COCHISE COUNTY
PROCUREMENT DEPARTMENT

1415 Melody Lane, Building C, Bisbee, AZ 85603
Phone: (520) 432-8390 | Fax: (520) 432-8397

Attachment 1 – Terms and Conditions

1.0 Cost, Payment and Pricing

1.1 Taxes

The County is responsible for the payment of all applicable sales, use and transaction privilege taxes as may be required by Arizona State and its sub-divisions. The County is exempt from all Federal Excise taxes. Out-of-state vendors shall not apply sales tax to purchases made by the County, unless required by their state. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes. The Contractor shall express taxes as a separate line item on invoices submitted.

1.2 Maximum Payment Amount

The County's total payment for any contract will not exceed the amount of the total contract amount, unless otherwise modified. Additionally, the County will not exceed the amount of any fiscal year purchase order, unless otherwise modified. The aggregate total of all purchase orders shall not exceed the maximum contract value. The Contractor shall not provide any goods or services above and beyond any approved contract amounts. If a Contractor provide goods and/or services above the approved contract amount, the Contractor is choosing to do so at its own risk.

1.3 Payment Terms

In accordance with A.R.S. § 35-342, the County reserves the right to apply Net 30 payment terms, unless negotiated terms have been determined to be more advantageous to the County, to all invoices submitted after the contract is awarded. The County will include any relevant discount terms during the evaluation for contract award, if it is deemed to be in the best interest of the County. All payments shall comply with all requirements of A.R.S. Titles 35 and 41.

1.4 Invoice Timing

In accordance with A.R.S. § 11-622, upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the County within thirty (30) days, and the County shall not pay any invoices that are not submitted within 6 months of completion of work or delivery of supplies.

1.5 Payment Timing

The Contractor shall not commence any billable work or provide any material or services under this Contract until Contractor receives an executed copy of the Purchase Order (PO) or is otherwise directed to do so in writing by the County Procurement Department. The County will pay the Contractor in accordance with A.R.S. § 11-217, following the submission of itemized invoice(s), including the Contractor company name, phone, invoice number, email address, and mailing address for any services rendered or materials delivered. No payment shall be issued prior to receipt of service and/or goods and a correctly itemized invoice. Each payment request must bear written certification by an authorized County representative confirming the services or goods for which payment is requested have been performed and/or received.

1.6 Authorized Ordering Official

In accordance with A.R.S. § 11-201(3), the Contractor shall not commence, nor perform work above and beyond the scope, work without receiving either a contract or amendment signed by the Cochise County Procurement Department or Board of Supervisors, or without furnishing of approved purchase order. Promises or agreements between contractor and County employees not authorized to contractually obligate Cochise County shall be considered null and void, and payments for good or services rendered under any such promises or agreements without a contract or purchase order shall not be compensated.

1.7 IRS W-9 Form

In order to receive payment, the Contractor shall have a current I.R.S. W9 Form on file with the County.

1.8 Economic Price Adjustment

Some contracts awarded by Cochise County shall be subject to economic price adjustment which requires the delivery of materials in order to complete services requested. The economic price adjustment will be subject to the Commercial Price Index (CPI). No economic price adjustment or negotiated amendment shall be approved for an increase higher than that fluctuation of the CPI, unless otherwise approved by the Procurement Department. If expressly allowed within the contract, the Contractor shall request a price adjustment and provide documentation of price increases.

1.9 Tax Indemnification

Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

1.10 Availability of Funds for Current Fiscal Year

Should the Board of Supervisors reduce the appropriations for any reason and these goods or services are not funded, the County may take any of the following actions:

- Accept a decrease in price offered by the contractor;
- Cancel the Contract; or
- Cancel the contract and re-solicit the requirements.

1.11 Availability of Funds for the Next Fiscal Year

Funds may not presently be available for performance under this Contract beyond the current County fiscal year. No legal liability on the part of the County for any payment may arise under this Contract beyond the current County fiscal year until funds are made available for performance of this Contract.

