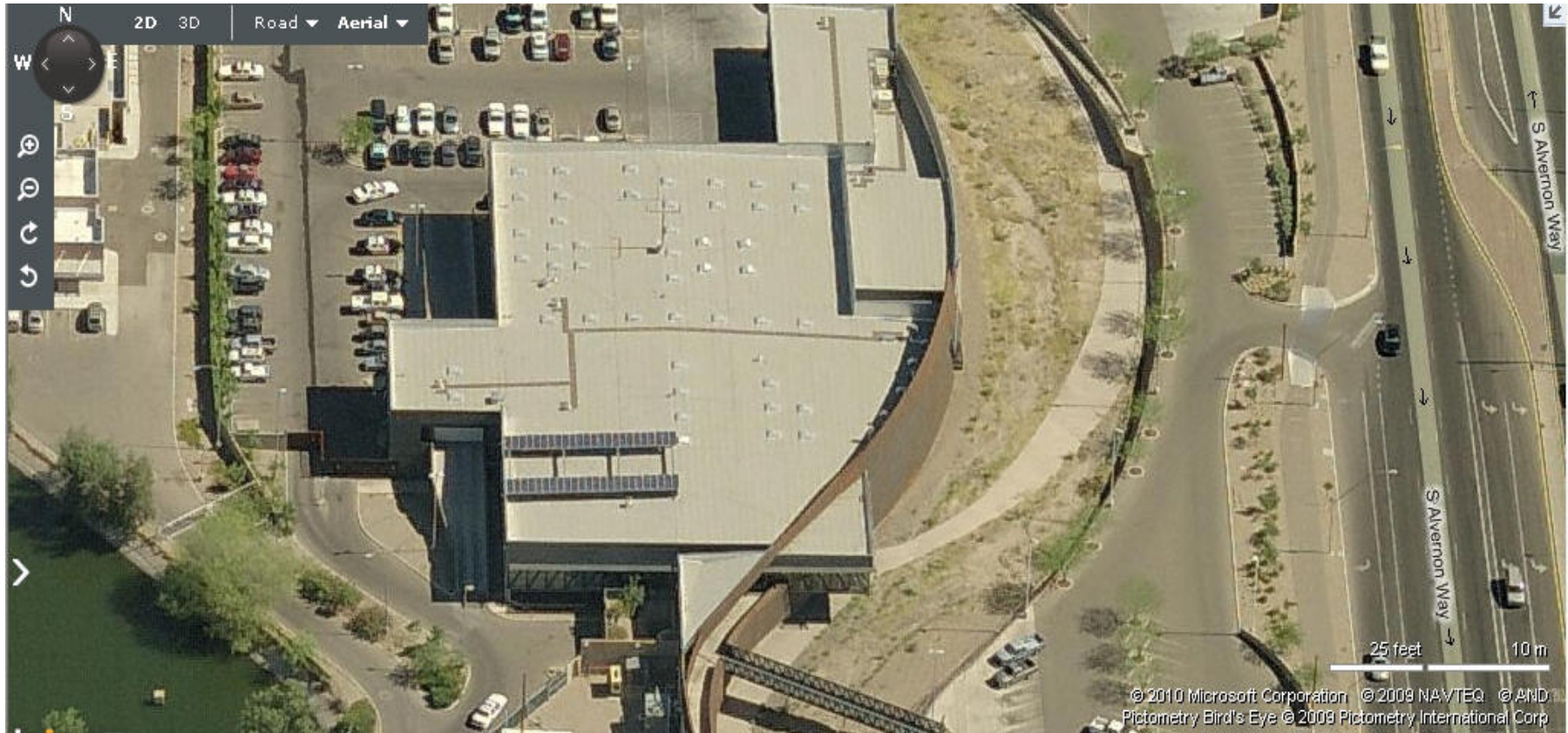


Approximate usable roof area: **26,731 SF**

(Site viewed from west to east)

