

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT
AND
RICK ENGINEERING COMPANY**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of Nov 31, 2013, between the Rio Nuevo Multipurpose Facilities District, an Arizona tax levying public improvement district (the "District"), and Rick Engineering Company, an Arizona corporation ("Rick Engineering").

RECITALS

A. After a competitive procurement process, the City of Tucson, Arizona ("Tucson"), entered into Contract No. 120365-07 dated February 7, 2012, as amended by that certain Amendment No. One (1) dated February 12, 2013 (collectively, the "On-Call Professional Services Contract"), for Rick Engineering to provide professional survey services. A copy of the On-Call Professional Services Contract, as amended, is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The District is permitted, pursuant to A.R.S. Section 11-952, and the Amended and Restated Intergovernmental Agreement between the City of Tucson, the City of South Tucson and the District, dated March 22, 2011, to purchase such services under the On-Call Professional Services Contract, at its discretion and with the agreement of the awarded Rick Engineering, and the On-Call Professional Services Contract permits its cooperative use by other public entities including the District.

C. The District and Rick Engineering desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the On-Call Professional Services Contract, (ii) establishing the terms and conditions by which Rick Engineering may provide the District with services, as more particularly set forth in the Scope of Work set forth in Exhibit B hereto (the "Services"), related to the Tucson Convention Center Arena Renovation Project (the "Project"), and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Rick Engineering hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2014 or upon completion of the Project, whichever is earlier (the "Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement or the On-Call Professional Services Contract.

2. Scope of Work. The Scope of Work for this Agreement on the Project is set forth in Exhibit B hereto.

3. Compensation. The District shall pay Rick Engineering, an aggregate amount not to exceed \$49,518.27 for the Services at the unit rates as set forth in the On-Call Professional Services Contract.

4. Payments. The District shall pay Rick Engineering monthly, based upon Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the On-Call Professional Services Contract, and (ii) document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the On-Call Professional Services Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that Rick Engineering and its subcontractors are complying with the warranty under Section 6 below, Rick Engineering's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Rick Engineering and its subcontractors' employees who perform any work or Services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the District, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Rick Engineering's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement, and (ii) evaluation of Rick Engineering's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the District to audit Records as set forth in this Section, Rick Engineering and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the District shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the District to Rick Engineering pursuant to this Agreement. Rick Engineering and its subcontractors shall provide the District with adequate and appropriate workspace so that the District can conduct audits in compliance with the provisions of this Section. The District shall give Rick Engineering or its subcontractors reasonable advance notice of intended audits. Rick Engineering shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, Rick Engineering and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Rick Engineering's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the District.

7. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, Rick Engineering certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this section the term “scrutinized business operations” shall have the meaning set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the District determines that Rick Engineering submitted a false certification, the District may impose remedies as provided by law including terminating this Agreement.

8. Conflict of Interest. This Agreement may be canceled by the District pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Pima County, Arizona.

10. Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep Rick Engineering fully informed as to the availability of funds for this Agreement. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the District governing board fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the District and Rick Engineering shall be relieved of any subsequent obligation under this Agreement.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any District-approved Work Orders, invoices and the On-Call Professional Services Contract, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the On-Call Professional Services Contract (collectively, the “Unauthorized Conditions”), other than the District’s project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the District of any Work Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the On-Call Professional Services Contract shall not alter or relieve Rick Engineering from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Rights and Privileges. To the extent provided under the On-Call Professional Services Contract, the District shall be afforded all of the rights and privileges afforded to Tucson and shall be the “City” (as defined in the On-Call Professional Services Contract) for the purposes of the On-Call Professional Services Contract.

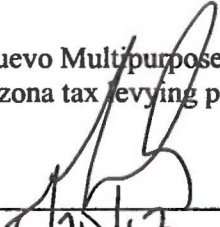
13. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 12 above, the District shall be afforded all of the insurance coverage and indemnifications afforded to the City to the extent provided under the On-Call Professional Services Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the District under this Agreement including, but not limited to, Rick Engineering's obligation to provide the indemnification and insurance. In any event, Rick Engineering shall indemnify, defend and hold harmless the District and each governing board member, officer, employee or agent thereof (the District and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or Services of Rick Engineering, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

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

"District"

Rio Nuevo Multipurpose Facilities District,
an Arizona tax levying public improvement district



5/31/13

ATTEST:

 5/31/13

Clerk/Secretary

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"Rick Engineering"

Rick Engineering Company,
an Arizona corporation

By: 

Name: Douglas E. Schneider

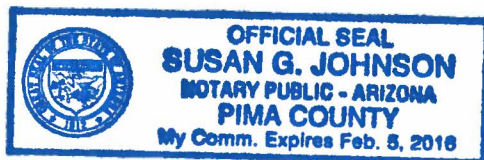
Title: Associate, Assistant Vice President

STATE OF ARIZONA)
) ss.
County of Pima)

On this, the 16th day of May, 2013, before me, personally appeared Douglas E. Schneider, the Associate, Assistant VP of Rick Engineering Company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the foregoing Cooperative Purchasing Agreement between Rio Nuevo Multipurpose Facilities District, an Arizona tax levying public improvement district, on behalf of the District, and Rick Engineering Company, an Arizona corporation.


Notary Public

(Affix notary seal here)



**EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE DISTRICT
AND
RICK ENGINEERING COMPANY**

[On-Call Professional Services Contract]

(See following pages.)

CITY OF TUCSON



Contract 120365-07

ARRA
On-Call Professional Survey Services

RICK ENGINEERING

CITY OF TUCSON DEPARTMENT OF PROCUREMENT
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701
P. O. BOX 27210, TUCSON, AZ 85726-7210

CONTRACT NO. 120365-07
PAGE 1 OF 21
CONTRACT OFFICER: MATT HAUSMAN.
PH: (520) 837-4123 / FAX: (520) 791-4735

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I. INTRODUCTION

The City of Tucson, hereinafter referred to as "COT" has conducted a competitive ONE-STEP process to retain UP TO EIGHT (8) CONSULTANT(s) to provide professional surveying services for the COT Transportation Department and other City Departments. Federal Highway Administration (FHWA), Federal Transit Administration (FTA), American Reinvestment and Recovery Act (ARRA), Housing and Urban Development (HUD), local and/or Regional Transportation Authority (RTA) funding may be utilized on individual projects under the Contract. Therefore, all FHWA, FTA, ARRA, HUD, federal, state and local requirements will be followed as necessary and the RTA shall be listed as additionally insured and as an additional indemnitee. FTA, ARRA and HUD Terms, Conditions and Certifications are included in Exhibit B.

II. SCOPE OF WORK - MISCELLANEOUS SURVEYING SERVICES

This professional services contracts shall provide for all aerial and ground survey work for property surveys, roadway and other construction surveys, layout services, engineering, parcel, easement, right-of-way, and A.L.T.A. surveys, calculations, drafting, monumentation, preparation of legal descriptions and exhibits, and other professional tasks associated with the maintenance, acquisition, or disposition of City-owned property. Drafting of all surveys for recordation and the clerical responsibility of typing legal descriptions and/or reports are also associated tasks.

It is the intent of the City of Tucson to engage, through this professional services contract, the Consultant's Survey Crews as defined in this contract. Consultant agrees to render professional services promptly (within two (2) calendar days) and diligently upon receipt of a notice to proceed.

The Consultant shall designate a representative to act as Contract Liaison. All work assignments, direction and control of the survey crews shall be facilitated through the Contract Liaison. The Contract Liaison does not have the authority to act on behalf of the City. It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint-venturer or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Consultant shall not be entitled to compensation in the form of salaries, or to be paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date. The City shall not provide any insurance coverage to the Consultant, including Workers Compensation coverage. The Consultant is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any.

1. CONSULTANT STAFF

The Consultant shall provide a three (3) member survey crew properly trained and completely equipped to perform the stated survey services, a Survey Technician to perform calculation, drafting, and legal description typing services, and a Professional Land Surveyor registered in the State of Arizona, who will be solely responsible for all right-of-way, monumentation, surveys and legal descriptions. All work is to be performed to

City standards or as modified by the City to meet the requirements of a specific project and/or construction contractor.

Note: GPS equipment will now be considered standard equipment and will no longer be the basis for billing at a different rate.

When deemed appropriate by the City, or as requested with City approval by the Consultant, a two (2) member crew shall be furnished at the negotiated rates. The Survey Technician shall also be furnished at the negotiated rate if requested by the City.

Consultation by the Consultant's Survey Party Chief with the Consultant's Principal shall not form the basis for Consultant principal charges against this contract, except by specific prior permission of the City Surveyor or designated representative. Such charges shall be at the negotiated hourly rate.

The Consultant shall utilize the survey crew chief and designated responsible Professional Land Surveyor registered in the State of Arizona as indicated in the proposal for acquiring this contract. Any change of staff from those set forth in the proposal must have the prior written approval of the City Surveyor or designated representative. Replacement personnel shall be equally qualified based on the evaluation criteria set forth in the Request for Qualifications.

- A. The Consultant, prior to accepting any assignment, shall attend a project assignment meeting to discuss the scope and time frame of the project. A City representative will contact the Consultant to inform the Consultant of the date, time, and place of said meeting.