1.12 Right of Offset

The County shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the County, or damages assessed by the County concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

1.13 Payment by the County

Each payment obligation of the County created hereby is conditioned upon the availability of County, State, and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the County and available for the continuance of services herein contemplated, the contract period for the service may be terminated by the County at the end of the period for which funds are available. The County shall notify the Contractor at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised, and the County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

2.0 Contract Performance

2.1 Arizona Law

Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7 and the policies of the Cochise County Procurement Policy.

2.2 Statutes

All parties shall comply will all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

2.3 Provisions Required by Law

Each and every provision of Law and any clause or terms 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.

2.4 Contract Order of Precedence

In the event of a conflict in the provisions of the Contract, as accepted by the County and as they may be amended, the following shall prevail in the order set forth below, if included within the contract:

1.0 Special Terms and Conditions;
2.0 Uniform Terms and Conditions;
3.0 Statement or Scope of Work;
4.0 Specifications;
5.0 Attachments;
6.0 Exhibits;
7.0 Documents referenced or included in the Solicitation.

2.4 Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

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

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

2.5 Severability

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parole Evidence

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7 No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

2.8 Public Records

The Procurement Department shall establish and ensure that all documentation produced, received, and sent to any parties regarding day-to-day operations is filed and retained in accordance with the State of Arizona Department of Library, Archives and Public Records guidelines and all applicable Arizona State statutes. Notwithstanding any other provision of the agreement, the parties understand that Cochise County is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq.

In any situation where the County may be awarded State or Federal funding, the guiding principles and policies of those organizations will be followed including any other sub-entity principles and policies, as applicable.

Defacing, changing, destroying or any other unauthorized alteration of contract file documentation shall result in administrative disciplinary action in accordance with Cochise County Public Policies and its sub-departments. No files or documentation shall be taken from the Procurement Department for any reason. Contract files will be made available to requesting parties after the submission of a Public Records Request

The County shall protect and hold confidential, upon a Vendor's request, any data which is considered to be proprietary or include trade secrets or personal identifiable information (PII) as determined, in writing, by the Procurement Department after it has evaluated the request from the vendor. The Vendor's request must be made at any point prior to the closing date of any solicitation.

2.9 Record Retention

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All records shall be subject to inspection and audit by the County at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

2.10 Audit

Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the County and, where

applicable, the State of Arizona and the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

The CONTRACTOR shall advise each sub-contractor of the COUNTY's rights, and the sub-contractor's obligations, under this Section by including a provision in each sub-contract substantially in the following form:

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

2.11 Non-Discrimination

The Contractor shall comply with State Executive Order No. 2009-09, Public Law 101-336, and 42 U.S.C. 12101-12213 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

2.12 Notices

Notices to the Contractor required by this Contract shall be made by the County to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the County required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Department employee and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

2.13 Federal Immigration and Nationality Act

The Contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during the term of the Contract. The County shall retain the right to perform random audits of Contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the County determine that the Contractor and/or any subcontractors be found noncompliant, the County may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the Contractor.

Any breach of the CONTRACTORs or any sub-contractor's warranty of compliance with the State and Federal immigration laws, or of any other provision of this section, shall be deemed to be a material breach of this CONTRACT subjecting the CONTRACTOR to penalties up to and including suspension or termination of this CONTRACT. If the breach is by a sub-contractor, and the sub-contract is suspended or terminated as a result, the CONTRACTOR shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the sub-contract or retain a replacement sub-CONTRACTOR, (subject to County approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

2.14 Advertising, Publishing and Promotion of Contract

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Department.

2.15 Property of the County

Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the County. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the County.

2.16 Modifications

This Contract is issued under the authority of the Procurement Department, delegated by the Board of Supervisors. The Contract may be modified only through a Contract amendment or modifications within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Board of Supervisors, County Administrator, or Procurement Department in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law.