5. **Hardesty Center**

1100 South Alvernon Way
Tucson, Arizona, 85711

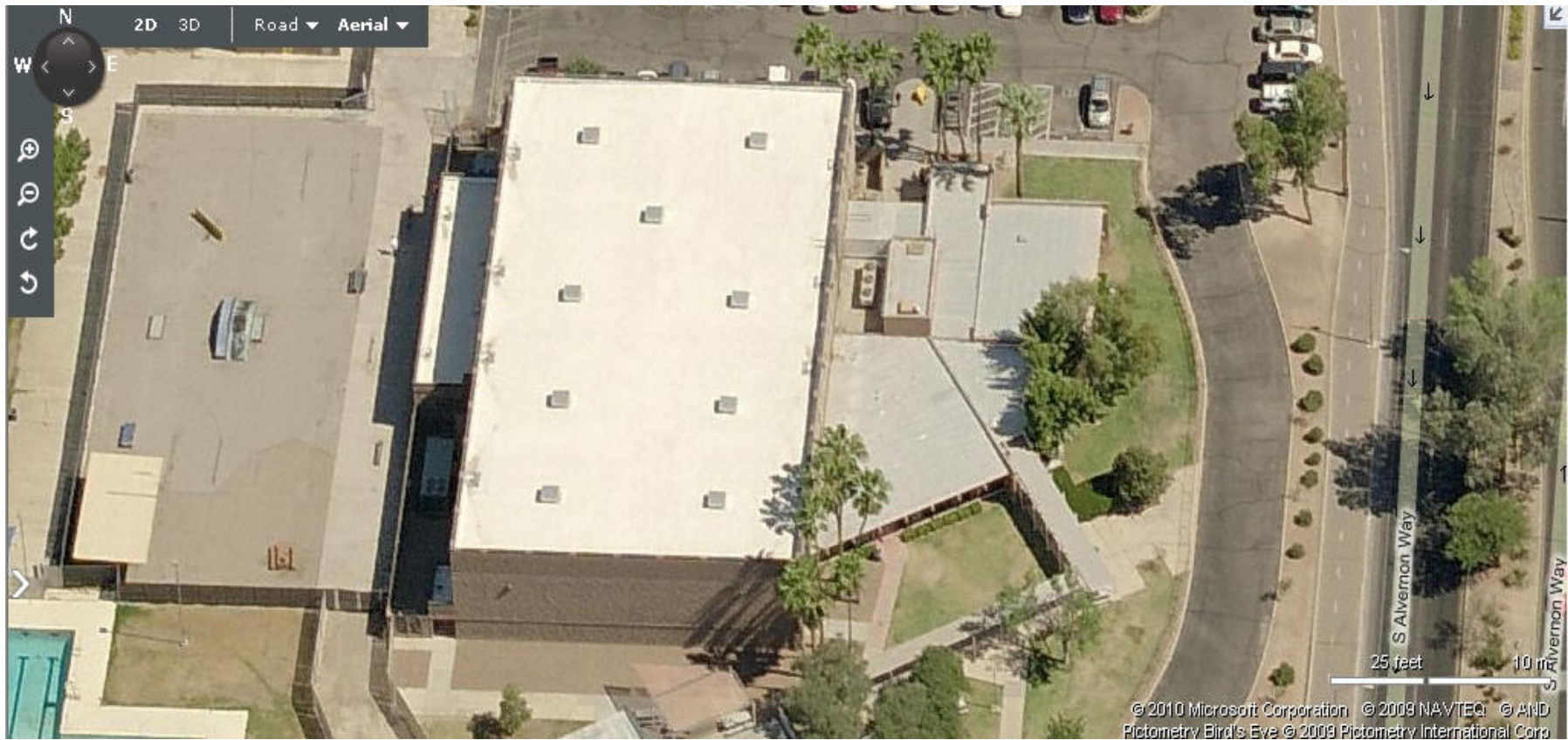


Approximate usable roof area: **30,000 SF**

(Site viewed from south to north)