2. CONSTRUCTION LAYOUT

The assigned project shall be staked in accordance with Department of Transportation or other City Departments standards and practices and as required by the contractor on a one-time basis. All equipment, vehicles, and materials required for construction staking are to be supplied by the Consultant. Plans will be supplied by the City Surveyor or designated representative. In addition to the duties of the Consultant set forth in this section, the Consultant may be directed by the City as to the number, type, and manner of other survey work. This direction by the City shall not be deemed to relieve the Consultant of responsibility for otherwise providing complete and proper survey and construction layout under this contract.

- A. The Consultant, prior to construction, will attend a preconstruction conference with the construction contractor and City representatives at which time known pertinent construction phases will be coordinated and construction schedules and surveying needs assessed.
- B. The Consultant shall provide all vertical and horizontal controls as may be required. Consultant shall also provide initial detailed construction staking as required by the construction contractor for the prosecution of his work, such services to commence during working hours of the second day following notification from the construction contractor or City representative. All requests for additional staking (beyond initial staking), when requested in writing by the contractor on forms to be provided by the City and signed by the City's Project Inspector, will be paid for at the hourly rate quoted for such services.
- C. The Consultant surveyor will assist the Project Inspector in marking a set of construction plans and/or drawings to show changes made during construction. The source of design modifications and authorization for the changes shall also be indicated on the prints. The City will perform drafting revisions to original drawings for "As-Builts". Such drafting shall

incorporate all "As-Built" notes from the Consultant's Survey Crew's As-Staked Field Book submitted to City Surveyor upon completion of projects.

3. ENGINEERING SURVEYS

This type of work shall include establishing benchmarks, horizontal control utilizing existing right-of-way [established by the City survey crews or by the Consultant as described under right-of-way survey(s)], locating all improvements and culture, locating vegetation, measuring distances and angles, measuring elevations of existing improvements (including inverts and rim elevations of storm drains and sanitary sewers), and all other work commonly found on City of Tucson Department of Transportation and other Department Engineering/Design surveys. Right-of-way surveys may be required in order to proceed with the Preliminary Engineering Survey.

Miscellaneous office calculations from field work may be required. All field work shall be kept in a City of Tucson field book using standard note keeping techniques, supplemented with digital data including data collector files, and .DXF or .DWG format drawings. Digital data shall be provided to the City and be compatible with AutoCAD 2009 or previous versions, and be compatible with AutoCAD Civil 3D. The consultant shall provide hard copies and electronic copies of the survey notes. Electronic copies shall be submitted in pdf format.

4. BOUNDARY/RIGHT-OF-WAY SURVEYS/LEGAL DESCRIPTIONS

This work shall include locating all required public land corners, street monumentation, property corners, and gathering of parcel evidence as required to determine existing land lines and/or right-of-way lines. Once the location of the actual boundary or right-of-way lines has been determined, monuments as required by the Rules and Regulations of the State Board of Technical Registration, or Arizona Revised Statutes, shall be set by the Consultant at all angle points, points of curvature, block corners, property corners, etc. In addition to monumenting the actual right-of-way lines, a monument line or centerline, whichever the case may be, shall also be fully monumented. A Record of Survey shall be prepared in accordance with all applicable regulations and Statutes, showing the results of the survey. The Record of Survey shall be duly recorded with the Pima County Recorder's Office after approval by the City Surveyor.

Preparation of legal descriptions for acquisition or disposal of City property shall be accomplished to all State and local standards and approved by the City Surveyor.

- A. The Consultant shall provide all work necessary for legal, ethical, and timely completion of any survey involving land boundaries. Each survey must conform to all Arizona statutes and the Minimum Standards for Arizona Land Boundary Surveys. The Consultant shall be responsible for review of the survey with the City Surveyor prior to approval of the survey. The Consultant shall also be responsible for recordation of the survey.
- B. The Consultant shall perform any and all Survey work that may be required to prepare a legal description to be used for any purpose. Any survey work performed for this function shall be in compliance with the conditions set forth in this contract.
- C. The Consultant shall provide additional survey services such as, but not limited to, engineering, right-of-way, and A.L.T.A. surveys in conjunction with Capital Improvement Projects as requested by the City Surveyor or designated representative. Such services shall commence during working hours of the second day following notification from the City.

5. PROPERTY SURVEYS

Consultant shall obtain all aerial and ground survey work necessary to establish horizontal and vertical controls including the existing utilities, existing construction, restrictions, easements and other rights affecting the property. The survey and mapping shall extend a sufficient distance beyond the property boundaries for design purposes. The survey shall include benchmarks on City datum in the vicinity of proposed construction. The horizontal controls shall be tied to the City's monumentation system.

6. REPORTS

The Consultant will prepare and submit written weekly progress reports on approved forms showing the progress of the construction work, as it relates to construction surveying and layout, and estimated progress anticipated during the next reporting period.

The Survey Party Chief shall keep a written daily log showing the progress of construction layout consistent in detail and form with records kept by City of Tucson Engineering Survey Crews.

The Consultant's Survey Crew Chief shall verbally report to the City Surveyor, or designated representative, construction staking progress, conditions, and problems on a regular daily basis (more often if deemed necessary by the Consultant), in addition to providing written reports. All work activities of the Consultant's Survey Crew shall be coordinated with the Project Inspector where applicable.

7. TUCSON WATER SPECIFIC REQUIREMENTS

- A. Provide a copy of all field survey notes for establishing horizontal and vertical control at the site.
- B. Provide a listing of coordinates and elevations of all control points/panels. (Coordinate listing to be electronic and hard copy in ASCII, CR5, and XML formats)
- C. Provide one reproducible 24" x 36" orthophoto mylar at the specified scale with one-foot contour intervals (white line) covering the project site and 50 feet beyond.
- D. Provide electronic copies of AutoCAD 2009 or later digital files matching final plotted map sheets in the following format:
 1. Topographic and planimetric features:
 - a. Overview-2d.dwg
 - b. Overview-3d.dwg
 - c. dtm.dwg
 2. Aerial photo planimetric features:
 - a. sid format (1' pixels or better)
 - b. sdw format (1' pixels or better)
 - c. tiff format (1' pixels or better)
 3. Survey features:
 - a. break.points
 - b. grid.pts
 - c. spots.pts

- E. All right-of-way and section lines covered by the contour mylar(s) shall be plotted on the mylar(s).
- F. The basis of the aerial and all elevations shall be based on Northings and Eastings of the state plane coordinate system.

8. PARKS AND RECREATION SPECIFIC REQUIREMENTS

GPS coordinates, both geodetic and state plane, shall be included for the location of all amenities or culture.

9. METHOD OF PAYMENT

In consideration of the performance of services, the City shall pay the Consultant a sum based upon the negotiated hourly rates and actual hours worked. These hourly rates shall be all inclusive, including but not limited to travel expense, overhead, profit and all other expenses incidental to the furnishing of a completely equipped survey crew and technical staff.

Any and all time charged by the Consultant Principal to the assigned project shall be as negotiated and agreed prior to any work by the Consultant Principal, except when the Principal is acting as the responsible registered Professional Land Surveyor in charge of a right-of-way survey or monumentation project, in which case the rate for a registered Professional Land Surveyor shall be utilized. It is the intent of the City that technical questions regarding preliminary surveying or construction staking be resolved by the City Surveyor or designated representative.

Overtime will be based on authorized work, by an overtime eligible individual performing work under the resulting contract(s), over 40 hours in a work week. A work week will be considered as starting at 12:00 a.m. on Sunday morning running until 12:00 midnight on the following Saturday. All overtime shall be approved in advance by the appropriate representative at a rate of one and a half times the regular hourly rate.

The City may make periodic payments toward services. The Consultant shall present an invoice on the prescribed City of Tucson form when services are approved for monthly progressive payments, and for final payment at 100% completion for each project assigned. Said invoice shall be submitted to the appropriate City representative within 45 days after the end of the Consultant's monthly billing period during which the services were rendered.

Each invoice shall show the names and job hours worked for each phase of a given project. In addition, each invoice must bear a written certification by an authorized City representative confirming the estimated professional services for which payment is requested. Final payment shall be conditioned upon all contractual services for specific projects having been performed and accepted by the City.

Progressive payments permitted under this contract shall be consistent with City procedures for processing requests for payment. Requests for payment for all work performed under the terms of this contract shall carry the project name, contract number, and other identification as required by the City.

The Consultant at monthly intervals may invoice the City for work done on each specific project and also indicate on the invoice the total amount charged to this contract.

III. CONTRACT TERM AND RENEWAL

The term of the Contract shall commence upon award and shall remain in effect for a period of ONE (1) year, unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that the City of Tucson shall have the right, at its sole option, to renew the Contract for FOUR (4) additional one-year periods or portions thereof. In the event that the City exercises such rights, all terms, conditions and provisions of the original Contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.

IV. FINANCIAL CONSIDERATIONS

In consideration of the services provided, the City shall pay the Consultant in accordance with the negotiated contract rates detailed in Exhibit A, and the Consultant shall charge the City only in accordance with those same rates. The level of effort required to complete each task along with any other direct expenses and/or sub-consultants shall be negotiated prior to issuance of a notice-to-proceed.

V. SPECIAL TERMS AND CONDITIONS

1. **SOFTWARE COMPATABILITY:** For the purposes of aiding the Consultant in the performance of their obligation under this Contract, the City shall furnish upon request all relevant data in the City's possession and shall direct City officers, agents and employees to render all reasonable assistance to Consultant in connection with Consultants performance under this Contract. The provision of such aid, assistance, information or services as received from the City shall in no way relieve the Consultant from obligations under this Contract. The City does not warrant the compatibility of City furnished data, either electronic or in any form, with the Consultant's software. All costs associated with data conversion or software upgrades and conversions shall be borne by the Consultant.

2. 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)

LIMITS OF LIABILITY

Statute

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

\$500,000 (Minimum)
Combined Single Limit

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which include surveying and/or construction surveillance.

Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles	\$1,000,000 - Bodily Injury Combined Single Limit \$100,000 Property Damage
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SPECIAL CONDITIONS:

1. THE CITY OF TUCSON & REGIONAL TRANSPORTATION AUTHORITY WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the City of Tucson, Department of Procurement, A/E Contracts Division, P.O. Box 27210, Tucson, Arizona 85726-7210.
3. Deductibles will 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.
3. **OTHER CONTRACTS:** The City may, as its sole option, enter into Contracts for additional work related to this project. The Consultant shall fully cooperate with other contractors and consultants and with City employees to accommodate such other work. The Consultant shall not commit or permit any act that interferes with the performance of such work by other contractors.
4. **COMPENSATION AND METHOD OF PAYMENT:** In consideration of the performance of the services described in the Scope of Services, the City shall pay the Consultant in accordance with the negotiated contract rates, and the Consultant shall charge the City only in accordance with those same rates.

The City will pay the Consultant following the submission of itemized invoice(s). Each itemized invoice must bear a written certification by an authorized City representative confirming the services for which payment is requested.
5. **CONFLICT OF INTEREST:** Subconsultants who design and/or develop specifications for materials for this project will be precluded from contract award for that item if a solicitation is issued for the item.
6. **KEY PERSONNEL:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions.

The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to and subsequent concurrence by the City.

If key personnel are not available for work under this Contract for a continuous period exceeding thirty calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

7. **INVOICING:** The City will pay the Contractor following the submission of an itemized invoice(s) on the prescribed form as provided by TDOT. Each itemized invoice must bear a written certification by an authorized City representative confirming the services for which payment is requested. The invoice shall be submitted based upon work completed and direct costs incurred. Upon completion of the project to the satisfaction of the City and acceptance of the work, final payment shall be made.

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

Invoices shall be submitted to the City's Project Manager within 30 calendar days of the end of the month for all actual work completed for the billing period performed during the preceding month. The invoice to the City shall include invoices for sub-consultants for the same billing period included by the Contractor. The invoices shall be accompanied by any required labor and reporting forms required by the American Reinvestment and Recovery Act (ARRA).

8. **MONITORING PAYMENTS TO SUBCONTRACTORS:** Prime contractors must maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. This reporting requirement also extends to any certified DBE subcontractor.

As part of the contract documents requirement, the prime contractor will submit to OEOP, at or before the pre-construction conference, company procedures and policy for prompt payment of work and prompt release of retention to subcontractors. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made by the City of Tucson to the prime contractor.

The Prime contractor is to pay all retainage owed to the DBE subcontractor within 30 days of **satisfactory completion** of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented by the prime contractor as required by the City of Tucson. As such, prime contractors are asked to submit the attached Certification of Payments, for each DBE subcontractor utilized on this project, once that portion of the work has been completed and the subcontractor has been paid in full. The City of Tucson will continue to hold full retainage as provided for under the Arizona Revised Statutes.

Prime contractors will report the actual value of any contract to DBE firms for work committed to them at the time of the contract award. Contractors must submit the attached Supplier & Subcontractor Utilization List Final Payment Record to OEOP with their request for final

payment. The Final Payment Record will record total dollar amounts paid to both DBE and non-DBE suppliers and subcontractors.

Prime contractors must provide notice to DBE firms that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the construction project. The DBE firm will be assisted by the Office of Equal Opportunity Programs with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

A copy of the DBE contract provisions shall be included with every subcontract.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

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

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

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

VI. STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE 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 professional services contract for the project.
 - C. **Consultant or Firm** - Used interchangeably in referring to the architect, engineer, geologist, landscape architect, or land surveyor organization offering professional services to the City of Tucson.
 - D. **Evaluation Committee** - The committee established to formally evaluate proposals according to the evaluation criteria listed herein.
 - E. **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.
 - F. **Contract** - The legal agreement executed between the City of Tucson, AZ and the Consultant/Firm.
 - G. **City Project Manager** - The City employee specifically designated as responsible for monitoring and overseeing the Consultant's performance under this Contract. Also referred to as City Designated Contract Representative.
 - H. **Director of Procurement** - The contracting authority for the City of Tucson, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Tucson, AZ.
2. **NOTICE TO PROCEED:** The Consultant agrees to render professional services promptly and diligently upon receipt of written notice to proceed with any or all of the services set forth herein.
3. **RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of Consultant or any and all of Consultant's sub-consultants. Said audit shall be limited to this Contract and its scope of services.
4. **PRINCIPAL CONSULTANT'S RESPONSIBILITY:** The 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 Professional Design Services 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 professional design services 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 judgment possessed by members of its profession, and that it will use reasonable and ordinary care and diligence in performing the work.

5. **ADDITIONAL COMPENSATION:** The Consultant shall submit a written proposal and secure the City Director of Procurement's written approval of same prior to the performance by the Consultant of any work for which additional compensation will be requested.

Without the City Director of Procurement's prior written approval of the proposed work and the fee therefore, the City will not consider payment of any sums other than those already set forth under this Contract.

6. **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 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.

7. **DRAWING, STANDARD DETAILS, ETC.:** City of Tucson drafting standards, standard details, specifications, and office procedures are to be used in the preparation of items required under this Contract unless directed otherwise by the City. The City will furnish the Consultant with copies of the necessary standard City documents. All final documents shall be prepared by such methods and of such quality of workmanship as will permit the making of satisfactory reproductions.

8. **ADVICE AND CONSULTATION:** The Consultant shall be available to the City for advice and consultation on the interpretation of the plans and specifications on questions which may arise during the course of this Contract.

9. **PUBLIC HEARINGS:** The Consultant shall upon request, attend any public hearing on matters related to the scope of professional services set forth in this Contract.
10. **TIME RECORDS:** The Consultant shall maintain complete, current and daily records covering all hours actually worked on this project by the various classes of workers. The City shall have the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by the City to be incomplete or erroneous.
11. **PROTEST PROCEDURE:** Should a firm believe that the City has not properly followed the selection procedures, the firm may file a protest in accordance with Article IX of the Tucson Procurement Code.

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 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
 - E. The form of relief requested.
12. **CERTIFICATION:** By signature in the offer section of the Offer page, Consultant certifies:
- A. The submission of the offer did not involve collusion or other anti-competitive practices.
 - B. The Consultant shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
 - C. The Consultant 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. Consultant certifies by signing that if a design is required for this project, the design being furnished will contain no specifications for tropical hardwood excluded from consideration of purchase by the City of Tucson. A list of tropical hardwood may be obtained from the City's Department of Procurement. Consultants knowingly violating the tropical hardwood restriction may be barred from any further contracting with the City of Tucson.
 - E. The Consultant submitting the offer hereby certifies that the individual signing the offer is an authorized agent for the Consultant and has the authority to bind the Consultant to the Contract.
13. **TERMINATION OF CONTRACT:**
- A. The City may terminate this Contract in whole or, from time to time, in part, for the City's convenience or because of the failure of the Consultant to fulfill the Contract obligations. Upon receipt of the notice of termination, the Consultant shall 1) Immediately discontinue all services affected (unless the notice directs otherwise), and 2) deliver to the Department of Procurement all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.
 - B. If the termination is for the convenience of the City, the City shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
 - C. If the termination is for failure of the Consultant to fulfill the contract obligations, the City may complete the work by contract or otherwise, and the Consultant shall be liable for any additional cost incurred by the City.
 - D. If, after termination for failure to fulfill contract obligations, it is determined that the Consultant has not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

- E. The rights and remedies of the City provided in this clause are in addition to any other rights or remedies provided by law or under this Contract.

14. SUSPENSION OF WORK:

- A. The City may order the Consultant, in writing, to suspend, delay, or interrupt all or any part of the work under this Contract for the period of time that the City determines appropriate for the convenience of the City.
- B. The Consultant agrees that no charges or claims for damages shall be made against the City for any delays or hindrances during the progress of this Contract. Such delays or hindrances, if any will be covered by an extension of time for such reasonable period as mutually agreed upon between the parties. It is agreed and understood, however, that permission to proceed with the Contract after the established completion date, shall not be construed as a waiver by the City of any of the rights herein.

- 15. ARBITRATION:** It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration shall apply to or be binding upon the City except by the City's express written consent given subsequent to the execution of the Contract. However, if both parties agree, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. Sec. 12-1501, et seq. Consultant shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this section.

- 16. INDEPENDENT CONSULTANT:** It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

Consultant shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

The City of Tucson will not provide any insurance coverage to Consultant, including Worker's Compensation coverage. The Consultant is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any.