6. Randolph Center

200 South Alvernon Way
Tucson, Arizona, 85711



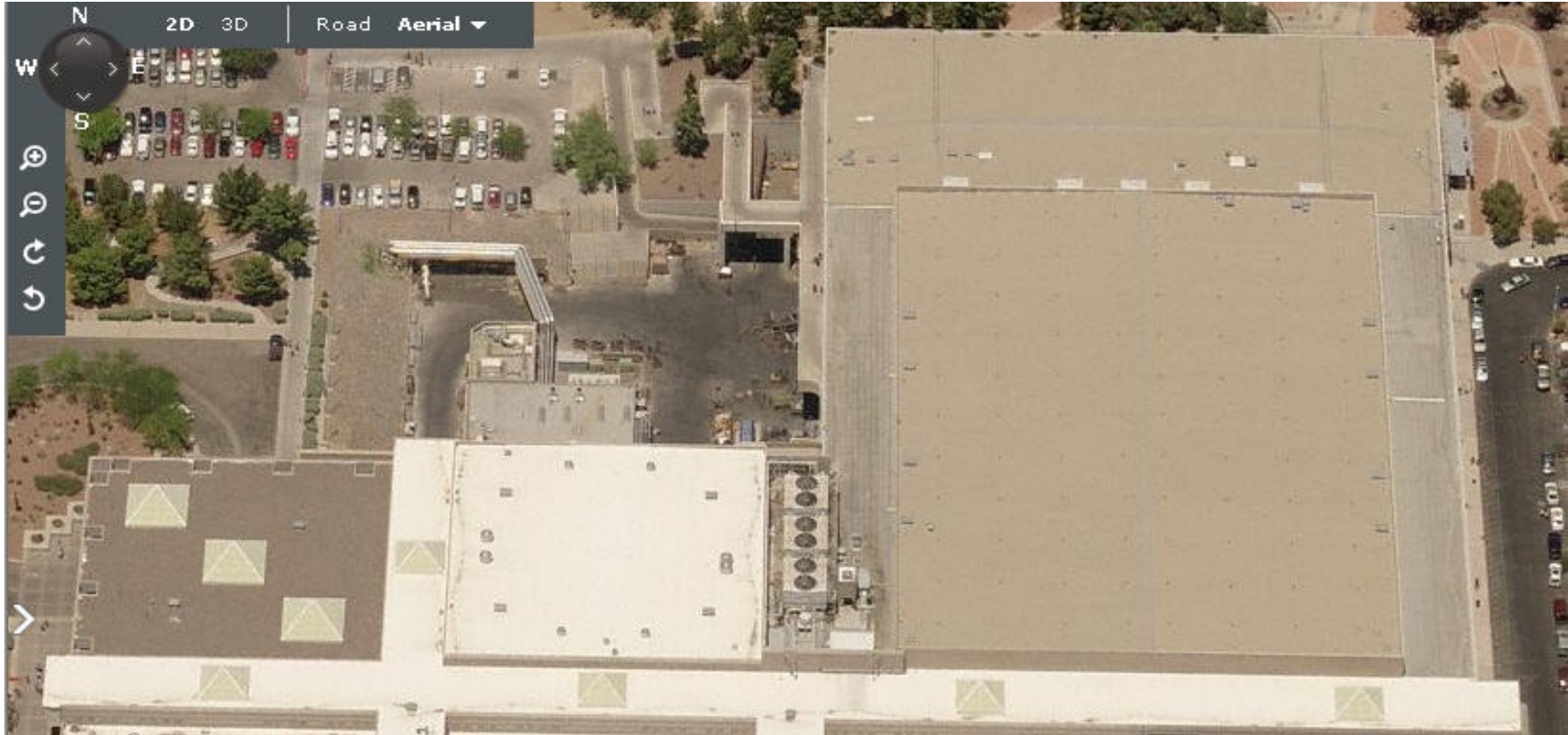
Approximate usable roof area: **15,046 SF**

(Site viewed from south to north)

7. **Tucson Convention Center (TCC) Ballroom***

260 South Church Avenue

Tucson, Arizona, 85701

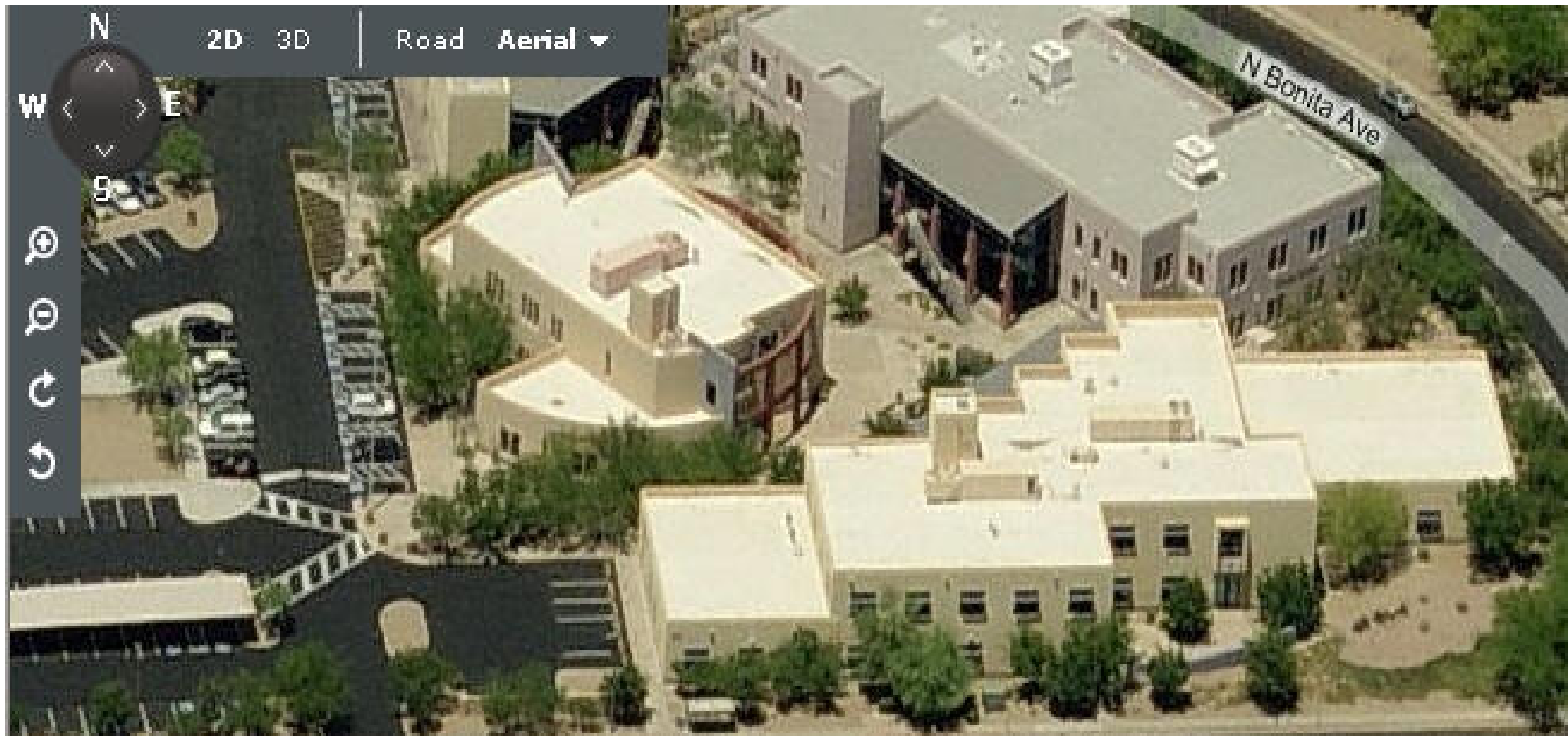


Approximate usable roof area: **60,000 SF (Arena)**

(Site viewed from south to north)

8. **Santa Rita/Sentinel**

310 North Commerce Park Loop
Tucson, Arizona, 85745



Approximate usable roof area: **13,294 SF**

(Site viewed from south to north)

9. Westside Police + 100 parking spaces

1310 West Miracle Mile
Tucson, Arizona, 85705

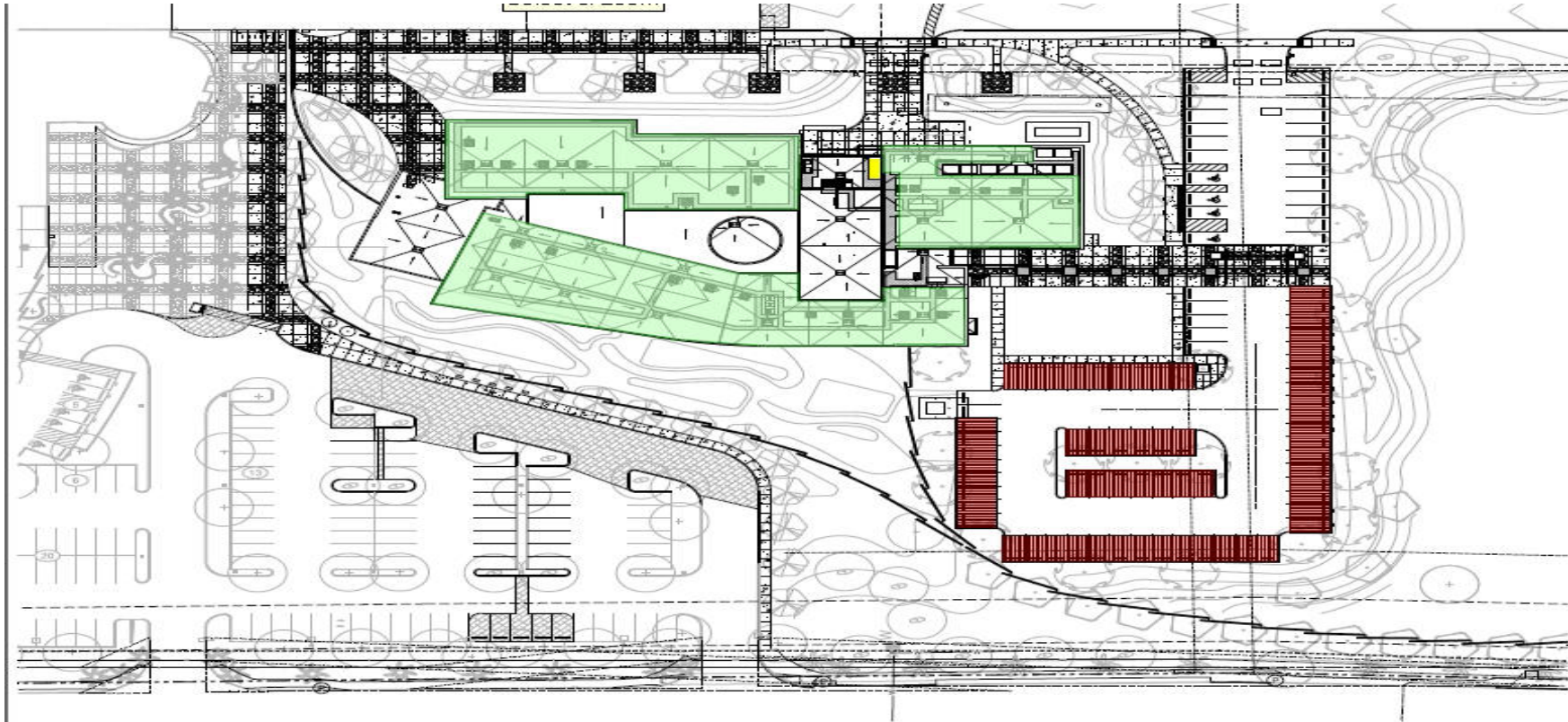


Approximate usable roof area: **5,324 SF**

(Site viewed from south to north)

10. Crime Lab* + 60 parking spaces

1306 West Miracle Mile Road
Tucson, Arizona, 85705



The green highlighted areas are where we anticipate roof PV going. The red areas are where we can install parking canopies (the PV provider will have to provide the whole thing - we won't have existing canopies to mount on). The yellow box on the roof is where the inverter will be located. If image is printed at a size of 30" x 40", image will be at a scale of 1/16" = 1'-0". Otherwise, this plan is not to scale.