- 17. HUMAN RELATIONS:** Consultant 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.
- 18. NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.
- 19. DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Consultant shall ensure that, whenever practicable, all printed materials produced by the Consultant in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
- 20. PATENT INFRINGEMENT:** The Consultant and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark or copyright and the Consultant shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute

Infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Consultant shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or replace same with noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

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

21. **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.
22. **CONFIDENTIALITY OF RECORDS:** The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
23. **GRATUITIES:** The City may, by written notice to the Consultant, cancel this Contract 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 Contract 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.
24. **APPLICABLE LAW:** This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Federal or State courts in the State of Arizona.
25. **CONTRACT:** The Final Contract document shall be written and shall be based upon the Request for Qualifications and/or the Request for Proposal issued by the City, the offer submitted by the Consultant in response to the Request for Qualifications and/or the Request for Proposal, and any negotiations entered into and changes agreed upon by both parties. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Qualifications and/or the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Consultant; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Consultant relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.
26. **LEGAL REMEDIES:** All claims and controversies shall be subject to the Tucson City Charter and Code.
27. **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.

28. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
29. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
30. **INTERPRETATION - PAROL EVIDENCE:** This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
31. **ASSIGNMENT – DELEGATION:** No right or interest in this Contract shall be assignable in whole or in part without the written consent of the parties hereto, and no delegation of any duty of Consultant shall be made without prior written permission of the City's Procurement Director. This Contract and all of the terms, conditions and provisions herein, shall extend to and be binding upon the heirs, administrators, executors, successors, and assigns of the parties hereto. The City shall not unreasonably withhold approval of assignment/delegation and shall notify the Consultant of the City's position within 15 days of receipt of written notice by the Consultant.
32. **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 15 days of receipt of written notice by the Consultant.
33. **RIGHTS AND REMEDIES:** No provision in this document or in the Consultant's response shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.
34. **ACKNOWLEDGMENTS:** Consultant acknowledges that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City, shall not alter or affect the obligations of the Consultant or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.
35. **INDEMNIFICATION:** To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but

not limited to, 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.

36. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Consultant hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
37. **RIGHT TO ASSURANCE:** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.
38. **ADVERTISING:** Consultant shall not advertise or publish information concerning this Contract without prior written consent of the City.
39. **RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of a Consultant or sub-consultant which is related to the performance of any contract as awarded or to be awarded.
40. **WORK SCHEDULE:** The consultant shall adhere to any and all work schedules developed under this contract. The work schedule will provide for the completion of services within a specified number of consecutive calendar days following the starting date established by a written notice to proceed. If the Consultant is unable to adhere to the accepted schedule, they shall prepare a justification letter with a proposed revised schedule and submit the same to the City for review and approval. It shall be the sole option of the City to approve any such requests. The City shall be furnished two (2) copies of the original work schedule and two (2) copies after each revision, if any, is approved.
41. **FORCE MAJEURE:**
 - A. 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 party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a sub-consultant unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
 - B. 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.
42. **INSPECTION:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at Consultant's risk and may be returned to the Consultant. If so returned, all costs are the responsibility of the Consultant. Noncompliance shall conform to the cancellation clause set forth in this document.

43. **PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary. Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

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

44. **BUSINESS LICENSES AND PERMITS:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. 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.

45. **PROJECT LICENSES AND PERMITS:** Consultant 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

46. **COST OF PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing, presenting, or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically providing adequate information in a straightforward and concise manner.

47. **PUBLIC RECORD:** All proposals 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.

48. **SUBSEQUENT EMPLOYMENT:** The City may cancel this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a Consultant to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when written notice from the Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

49. **PROJECT COMPLIANCE:** At a minimum, the project shall be designed to comply with all applicable Federal, State and Local regulations and any amendments thereto which are adopted during the life of this Contract. Therefore, 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 Consultant to alert the City of any deviation from this requirement. (Note: It is the Consultant'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.

50. **CONTINUITY:** Consultant shall maintain all pertinent files, records, and documents which relate to the delivery of the services provided in this Contract. Supporting documents, files, and records shall be retained by Consultant for at least five (5) years after the termination of this Contract.
51. **E-VERIFY:** 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.
52. **CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-397:** By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-397. 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.
53. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

VII. OFFER TO THE CITY OF TUCSON:

The Consultant hereby offers to provide the services listed in the attached contract and based upon the Request for Qualifications, including all terms, conditions, specifications, scope of work, amendments, offers and subsequent negotiations, as accepted by the City.

RICK ENGINEERING, Co.
Company Name
3945 E. FORT LOWELL RD. #111
Address
TUCSON, AZ 85712
City State Zip
[Signature]
Signature of Person Authorized to Sign
DOUGLAS E. SCHNEIDER
Printed Name
Associate
Title

ACCEPTANCE OF OFFER:

The Offer is hereby accepted.

The Consultant is now bound to provide the services listed in the attached contract and based upon the Request for Qualifications, including all terms, conditions, specification, scope of work, amendments, the Consultants Offer and subsequent negotiations, as accepted by the City.

This contract shall henceforth be referred to as Contract No. 120365-07. The Consultant has been cautioned not to commence any billable work or to provide any material or service under this contract until Consultant receives a purchase order, or is otherwise directed to do so in writing by the undersigned.

CITY OF TUCSON, a municipal corporation

Approved as to form this 8th day of Feb, 2012. Awarded this 7th day of February, 2012.

[Signature]
As Tucson City Attorney and not personally

[Signature]
Mark A. Neihart, C.P.M., CPPB
As Director of Procurement and not personally

EXHIBIT A



January 12, 2012

VIA E-MAIL
Matt.Hausman@tucsonaz.gov

Mr. Matt Hausman
Principal Contract Officer
CITY OF TUCSON - DEPARTMENT OF PROCUREMENT
P.O. Box 27210
Tucson, AZ 85726

SUBJECT: RFQ 120365 - ON CALL SURVEY

Dear Mr. Hausman:

In response to your January 11, 2012 email, the following are our revised fully loaded rates for the disciplines requested. In addition, attached are copies of the other information requested.

Discipline:	Direct Labor x Overhead Rate	+ Direct Labor	x 10% Profit	= Fully Loaded Rate
RLS	41.03 x 1.88	+ 41.03	x 1.10	= \$129.98
2-Person Survey Crew	(26.00 + 17.75) x 1.88	+ 43.75	x 1.10	= \$138.60
3-Person Survey Crew	(26.00 + 17.75 + 15.00) x 1.88	+ 58.75	x 1.10	= \$186.12
Survey Tech	26.83 x 1.88	+ 26.83	x 1.10	= \$85.00
Admin/Clerical	23.25 x 1.88	+ 23.25	x 1.10	= \$73.66

If you have any questions or concerns, please feel free to contact our office.

Sincerely,

RICK ENGINEERING COMPANY, INC.

Doug Schneider, R.L.S.
Associate

DES:cj H:\rec2011\Proposals\des\RFQ 120365 rates 2012_revised.doc

Attachments: Letter from Rick Engineering Chief Financial Officer Justifying Overhead Rate

3945 E. Fort Lowell Road, Suite 111 • Tucson, AZ 85712-1046 • (520) 795-1000 • Fax (520) 322-6956 • rickengineering.com
TUCSON PHEONIX SAN DIEGO RIVERSIDE ORANGE SACRAMENTO SAN LUIS OBISPO BAKERSFIELD



January 4, 2012

VIA E-MAIL
Matt.Hausman@tucsonaz.gov

Mr. Matt Hausman
Principal Contract Officer
CITY OF TUCSON - DEPARTMENT OF PROCUREMENT
P.O. Box 27210
Tucson, AZ 85726

SUBJECT: RFQ 120365 - ON CALL SURVEY

Dear Mr. Hausman:

Attached is a copy of the overhead calculations and accompanying schedules utilized to determine the allowable overhead rate as requested in your December 22, 2011 e-mail.

These calculations and schedules are for the period ending December 31, 2010 and represent the latest complete year-end financial information for the office. These calculations have been prepared by our in-house accounting department and are consistent with the Federal Acquisitions Regulations (FAR).

If you have any questions or concerns, please feel free to contact our office.

Sincerely,

RICK ENGINEERING COMPANY, INC.

A handwritten signature in black ink, appearing to read "P. Iezzi", written over the printed name.