*Information provided by WSM Architects

Approximate usable roof area: **15,000 SF**

(Site viewed from south to north)

City of Tucson Solar Project (RFQ #100421)

Attachment B

1. Rincon/Golf Links

Building name: Golf Links Library/Rincon Police Substation

Address: 9640 East Golf Links Road, Tucson, AZ 85711

Electrical Details:

- TEP Account #1210007154, Rate 40
- Meter #TR9-2272
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service A: 1000 amps
- Estimated support for PV system: 405 kW

Bill History:

Date	Amount	kWh Usage
7/7/2008	\$ 5,402.16	58,720
8/7/2008	\$ 5,884.11	64,000
9/8/2008	\$ 5,462.90	59,360
10/7/2008	\$ 5,389.84	58,560
11/5/2008	\$ 4,396.31	47,680
12/11/2008	\$ 4,148.43	46,560
1/12/2009	\$ 3,968.17	45,120
2/10/2009	\$ 3,717.35	41,760
3/11/2009	\$ 3,675.55	41,280
4/9/2009	\$ 4,149.20	46,720
5/11/2009	\$ 4,121.36	46,400
6/9/2009	\$ 5,573.68	56,320

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	564,480	\$50,955.00	\$0.0903
08/09	612,480	\$55,673.79	\$0.0909

City of Tucson Solar Project (RFQ #100421)

Attachment B

2. TOPSC #1

Building name: Thomas O. Price Service Center (TOPSC) Bldg. #1

Address: 4004 South Park Avenue, Tucson, AZ 85714

Electrical Details:

- TEP Account # 2910006584, Rate 40
- Meter #TR9-1317
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service: 400 amps
- Estimated support for PV system: 197 kW

Bill History:

Date	Amount	kWh Usage
7/14/2008	\$ 1,365.41	14,496
8/13/2008	\$ 1,566.96	16,704
9/11/2008	\$ 1,269.58	13,440
10/13/2008	\$ 1,471.21	15,648
11/11/2008	\$ 1,383.56	14,688
12/15/2008	\$ 1,457.83	16,224
1/19/2009	\$ 1,385.25	14,976
2/17/2009	\$ 1,318.36	14,208
3/17/2009	\$ 1,284.92	13,824
4/15/2009	\$ 1,293.27	13,920
5/14/2009	\$ 1,276.59	13,728
6/15/2009	\$ 1,510.79	14,304

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	186,048	\$16,739.05	\$0.0900
08/09	176,160	\$16,583.73	\$0.0941

City of Tucson Solar Project (RFQ #100421)

Attachment B

3. TOPSC #2

Building name: Thomas O. Price Service Center (TOPSC) Bldg. #2

Address: 4004 South Park Avenue, Tucson, AZ 85714

Electrical Details:

- TEP Account # 2910003075, Rate 40
- Meter #TR9-3666
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service: 3,000 amps
- Estimated support for PV system: 1,375 kW

Bill History:

Date	Amount	kWh Usage
7/14/2008	\$ 14,500.86	158,400
8/13/2008	\$ 17,962.16	196,320
9/11/2008	\$ 16,698.71	182,400
10/13/2008	\$ 15,559.06	169,920
11/11/2008	\$ 11,745.62	128,160
12/15/2008	\$ 11,224.30	128,160
1/19/2009	\$ 9,568.50	108,960
2/17/2009	\$ 9,693.87	110,400
3/17/2009	\$ 8,272.88	94,080
4/15/2009	\$ 8,523.67	96,960
5/14/2009	\$ 8,690.82	98,880
6/15/2009	\$ 12,937.58	128,640

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	1,501,440	\$134,000.95	\$0.0892
08/09	1,601,280	\$145,398.63	\$0.0908

4. EPIC

Building name: Evidence Property & Identification Center (EPIC)

Address: 945 East Ohio Street, Tucson, AZ 85714

Electrical Details for Meter A:

- TEP Account # 3710002539, Rate 40
- Meter #TR9-2459
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service A: 800 amps
- Estimated support for PV system: 360 kW

Bill History Meter A:

Date	Amount	kWh Usage
7/15/2008	\$ 4,080.42	44,240
8/18/2008	\$ 4,345.19	47,120
9/16/2008	\$ 4,286.74	46,480
10/15/2008	\$ 3,278.59	35,440
11/17/2008	\$ 673.20	6,960
12/17/2008	\$ 4,865.33	55,520
1/20/2009	\$ 2,637.66	29,360
2/19/2009	\$ 2,393.86	26,560
3/19/2009	\$ 2,379.95	26,400
4/21/2009	\$ 2,470.48	27,440
5/19/2009	\$ 2,878.03	31,520
6/18/2009	\$ 3,687.62	36,080

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	192,240	\$17,154.02	\$0.0892
08/09	413,120	\$37,977.07	\$0.0919

Electrical Details for Meter B:

- TEP Acct. # 2910000665, Rate 10
- Meter #TR9-7069
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service B: 1,200 amps
- Estimated support for PV system: 503 kW

Bill History Meter B:

Date	Amount	kWh Usage
7/15/2008		
8/18/2008		
9/11/2008	\$ 2,198.37	19,120
10/13/2008	\$ 12,672.74	112,880
11/11/2008	\$ 8,157.19	72,320
12/15/2008	\$ 6,242.29	55,120
1/19/2009	\$ 6,838.60	63,840
2/17/2009	\$ 6,803.04	57,760
3/17/2009	\$ 6,179.27	52,400
4/15/2009	\$ 5,825.43	49,360
5/14/2009	\$ 5,536.83	46,880
6/15/2009	\$ 6,798.67	56,880

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08			
08/09	586,560	\$67,252.43	\$0.1147

5. Hardesty Center

Building name: Hardesty Midtown Multiservice Center
Address: 1100 South Alvernon Way, Tucson, AZ 85711

Electrical Details:

- TEP Account #4110000529, Rate 40
- Meter # TR9-0291
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service: 1,200 amps
- Estimated support for PV system: 429 kW

Bill History:

Date	Amount	kWh Usage
7/16/2008	\$ 8,805.04	96,000
8/18/2008	\$ 10,737.46	117,120
9/17/2008	\$ 10,025.17	109,320
10/16/2008	\$ 8,677.32	94,560
11/17/2008	\$ 8,670.44	94,920
12/18/2008	\$ 7,360.97	84,240
1/21/2009	\$ 7,019.06	79,680
2/19/2009	\$ 6,381.71	72,360
3/23/2009	\$ 6,611.60	75,000
4/20/2009	\$ 7,259.38	82,440
5/19/2009	\$ 7,549.36	83,640
6/18/2009	\$ 9,113.78	90,360

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	1,085,040	\$96,695.30	\$0.0891
08/09	1,079,640	\$98,094.33	\$0.0909

6. Randolph Center

Building name: Randolph Recreation Center
Address: 200 South Alvernon Way, Tucson, AZ 85711

Electrical Details for Meter A:

- TEP Account #4110008551, Rate 40
- Meter #3AA-3157
- Main service voltage: 208 volts
- 3 phase service panel
- Main electrical service A: 800 amps
- Estimated support for PV system: 48 kW

Bill History Meter A:

Date	Amt	kWh Usage
7/16/2008	\$ 7,154.72	77,920
8/18/2008	\$ 7,742.21	84,320
9/17/2008	\$ 5,269.31	57,240
10/16/2008	\$ 5,554.23	60,360
11/17/2008	\$ 4,863.64	53,040
12/18/2008	\$ 3,545.22	40,320
1/21/2009	\$ 3,250.66	36,400
2/19/2009	\$ 3,160.09	35,360
3/23/2009	\$ 3,236.71	36,240
4/20/2009	\$ 3,086.96	34,520
5/19/2009	\$ 3,759.96	41,200
6/18/2009	\$ 5,359.22	52,800

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	608,040	\$54,544.63	\$0.0897
08/09	609,720	\$55,431.40	\$0.0909

Electrical Details for Meter B:

- TEP Account # 4110000572, Rate 40
- Meter # TR9-10206
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service B: 600 amps
- Estimated support for PV system: 225 kW

Bill History Meter B:

Date	Amount	kWh Usage
7/16/2008	\$ 4,388.59	47,616
8/18/2008	\$ 5,547.66	60,288
9/17/2008	\$ 4,180.07	45,312
10/16/2008	\$ 4,267.74	46,272
11/17/2008	\$ 4,021.47	43,776
12/18/2008	\$ 3,194.93	36,288
1/21/2009	\$ 2,822.95	31,488
2/19/2009	\$ 2,538.74	28,224
3/23/2009	\$ 2,906.54	32,448
4/20/2009	\$ 3,240.91	36,288
5/19/2009	\$ 3,321.40	36,288
6/18/2009	\$ 4,169.30	40,896

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07-08	439,680	\$39,615.06	\$0.0901
08-09	485,184	\$44,367.40	\$0.0914

7. TCC

Building name: Tucson Convention Center (TCC) Ballroom
Address: 260 South Church Avenue, Tucson, AZ 85701