Paul Iezzi, P.E.
Principal and Chief Financial Officer

PJI:cj H:\rc2011\Proposals\des\RFQ 120365 in-house rate letter 2012.doc

Attachments - Overhead Calculations and Schedules for December 31, 2010

Rick Engineering Company - Tucson
Overhead Calculation
For the 12 months ending 12/31/10

	YTD	Unallowable	Adjusted
Indirects			
Indirect Labor - Employees	240,830.73		240,830.73
Accounting & Legal	8,713.84		8,713.84
Bad Debts Recovered	(75.00)		(75.00)
Indirect Labor - Other	63,334.81		63,334.81
Auto	14,773.88		14,773.88
Auto Leases	0.00		0.00
Transportation Incentive	0.00		0.00
Bad Debt Expense	112,667.88	(112,667.88)	0.00
Payroll/Bank Fees	9,576.60		9,576.60
Building Rent/Storage Rental	504,059.83		504,059.83
Back Charges	3,545.88		3,545.88
Business Development/Marketing	81,815.44	(81,815.44)	0.00
Charitable Contributions	0.00		0.00
Computer Service/Maintenance	4,202.45		4,202.45
Depreciation	104,200.00		104,200.00
Dues/Subscriptions/Fees	13,977.12		13,977.12
Equipment Rent/Lease	18,541.20		18,541.20
Health and W/C Insurance	188,364.97		188,364.97
Southside Blueprint	237.37		237.37
Blueprinting	1,019.82		1,019.82
Fees Advanced	0.00		0.00
Printing/Maps	41.18		41.18
Other Insurance	51,815.18		51,815.18
Delivery	952.82		952.82
Postal/UPS/FedEx	935.14		935.14
Westside Blueprint	0.00		0.00
Northside Blueprint	0.00		0.00
Interest	6,828.03	(6,828.03)	0.00
Interest Buy/Sell	0.00		0.00
Library Publications	195.20		195.20
Licenses	1,848.13		1,848.13
Building Maintenance	14,382.83		14,382.83
Employee Benefits	3,483.74		3,483.74
Personal Purchases	337.88		337.88
Equipment Repair & Maintenance	975.71		975.71
Payroll Taxes	95,080.18		95,080.18
Political Contributions	0.00		0.00
Professional Development & Recruitment	7,988.84		7,988.84
Profit Sharing Contribution	25,000.00		25,000.00
Miscellaneous Supplies	1,758.88		1,758.88
Travel & Promotion	15,510.84		15,510.84
Entertainment & Meals	1,400.44	(1,400.44)	0.00
Copyer Supplies	1,017.18		1,017.18
Supplies/Drafting	89.23		89.23
Supplies/Computer	857.13		857.13
Supplies/Blueprint	0.00		0.00
Supplies/Field	12,285.88		12,285.88
Supplies/Office	8,271.70		8,271.70
Postal/Delivery	1,075.71		1,075.71
Property Taxes	34,508.17		34,508.17
Telephones	35,803.50		35,803.50
Electric & Water	18,621.83		18,621.83
Personal Leave	94,502.83		94,502.83
Total Indirects	1,768,354.14	(182,308.89)	1,584,044.25
Direct Labor	841,387.23	2.10	Overhead Rate 1.88

Rick Engineering Company - Tucson
Schedule 1
Income Statement
Computation Of Overhead Rate
For The Twelve Months Ended 12/31/10

Direct Labor		\$ 841,397
Fringe Expenses:		
Payroll Taxes, Insurance, Holiday, Personal Leave, Profit Sharing	380,549	
General & Administrative	<u>1,385,806</u>	
Total Overhead		<u>1,766,354</u>
Total Expenses		<u>\$ 2,607,751</u>

Overhead Rate Per Financial Statements

	<i>Fringe</i>		<i>Direct Labor</i>	
Fringe:	380,549	/	841,397	0.45
G & A:	1,385,806	/	841,397	<u>1.65</u>
Total Overhead Rate				<u>2.10</u>

Overhead Rate Per Financial Statements (w/o Incentive Pay)

	<i>Fringe</i>		<i>Direct Labor</i>	
Fringe:	380,549	/	841,397	0.45
G & A:	1,385,806	/	841,397	<u>1.65</u>
				<u>2.10</u>

Rick Engineering Company - Tucson
Schedule 2
Detail To Indirect Cost Rate

Direct Labor From 12/31/10 Financial Statements	\$ 841,397
Less: Adjustments	-
Total Direct Labor	<u>\$ 841,397</u>

Fringe Expense

Payroll Taxes	\$ 96,080
Health/Life/Worker's Comp. Ins. (149,444+48,815)	220,000
Holiday	37,106
Personal Leave	94,503
Profit Sharing/401k Match	26,000
Sub-Total	<u>\$ 472,689</u>
Less - Fringe On Indirect Labor (Schedule 3)	<u>(92,141)</u>
Fringe Expense On Direct Labor	<u>\$ 380,549</u>

Holiday Recap:		
	New Years Day	\$ 5,088
	Presidents Day	4,394
	Memorial Day	4,394
	July 4th	4,566
	Labor Day	4,560
	Thanksgiving (2)	9,402
	Christmas Day	4,701
		<u>\$ 37,106</u>

G & A Expenses From 12/31/10 Financial Statements	\$ 1,766,354
Less: Fringe Expenses On Direct Labor	<u>(380,549)</u>
Total G & A Expenses	<u>\$ 1,385,806</u>

**Rick Engineering Company - Tucson
Schedule 3**

Computation Of Indirect Labor

Administrative O/H Per Financial Statements	\$ 240,831	
Less - Holiday	(37,106)	
Total Indirect Labor	<u>\$ 203,724</u>	

% Of Wages To Total Wages

Total Direct Labor	\$ 841,397	80.6%
Total Indirect Labor	203,724	19.5%
Total Wages	<u>\$ 1,045,122</u>	

Total Fringe Benefit Costs	\$ 472,889	
Less - Portion Attributable To Indirect Labor (19.5% * 472,889)	(92,141)	
Fringe Expense On Direct Labor	<u>\$ 380,649</u>	

EXHIBIT B

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

FEDERAL TRANSIT ADMINISTRATION TERMS, CONDITIONS AND CERTIFICATIONS

Requirements/Conditions For All FTA Assisted Contracts:

- Federal Disclaimer to Third Parties
- Program Fraud and False or Fraudulent Statements and Related Acts
- Access to Third Party Contract Records
- Prohibitions Against Exclusionary or Discriminatory Specifications
- Changes to Federal Requirements
- Civil Rights Requirements
- Termination Provisions
- Requirements for Disadvantaged Business Enterprises
- Incorporation of FTA Terms

Requirements for Contracts Exceeding \$25,000):

- Debarment and Suspension Requirements

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

- Report, record retention, and access provisions
- Buy America requirements
- Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation
- Lobbying Requirements
- Clean Water Requirements
- Clean Air Requirements

Non Construction Activities

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

Miscellaneous Special Requirements

- Environmental Protection
- Energy Conservation Requirements
- Metric System Requirements
- National ITS Architecture
- Seat Belt Use
- Text Messaging While Driving

Certifications

- Lobbying Certification

Protest Procedures For Federal Transit Administration Funded Projects

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

Requirements/Conditions For All FTA Assisted Contracts

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

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

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

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

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

Federal Disclaimer to Third Parties

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

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

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

right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

Access to Third Party Contract Records

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

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

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

Changes to Federal Requirements - 49 CFR Part 18

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

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

1. Termination for Convenience (General Provision): The City Of Tucson may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City Of Tucson to be paid the Contractor. If the Contractor has any property in its possession belonging to the City Of Tucson, the Contractor will account for the same, and dispose of it in the manner the City Of Tucson directs.
2. Opportunity to Cure (General Provision): The City Of Tucson in its sole discretion may, in the case of a termination for breach or default, allow the Contractor to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

3. Waiver of Remedies for any Breach: In the event that the City of Tucson elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such

waiver by the City of Tucson shall not limit the City of Tucson's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
Civil Rights Requirements - 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

The Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. Nondiscrimination in Federal Public Transportation Programs: The Contractor agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b. Nondiscrimination - Title VI of the Civil Rights Act: The Contractor agrees to comply, and assures the compliance of each subcontractor at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Contractor agrees to follow all applicable provisions of the most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," and any other applicable Federal directives that may be issued.
- c. Equal Employment Opportunity. The Contractor agrees to comply, and assures the compliance of each subcontractor at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Contractor also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. The Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq.; with Implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.

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

1. The Federal Fiscal Year goal has been set by the City Of Tucson in an attempt to match projected procurements with available qualified disadvantaged businesses. The City Of Tucson goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City Of Tucson as set forth by the Department of Transportation Regulations 49 C.F.R. Part 26, March 31, 1980, and amended by Section 106(c) of

the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

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

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

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

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

b. DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

c. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the contractor noncompliant and in breach of contract.

d. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the City Of Tucson DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City Of Tucson and will be submitted to the City Of Tucson upon request.

e. The City Of Tucson will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

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

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

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

or

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

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

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

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

3. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made by the City of Tucson to the prime contractor. If applicable, the Prime contractor is to pay all retainage owed to the DBE subcontractor within 30 days of satisfactory completion of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented by the prime contractor as required by the City of Tucson. The City of Tucson will continue to hold full retainage as provided for under the Arizona Revised Statutes. Prime contractors must provide notice to DBE firms that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project.

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

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

Requirements for Contracts Exceeding \$25,000

Debarment and Suspension Requirements

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

- a. State Debarment and Suspension Lists. A recipient may also treat any prospective contractor or subcontractor listed on a centralized State government debarment and suspension list as nonresponsible and ineligible for contract award

Requirements for Contracts Exceeding \$100,000

Report, Record Retention and Access Provisions - 49 U.S.C. 5325, 18 CFR 18.36 (l), 49 CFR 633.17

Record Retention

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

Access to Records of Recipients and Subrecipients

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

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

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

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

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

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

Disputes

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

Performance During Dispute

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

Claims for Damages

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

Remedies

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

Rights and Remedies

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

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

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

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

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

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

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

Non Construction Activities

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

The Contractor agrees to comply with and assures compliance by other Project participants with any applicable employee protection requirements for nonconstruction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

Miscellaneous Special Requirements

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

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

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

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

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

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

National ITS Architecture

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

Seat Belt Use

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

Text Messaging While Driving

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

a. Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

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

b. Safety. The Grantee is encouraged to:

- (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:
 - (a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;
 - (b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
 - (c) Any vehicle, on or off duty, and using an employer supplied electronic device.
- (2) Conduct workplace safety initiatives in a manner commensurate with the Grantee's size, such as:
 - (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- (3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

Certifications

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

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

(To be submitted by the bidder/offeror)

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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

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

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

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

- C. Failure to make award will otherwise cause undue harm to the grantee for the Federal Government.