Electrical Details for Meter A:

- TEP Account # 2910002930, Rate 40
- Meter #TR9-5486
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service A: 2,000 amps
- Estimated support for PV system: 835 kW

Bill History Meter A:

Date	Amount	kWh Usage
9/11/2008	\$16,561.75	180,900
10/13/2008	\$10,205.98	111,300
11/11/2008	\$11,877.11	129,600
12/15/2008	\$12,972.94	148,200
1/19/2009	\$ 8,387.80	95,400
2/17/2009	\$ 8,727.40	99,300
3/17/2009	\$10,608.14	120,900
4/15/2009	\$ 7,630.30	86,700
5/14/2009	\$ 8,413.94	95,700
6/15/2009	\$ 9,345.71	92,700
7/14/2009	\$11,046.78	109,500
8/17/2009	\$10,952.46	106,500

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	1,565,400	\$140,093.92	\$0.0895
08/09	1,465,200	\$133,055.71	\$0.0908

Electrical Details for Meter B:

- TEP Account #2910009067, Rate 40
- Meter #TR9-4025
- Main service voltage: 208 volts
- 3 phase service panel
- Main electrical service B: 3,000 amps
- Estimated support for PV system: 660 kW

Bill History Meter B:

Date	Amount	kWh Usage
7/14/2008	\$ 3,739.04	40,500
8/13/2008	\$ 5,820.23	63,300
9/11/2008	\$ 3,576.28	38,700
10/13/2008	\$ 3,220.12	34,800
11/11/2008	\$ 3,850.23	41,700
12/15/2008	\$ 4,675.30	53,100
1/19/2009	\$ 3,163.57	35,400
2/17/2009	\$ 3,320.29	37,200
3/17/2009	\$ 3,999.47	45,000
4/15/2009	\$ 3,059.09	34,200
5/14/2009	\$ 3,032.97	33,900
6/15/2009	\$ 3,619.13	35,400

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	529,800	\$47,004.83	\$0.0887
08/09	493,200	\$44,647.97	\$0.0905

8. Santa Rita/Sentinel

Building name: Santa Rita and Sentinel Buildings

Address: 310 North Commerce Loop Road, Tucson, AZ 85745

Electrical Details:

- TEP Account #2410007406, Rate 40
- Meter #TR9-3111
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical servicing both Santa Rita and Sentinel buildings: 1,600 amps
- Estimated support for PV system: 450 kW at main switchboard and 145 kW for panel designated HMDL (fed from main switchboard)

Bill History:

Date	Amt	kWh Usage
7/10/2008	\$ 7,089.00	77,200
8/12/2008	\$ 7,874.01	85,800
9/10/2008	\$ 7,092.02	77,200
10/13/2008	\$ 6,105.78	66,400
11/10/2008	\$ 5,941.42	64,600
12/15/2008	\$ 5,988.62	68,000
1/19/2009	\$ 7,371.50	84,200
2/16/2009	\$ 6,071.72	68,800
3/16/2009	\$ 5,984.65	67,800
4/14/2009	\$ 5,601.56	63,400
5/13/2009	\$ 5,671.22	64,200
6/18/2009	\$ 7,444.61	74,000

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	871,600	\$77,939.75	\$0.0894
08/09	861,600	\$78,273.58	\$0.0908

9. Westside Police + 100 parking spaces

Building name: Westside Police Substation

Address: 1310 West Miracle Mile, Tucson, AZ 85705

Electrical Details:

- TEP Account #2910000647, Rate 40
- Meter #TR9-6514
- Main service voltage: 480 volts
- 3 phase service panel
- Main electrical service: 3,000 amps
- Estimated support for PV system: 1,350 kW

Bill History:

Date	Amt	kWh Usage
7/14/2008	\$ 1,181.39	12,480
8/13/2008	\$ 14,418.71	157,500
9/11/2008	\$12,260.63	133,800
10/13/2008	\$ 11,575.76	126,300
11/11/2008	\$ 9,685.47	105,600
12/15/2008	\$10,643.39	121,500
1/19/2009	\$ 11,313.39	129,000
2/17/2009	\$ 10,817.09	123,300
3/17/2009	\$10,033.45	114,300
4/15/2009	\$ 10,581.99	120,600
5/14/2009	\$ 9,981.23	113,700
6/15/2009	\$10,724.90	106,500

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
07/08	33,440	\$2,984.13	\$0.0892
08/09	1,364,580	\$123,217.40	\$0.0903

10. Crime Lab + 60 parking spaces

Building name: Crime Lab

Address: 1306 West Miracle Mile Road, Tucson, AZ 85705

Electrical Details:

- Crime Lab is in the process of being built, thus all data is being estimated.
- These numbers are from the model - the actual energy use of the building will vary from these calculations.

Bill History*:

Date	Amt	kWh Usage
January	\$5,232.26	57,815
February	\$4,739.49	52,370
March	\$5,846.75	64,605
April	\$5,333.80	58,937
May	\$6,759.45	74,690
June	\$7,820.11	86,410
July	\$8,357.13	92,344
August	\$9,006.38	99,518
September	\$7,057.55	77,984
October	\$6,292.01	69,525
November	\$5,365.75	59,290
December	\$5,097.77	56,329

Annual Cost and Usage			
Fiscal Year	Total Use (kWh)	Total Cost	\$/kWh
Model	849,817	\$76,908.44	\$0.0905

*Monthly kWh usage information estimated by WSM Architects

City of Tucson Solar Project: RFQ #100421: ATTACHMENT C

On February 17, 2009 President Obama signed the American Reinvestment and Recovery Act of 2009 (ARRA, Act, or the "Recovery Act") as an economic stimulus.

By executing this contract, the Contractor certifies to the City and in addition, agrees that it will comply with all requirements and applicable regulations specified in this bid and the American Reinvestment and Recovery Act of 2009.

This Design Build for the City of Tucson Solar Projects will be funded with funds appropriated by the American Reinvestment and Recovery Act of 2009. This procurement is subject to the Federal procurement rules, 24 CFR Part 85. All applicable federal rules and regulations are incorporated by reference herein notwithstanding the fact that they may not be specifically referenced in this solicitation.

Applicable federal laws, regulations and requirements include, but are not limited to the following:

ITEM ONE (1): BUY AMERICAN USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS

- (a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- (b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that—
 - (1) applying subsection (a) would be inconsistent with the public interest;
 - (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
- (c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
- (d) This section shall be applied in a manner consistent with United States obligations under international agreements.

Contractor may be required to submit certificates of compliance from all suppliers of iron, steel or manufactured goods certifying compliance with section 1605 of the American Reinvestment and Recovery Act of 2009.

ITEM TWO (2): WAGE RATE REQUIREMENTS

SEC. 1606. Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

The following provisions shall apply

Davis Bacon Act which is located at 29CFR5.5

ITEM THREE (3): RIGHTS TO INSPECTION

ACCESS OF OFFICES OF INSPECTOR GENERAL TO CERTAIN RECORDS AND EMPLOYEES.

(a) ACCESS.—With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized—

(1) to examine any records of the Contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

(b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

ITEM FOUR (4): WHISTLEBLOWER PROTECTIONS

PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS

(a) No employee of any non-Federal employer receiving covered funds may be discharged, demoted, or otherwise discriminated against as reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board (hereafter the "Board"), an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

(1) gross mismanagement of an agency contract or grant relating to covered funds;

(2) a gross waste of covered funds;

(3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;

(4) an abuse of authority related to the implementation or use of covered funds; or

(5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) The term "covered funds" means any contract, grant, or other payment received by any non-Federal employer if the Federal Government provides any portion of the money or property that is provided, requested, or demanded at least some of the funds are appropriated or otherwise made available by the Recovery Act.

(c) The rights and remedies afforded to employees by this Article and Section 1553 of Division I of the Act may not be waived by any agreement, policy, form, or condition of employment. No dispute arising under this Article shall be subject to any pre-dispute requirement for arbitration, except that an arbitration requirement in a collective bargaining agreement shall be enforceable with respect to disputes arising under that agreement.

(d) CONTRACTOR must post a notice of the employee rights and remedies under this Article and Section 1553 of Division I of the Act in a prominent and clearly visible location accessible to employees, and require each subcontractor at every tier to do so.

Employee Notice of Rights is attached

(e) This Article shall be included in all subcontracts at every tier.

(f) Any confirmed incident of reprisal under this Article or Section 1553 of the Act or any failure to comply with the requirements of this Article or Section 1553 of the Act may be justification for termination of the Contract for cause.

ITEM FIVE (5): REPORTING

By executing this Amendment, Contractor agrees to comply with all reporting requirements regarding labor hours and the estimated number of jobs created or retained as required by Division A, Title XV, Section 1512, subsection (c)(3)(D), of the American Reinvestment and Recovery Act of 2009.

ITEM SIX (6): CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

By executing this Amendment, Contractor certifies to the City and in addition, agrees that, in any proposal submitted to the City in connection to this Agreement, Contractor shall further certify to the City that neither Contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction evidenced by this Agreement by any federal department or agency, and further agrees to comply with the requirements of Appendix B to 24 C.F.R. Part 24, and subpart C of the OMB guidance set forth in 2 C.F.R. Part 180, as supplemented by 2 C.F.R. Part 2424.

No part of the contract shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

ITEM SEVEN (7): REGISTRATION REQUIREMENTS

Contractor shall ensure that they have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

ITEM EIGHT (8): UTILIZATION OF SMALL BUSINESS

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

ITEM NINE (9): LOBBYING RESTRICTIONS

By accepting funds you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate with Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

ITEM TEN (10): DRUG-FREE WORKPLACE

Contractor must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.).