8. FTA will only entertain a protest that alleges:

- 1. The City failed to have or to adhere to its protest procedures, or failed to review a complaint or protest; or
- 2. Violations of Federal law or regulation.

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

A protest filed with FTA shall:

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

HUD FORMS 5369-B, 5369-C & 5370-C

Instructions to Offerors Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing



- 03291 -

Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer;
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HAHUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HAHUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HAHUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

**Certifications and
Representations
of Offerors
Non-Construction Contract**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1) ☐ has, ☒ has not employed or retained any person or company to solicit or obtain this contract; and
- (2) ☐ has, ☒ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a) ☐ is, ☒ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) ☐ is, ☒ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) ☐ is, ☒ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

(1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

 1/30/12

Signature & Date:

Douglas B. SCHNEIDER

Typed or Printed Name:

Associate

Title:

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Labor Relations
OMB Approval No. 2577-0157 (exp. 12/31/2011)

Public Reporting Burden for this collection of information is estimated to average 0.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (without maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 988.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 - use Sections I and II.

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban Development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (i) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (I) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(i)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(i)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(i)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

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

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

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

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968, 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.



ARRA Terms and Conditions

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.

This solicitation will be funded with funds appropriated by the American Reinvestment and Recovery Act of 2009. All applicable federal rules and regulations are incorporated by reference herein notwithstanding the fact that they may not be specifically referenced in this solicitation.

By submission of your proposal, the Offeror certifies to the City and in addition, agrees that it will comply with all requirements and applicable regulations specified in this solicitation and the American Reinvestment and Recovery Act of 2009.

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

1. 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.

2. 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 poster is attached herein.

(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.

3. 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.

4. 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.

5. 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.

6. DRUG-FREE WORKPLACE

Contractor must comply with drug-free workplace requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C.701 et seq.).



U.S. DEPARTMENT OF TRANSPORTATION OFFICE OF INSPECTOR GENERAL

WHISTLEBLOWERS KNOW YOUR RIGHTS

On February 17, 2009 the American Recovery and Reinvestment Act (ARRA) was signed into law by President Obama to improve public welfare. If you protect America's interests by reporting fraud, abuse, or mismanagement of ARRA funds at your workplace, and are retaliated against as a result, know that America is here for you.

American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Title XV, Subtitle D, Section 1553

ADMINISTRATIVE REVIEW:

You have the right to file a complaint with the Office of Inspector General and receive a timely investigation and response.

REPRISAL-FREE:

You have the right to be free from discharge, demotion, or discrimination as a result of disclosing:

- *Gross mismanagement of a stimulus-funded project.*
- *Gross waste of stimulus funds.*
- *Danger to public health and safety related to a stimulus-funded project.*
- *Violation of the law relating to stimulus funds or a stimulus-funded project.*
- *Abuse of authority related to the implementation of stimulus funds.*

REMEDIES:

You have the right to receive remedies if the Office of Inspector General determines you were subjected to an unlawful reprisal. Your employer may be ordered to abate the reprisal, reinstate your employment, and you may receive compensation to reimburse you for your attorney fees and other financial suffering experienced as a result of the reprisal.

ALTERNATIVES:

You have the right to take action against your employer in civil district court if the Office of Inspector General does not respond within 210 days or determines that there was not an unlawful reprisal.

... **OIG HOTLINE** ...

www.oig.dot.gov/recovery/whistleblower_protections.jsp

Phone: 1-800-424-9071

Email: hotline@oig.dot.gov

EXHIBIT C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/26/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cavignac & Associates 450 B Street, Suite 1800 San Diego, CA 92101-8005 License No. CA99520	CONTACT NAME: Certificate Department PHONE: (619) 234-6848 FAX: (619) 234-8601 E-MAIL: certificates@cavignac.com PRODUCER CUSTOMER ID: RICKR-1														
INSURED Rick Engineering Company 3945 East Fort Lowell Road, Suite 111 Tucson, AZ 85712 United States	<table border="1"><tr><td>INSURER(S) AFFORDING COVERAGE</td><td>NAC #</td></tr><tr><td>INSURER A: TRAVELERS IND CO OF CT</td><td>25682</td></tr><tr><td>INSURER B: PHOENIX INS CO</td><td>25623</td></tr><tr><td>INSURER C: TRAVELERS PROP CAS CO OF AMER</td><td>25674</td></tr><tr><td>INSURER D: XL SPECIALTY INS CO</td><td>37885</td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAC #	INSURER A: TRAVELERS IND CO OF CT	25682	INSURER B: PHOENIX INS CO	25623	INSURER C: TRAVELERS PROP CAS CO OF AMER	25674	INSURER D: XL SPECIALTY INS CO	37885	INSURER E:		INSURER F:	
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INSURER D: XL SPECIALTY INS CO	37885														
INSURER E:															
INSURER F:															

COVERAGES	CERTIFICATE NUMBER: 172023	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INS LTR	TYPE OF INSURANCE	ADSL. WASH. INSR. WORD	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
B	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liability <input checked="" type="checkbox"/> Separation of Insureds GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC	X	6807294L67A	1/1/2012	1/1/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000 Deductible \$ 0
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	X	NA7276LS22	1/1/2012	1/1/2013	COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$ \$ \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	UB3833T378	1/1/2012	1/1/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liability		DPR9496070	8/15/2011	8/15/2012	Each Claim \$3,000,000 Aggregate \$8,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: On-Call Professional Survey Services. Additional Insured coverage applies to General and Automobile Liability for The City of Tucson, and the Regional Transportation Authority per policy form. Prof. Liab. - Claims made, defense costs included within limit.

CERTIFICATE HOLDER The City of Tucson P.O. Box 27210 Tucson, AZ 85726-7210 United States	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Jeffrey W. Cavignac
---	---

ACORD 25 (2009/09)

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2009B - CAVIGNAC & ASSOCIATES 172023

Page 2 of 4

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| A. BROAD FORM NAMED INSURED | H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT |
| B. BLANKET ADDITIONAL INSURED | I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT |
| C. EMPLOYEE HIRED AUTO | J. PERSONAL EFFECTS |
| D. EMPLOYEES AS INSURED | K. AIRBAGS |
| E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS | L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS |
| F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS | M. BLANKET WAIVER OF SUBROGATION |
| G. WAIVER OF DEDUCTIBLE – GLASS | N. UNINTENTIONAL ERRORS OR OMISSIONS |

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – LIABILITY COVERAGE:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II – LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and

executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – LIABILITY COVERAGE:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to the additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF INSURANCE (Section III)** for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is

available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.



PO Change Order

City of Tucson
255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

Page 1 of 1
PO Date: 02/09/2012
Change Order Date: 02/20/2013

VENDOR	Vendor ID: 0639400 Phone: (520) 795-1000 Fax: (520) 322-8958
	RICK ENGINEERING CO INC 3945 EAST FORT LOWELL ROAD, SUITE 111 TUCSON, AZ 85712

INVOICE	Change Order Number Blanket PO Number 38840 ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER
	City of Tucson Finance/Accounts Payable PO Box 27450 Tucson, AZ 85726-7450 (520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date		
	120365, - 07	Destination, Prepay & Allow	Net 30	0 Days ARO		
Catalog: Engineering Services - Engineering Services						
Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
2	CONTRACT 120365 - ON-CALL PROFESSIONAL SURVEY SERVICES - RENEWED THROUGH 2/7/14 Item 2 added		0.00	0.00	0.00	0.00
Previous PO Total: \$0.00					New PO Total: \$0.00	

If this purchase order is associated to a contract, the contract's terms and conditions shall apply. Otherwise, by accepting this order, vendor agrees to all terms and conditions posted on http://www.tucsonprocurement.com/bidders_tandc.aspx. Terms and conditions are incorporated by reference as through fully set forth herein. Terms and conditions are also available by calling (520) 791-4217 for a mailed copy.

(Rev. 4/27/2009) PO_CHG_S.rpt

Matt Hausman

Contract Officer

(520) 837 - 4123

Phone

CONTRACT AMENDMENT

CITY OF TUCSON
DEPARTMENT OF PROCUREMENT
265 W. ALAMEDA, 8TH FLOOR
TUCSON AZ 85726-7210
(520) 837-4123

CONTRACT NO.: 120365-07
CONTRACT AMENDMENT NO.: ONE (1)
PAGE 1

CONTRACT OFFICER: Matt Hausman

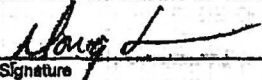
THIS CONTRACT IS AMENDED AS FOLLOWS:

CONTRACT NO. 120365 ON-CALL PROFESSIONAL SURVEY SERVICES AMENDMENT NO. ONE (1)

ITEM NO. ONE (1) In accordance with the Contract ~ III, CONTRACT TERM AND RENEWAL, the parties hereby agree to renew the contract for the period of 2/8/2013 through 2/7/2014.

ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF
AND UNDERSTANDING OF THE ABOVE AMENDMENT.

 2/14/13
Signature Date

Doug E. Schneider, Associate/Survey Mgr.
Typed/Printed Name and Title

Rick Engineering Company
Company Name

3945 E. Fort Lowell Rd, Suite 111
Address

Tucson, Arizona 85712
City State Zip

dschneider@rickengineering.com
E-MAIL

THE ABOVE REFERENCED CONTRACT AMENDMENT

IS HEREBY EXECUTED THIS 12 DAY
February, 2013, AT TUCSON, ARIZONA.


As Director of Procurement and not personally

12/13
2/14/13



April 11, 2013

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT
and
CITY OF TUCSON - DEPARTMENT OF PROCUREMENT

SUBJECT: ON CALL SURVEY DISCIPLINES FOR TCC LASER SCANNING

The following are our fully loaded rates for the disciplines to be used for the laser scanning work at the TCC. The 'scanner' disciplines shown have been added to the current disciplines referenced in Rick Engineering's On-Call Professional Services Contract No. 120365.

Discipline:	Direct Labor x Overhead Rate	+ Direct Labor	x 10% Profit	= Fully Loaded Rate
RLS	53.56×1.88	+ 53.56	x 1.10	= \$169.68
2-Person Survey Crew	$(26.00 + 17.75) \times 1.88$	+ 43.75	x 1.10	= \$138.60
3-Person Survey Crew	$(26.00 + 17.75 + 15.00) \times 1.88$	+ 58.75	x 1.10	= \$186.12
Survey Tech	30.00×1.88	+ 30.00	x 1.10	= \$95.04
Admin/Clerical	23.25×1.88	+ 23.25	x 1.10	= \$73.66
Scanner Manager	45.25×1.88	+ 45.25	x 1.10	= \$143.35
Scanner Specialist	40.00×1.88	+ 40.00	x 1.10	= \$126.72
1-Person Scanner Crew	40.00×1.88	+ 40.00	x 1.10	= \$126.72
2-Person Scanner Crew	$(40.00 + 26.00) \times 1.88$	+ 66.00	x 1.10	= \$209.09

If you have any questions or concerns, please feel free to contact our office.

Sincerely,

RICK ENGINEERING COMPANY, INC.

Doug Schneider, R.L.S.
Associate

DES:sj H:\rc2013\Proposals\des\Laser Scanning rates City of Tucson 2013.doc

3945 E. Fort Lowell Road, Suite 111 • Tucson, AZ 85712-1046 • (520) 795-1000 • Fax (520) 322-6956 • rickengineering.com
TUCSON PHOENIX SAN DIEGO RIVERSIDE ORANGE SACRAMENTO SAN LUIS OBISPO BAKERSFIELD

**EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE DISTRICT
AND
RICK ENGINEERING COMPANY**

[Scope of Work]

(Attached)



May 3, 2013

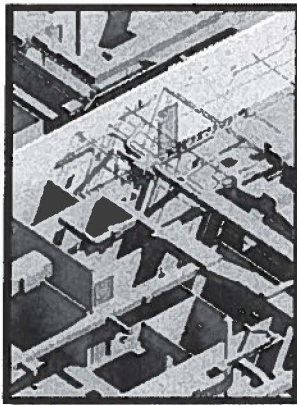
Ms. Elaine Weaver
CITY OF TUCSON-ARCHITECTURE & ENGINEERING
4004 S. Park Avenue, Building 2
Tucson, Arizona 85714

SUBJECT: HIGH DEFINITION SURVEYING (HDS) LASER SCANNING FOR TCC ARENA: OPTION 1 – RICK ENGINEERING COMPANY

Dear Elaine;

Rick Engineering Company is pleased to provide this proposal to perform precision as-built services for the project described above. We are preparing this proposal in response to your request, review of area of work and review of building plans.

Sample Revit Model + MEP



TCC Arena Interior



OVERVIEW OF 3D LASER SCANNING:

High Definition Surveying (HDS) or 3D Laser Scanning collects up to 500,000 points per-second to produce a very dense and accurate collection of individual measurements known as a "point cloud" with a positional accuracy of 6mm (.02'). HDS using "line of sight" measures existing building interiors and exteriors, pipe networks, construction sites, bridges, historical sites, topography and more and can produce a 2-D or 3D CAD model; a dependable starting point to test and verify design concepts that account for existing conditions. A single laser scan session builds a foundation and enhances coordination among architects, engineers, planners, developers, and



5620 Friars Road • San Diego, California 92110-2596 • (619) 291-0707 • FAX: (619) 291-4161 • rickengineering.com
SAN DIEGO RIVERSIDE ORANGE SACRAMENTO SAN LUIS OBISPO BAKERSFIELD PHOENIX TUCSON

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contractors with everyone working from the same database while simultaneously maintaining the utmost in workplace safety because you don't have to "touch" the objects to scan them.

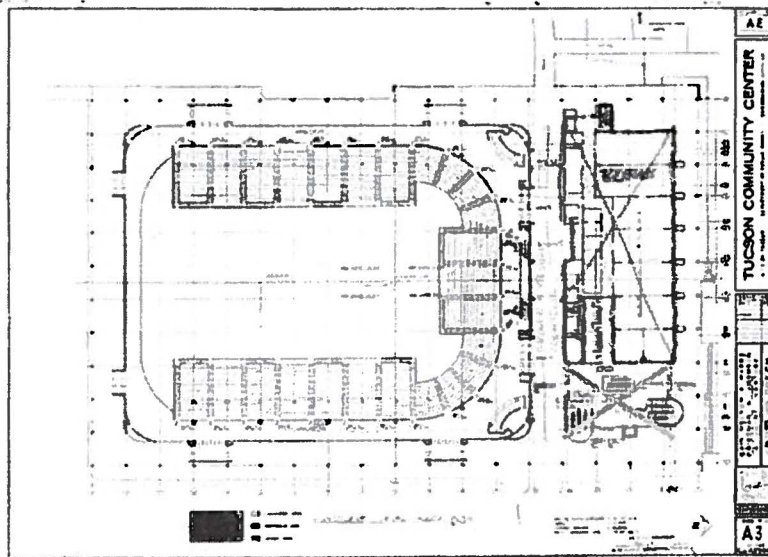
3D laser scanning data is one of the foundational building blocks to the Building Information Modeling process on existing facilities. Before design and construction can begin with any modernization or rehabilitation project, the existing conditions must be accurately captured to maximize design effort and minimize construction delays due to change orders.

SCOPE OF WORK:

GENERAL DESCRIPTION

Create an existing building model using 3D Laser Scanning of the interior of the TCC Arena to support the design process and future construction coordination efforts. The complete interior of the TCC Arena will be captured, including concourse, mezzanine and lower levels (excluding mechanical rooms and locker rooms). The corridors between the arena and hall, plus the easterly exterior of the hall are a part of this scope. The meeting space and lobby of the exhibition hall is not a part of this scope. In total, approx. 145,000 square feet and 35 rooms will be captured and modeled. Options have been included for additional building exterior, and roof space of the facility.

Sketch of Interior Area to be Surveyed for Option 1



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Sketch of Exterior Area to be Surveyed for Option 1



FIELD SURVEY, SCANNING & RESEARCH

Research

Identify and gather pertinent as-built drawings, existing design CAD files, site photographs, results of previous surveys and any other available pertinent information. A pre-project team meeting may be scheduled to review existing as-built information, preliminary design, and to discuss project limits, points of connection and other project details.

Field Procedures

Two scan crews and one survey crew will be deployed onsite; totaling 5-6 people. It is anticipated to conduct field work during normal daytime hours. Options are available for night and weekend mobilizations.

It is understood that a member of the building's facility staff will be on site at all times and accompany the project team to aid in building access, security, safety and maintenance logistics; unless otherwise agreed upon.

Establish survey control network to existing project coordinate system and extend dimensional control into areas to be captured by the laser scanner. This enables the results of the 3D laser scan to be accurately incorporated into the project's existing coordinate system allowing for proper spatial coordination efforts by all design disciplines and construction trades.

The project coordinate system requirement for this project is to be established prior to commencement of field work.

Perform terrestrial (HDS) scans of facilities.

A combination of time of flight and phase based scanning technologies will be leveraged on this project to accommodate the very large spaces in combination with many small rooms and corridors.

Space	Rooms	Approx SF	Approx Scans
Lower Level	15	55,000	45
Mezzanine	14	20,086	30

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Concourse	5	57,599	50
Corridor	0	3,250	8
Hall Easterly Exterior	-	-	16

To facilitate the registration process, it will be necessary to temporarily affix registration paper/sticker targets with Scotch-Blue Painter's Tape or with post-it type adhesive, throughout project (walls, beams, windows, etc). These will be removed upon completion of the field survey but may be visible for a few days or as otherwise directed to be removed.

Interstitial spaces/above ceiling is not included in the main scope. There is an optional item to include scanning for these spaces.

Infection Protection / Dust Control

Infection protection or dust control is not anticipated on this project.

POST PROCESSING

Registration

Each individual scan will be registered together resulting in a complete scalable continuous 3D point cloud of the facility in the project's coordinate system. A survey report detailing the results of the registration will be available upon project delivery.

Point Cloud cleaning and translation

Point clouds will be cleaned of any significant noise points and translated into PCG format for use within AutoCAD 2011/Revit 2012 or newer. Individual point cloud files (PCG) will be "cut out" to maximize Revit performance yet minimize the total number of point cloud files.

The unified point cloud will be archived and available to revisit without returning to the field to extract additional objects and level of detail not included within this scope of work.

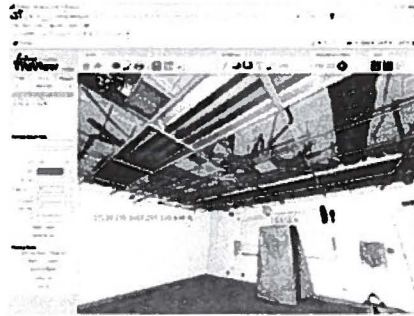
TruView Development

The first deliverable will include TruView, an interactive panoramic view program that allows planning level measurements at each scan location by all design team members no matter their geographical location. This is a published application viewed with Internet Explorer used to provide virtual field walks of the project site.

To learn more about the TruView service or try one out please visit www.rickengineering.com/hds and click on the TruView Portal.

Rick Engineering Company will host developed TruViews on their secure Internet site for ease of deployment via email or web site links and viewing for an initial time period of 12 months.

Optional: Use of an external high-resolution camera to take panoramic photographs at each scan observation setup to be incorporated into the TruView development process. This additional process enhances the TruViews



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to provide a more true color representation of existing site conditions and generates powerful panoramic images for project story telling.

Optional Animations and Graphic Services: Rick Engineering Company has the capability to create single pass animations of the as-built site conditions to be used for planning and presentation purposes. Please visit our YouTube channel for various samples: <http://www.youtube.com/user/Rickis3D>

3D MODELING / OBJECT RECONSTRUCTION / EXISTING CONDITIONS BIM DEVELOPMENT

Model Purpose Statement: Create an existing building model of visible major architectural, structural and mechanical features to aid in the design process to refurbish portions of the arena.

Model Intended usage statement: Delivered as-built models are for conflict checks, spatial coordination and attribute information only. Models are not intended to be a complete engineered system for Architectural, Structural or MEP analysis.

Revit 2012 will be used. Architectural and Structural shell will be developed directly in Revit from the point cloud.

Architectural + Structural Modeling – Building Interiors and Interstitial Spaces (AIA LOD 300)

- Modeling services will capture the basic geometry of major permanent architectural and structural features.
- Objects captured by the scan will be modeled to the outside extents of insulation if present.
- Modeling of walls, floors, windows, doorways using generic families.
- Included for items 2" and greater and that are visible from the interior spaces.

Exclusions

- Structural Features within open ceiling area of arena (above catwalk level)
 - o See Optional Catwalk Level Scanning + Modeling
- Material and part identification
- Movable partition walls, furniture and other miscellaneous equipment
- Seismic reinforcement and hangers.
- Energy Analysis

Architectural + Structural Modeling – Building Exterior (Optional)

- Develop basic geometry of exterior architectural and structural features of the building's exterior
- Model walls, floors, windows, doors

MEP Modeling

- Modeling of visible MEP systems 2" or larger in size, piping and conduit.
- Included for items 2" and greater and that are visible from the interior spaces
- Modeling of Plumbing equipment and identification of equipment only
- Modeling of plumbing piping 2" and larger in size
- Modeling of HVAC duct work & equipment
- Modeling of mechanical piping.
- Modeling of Fire Sprinkler.
- Modeling of Plumbing Water Supplies.
- Modeling of Roof Drains with proper slopes.
- All modeling of piping shall be from outside of insulation and outside of raw piping.

Exclusions

- All systems indicated above will have proper system identification with proper labeling of systems.

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- MEP systems in interstitial or in-accessible spaces.
- MEP equipment will not have performance data, or product information.
- Electrical outlets and switches will not be modeled.
- Plumbing fixtures will not be included.
- Energy Analysis
- No rendering capabilities will be incorporated into the MEP model.
- No calculation capabilities will be incorporated into the MEP model.
- Modeling of objects not visible, i.e. within walls or other obstructed areas are excluded.

TRAINING AND TECHNICAL SUPPORT

The process of utilizing the results of 3D laser scanning are new and growing in many industries, as such our approach of project delivery includes the introduction of the deliverables to the project teams and suggested best practices to leverage the investment of 3D laser scanning technology. These are conducted both onsite and online through web sharing tools and included demonstration of our web viewing tools and usage of point clouds in various products. We currently support Leica Cyclone, Leica CloudWorx for AutoCAD & Microstation, and native point cloud usage in AutoCAD, Microstation, Revit & Sketchup.

This project includes one-on-one web support for three months commencing at this scope's project delivery date and one onsite 2 hour training class. Additional training and support packages are available upon request.

DELIVERABLES

- PointCloud (PCG – multiple files)
- Revit Architectural and Structural Shell (RVT 2012 – One Model)
- Revit MEP Model (RVT 2012 – One Model)
- TruViews (12 months hosted)
- Site Photos & Survey Report

SCHEDULE

We anticipate being onsite for approximately five-six business days, the remainder of services will be performed at Rick Engineering Company offices.

The post processing: registration, processing of the point cloud data and TruView creation is estimated at approximately ten (20) business days from completion of field work. The processing of the data into the Architectural + Structural Building Information Model is estimated at approximately sixteen (35) business days from completion of field work. The processing of the data into the MEP Building Information Model is estimated at approximately sixteen (60) business days from completion of field work.

FEE SCHEDULE

Option 1:

Field Survey & Scanning	\$ 23,500
Post Processing: Registration, Clean-Up, Translation, TruView	\$ 12,500
3D Modeling/ Object Reconstruction: Arch + Stru	\$ 12,518
Training and Technical Support	INCLUDED
TruView Hosting	\$ 1,000
Total Cost this Project	\$ 49,518

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Additional Items for Option 1:

3D Modeling / Object Reconstruction: MEP \$ 35,000

Building Exterior + Roof:

Field Survey & Scanning + Post Processing \$ 19,500

3D Modeling / Object Reconstruction \$ 5,000

Above Catwalk:

Field Survey & Scanning + Post Processing \$ 4,500

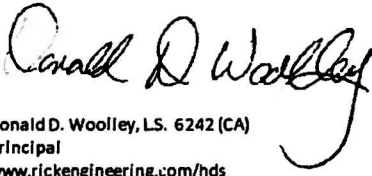
3D Modeling / Object Reconstruction \$ 3,000

This is intended to provide you a scope and fee for the range of services noted and is not by itself intended to be a contract. If you wish to enter into an agreement we will provide our formal agreement to incorporate our Standard Provisions of Agreement.

If you have any questions regarding this scope of work please contact me directly at 619-688-1436. Thank you for your interest in Rick Engineering Company. I look forward to discussing this with you further.

Sincerely,

RICK ENGINEERING COMPANY



Donald D. Woolley, L.S. 6242 (CA)
Principal
www.rickengineering.com/hds

RICK ENGINEERING COMPANY



Brian Laird, L.S. 45830 (AZ)
Project Manager



April 11, 2013

RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT
and
CITY OF TUCSON - DEPARTMENT OF PROCUREMENT

SUBJECT: ON CALL SURVEY DISCIPLINES FOR TCC LASER SCANNING

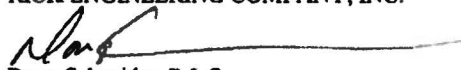
The following are our fully loaded rates for the disciplines to be used for the laser scanning work at the TCC. The 'scanner' disciplines shown have been added to the current disciplines referenced in Rick Engineering's On-Call Professional Services Contract No. 120365.

Discipline:	Direct Labor x Overhead Rate	+ Direct Labor	x 10% Profit	= Fully Loaded Rate
RLS	53.56×1.88	+ 53.56	x 1.10	= \$169.68
2-Person Survey Crew	$(26.00 + 17.75) \times 1.88$	+ 43.75	x 1.10	= \$138.60
3-Person Survey Crew	$(26.00 + 17.75 + 15.00) \times 1.88$	+ 58.75	x 1.10	= \$186.12
Survey Tech	30.00×1.88	+ 30.00	x 1.10	= \$95.04
Admin/Clerical	23.25×1.88	+ 23.25	x 1.10	= \$73.66
Scanner Manager	45.25×1.88	+ 45.25	x 1.10	= \$143.35
Scanner Specialist	40.00×1.88	+ 40.00	x 1.10	= \$126.72
1-Person Scanner Crew	40.00×1.88	+ 40.00	x 1.10	= \$126.72
2-Person Scanner Crew	$(40.00 + 26.00) \times 1.88$	+ 66.00	x 1.10	= \$209.09

If you have any questions or concerns, please feel free to contact our office.

Sincerely,

RICK ENGINEERING COMPANY, INC.


Doug Schneider, R.L.S.
Associate

DES:sj

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3945 E. Fort Lowell Road, Suite 111 • Tucson, AZ 85712-1046 • (520) 795-1000 • Fax (520) 322-6956 • rickengineering.com
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