Such changes, including unauthorized written Contract amendments or modifications shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

2.17 Contractor/Vendor Indemnification (Not Public Agency)

The parties to this contract agree that the County, its departments, agencies, and Board of Supervisors shall be indemnified and held harmless by the Contractor for the vicarious liability of the County and/or State as a result of entering into this Contract. However, the parties further agree that the County, its departments, agencies, and Board of Supervisors shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

2.18 Public Agency Language Only

Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

2.19 Indemnification - Patent and Copyright

The Contractor shall indemnify and hold harmless the County against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the County of materials furnished or work performed under this Contract. The County shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

CONTRACTOR agrees to indemnify, defend, and hold harmless the COUNTY, a body politic and corporate of the State of Arizona, its board members, officers, employees, agents and other officials from

all claims, damages, losses, and expenses, including but not limited to attorney's fees, reasonable court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under this CONTRACT, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, including the loss of use or diminution in value resulting there from; but only to the extent caused in whole or in part by the actual or alleged negligent acts, errors, or omissions of CONTRACTOR, or anyone for whose acts CONTRACTOR may be liable. COUNTY reserves the right, but not the obligation, to participate in defense without relieving CONTRACTOR of any obligation hereunder. The liability of the CONTRACTOR under this clause shall not exceed the total sum paid on behalf of CONTRACTOR by its insurers in settlement or satisfaction of claims under CONTRACTORs available insurance coverage.

2.20 Cancellation for Conflict of Interest

Pursuant to A.R.S. § 38-511, the County may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is or becomes at any time while the Contract or an 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. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511. Upon signing of the Contract, the Contractor agrees to the provision, and their understanding as if it were included within the Contract.

2.21 Gratuities

The County may, by written notice, terminate this Contract, in whole or in part, if the County determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the County for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The County, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

2.22 Termination for Convenience

The County reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the County, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

The failure of either party of this CONTRACT to take affirmative action with respect to any conduct of the other which is in violation of the terms of this CONRACT shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct. The COUNTY reserves the right to terminate, with or without cause, in whole or any part of this CONTRACT due to failure of the CONTRACTOR to carry out any terms, promise or condition of this CONTRACT. If this CONTRACT is terminated, the COUNTY

shall be liable only for payment(s) for services rendered, materials accepted or both, prior to the effective date of any such termination.

2.23 Termination for Default

In addition to the rights reserved in the contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Department shall provide written notice of the termination and the reasons for it to the Contractor.

Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.

2.24 Continuation of Performance Through Termination

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

2.25 Non-Appropriation

The County may terminate any resulting contract at the end of any fiscal year, June 30th, without further liability other than payment of debt incurred during such fiscal year, should funds not be appropriated by its governing body to continue service for which the contract was intended.

2.26 Preparation of Specifications by Persons Other than County Personnel

All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the County's needs in accordance with A.R.S. Chapter 23, Article 4. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

2.27 Procedures and Controls

The Contractor shall establish and maintain procedures and controls that are acceptable to the County for the purpose of assuring that no information contained in its records or obtained from the County or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information must be referred to the County.

2.28 Data

All data created, used and/or modified under this agreement shall be the property of Cochise County and shall not be used by the Contractor or any other person except with the prior written permission of the County.

2.29 Public Entity Disclaimer

Notwithstanding any other provision of the agreement, the parties understand that Cochise County is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq.

2.30 Written Notice

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

2.31 Insurance

Contractor shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, and/or employees.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County of Cochise in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his/her agents, representatives, employees and Contractor is free to purchase additional insurance as may be determined necessary.

2.31.1 MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

2.31.1.1 Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	$1,000,000
Annual Aggregate	$1,000,000

a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this contract is completed.

b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

2.31.1.2Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory	Employers'
Liability		
Each Accident	$1,000,000	
Disease – Each Employee	$1,000,000	
Disease – Policy Limit	$1,000,000	

a. This requirement shall not apply when a Contractor is exempt under A.R.S. §23-901, **AND** when such Contractor executes the appropriate sole proprietor waiver form.

2.31.1.2.3 Medical Malpractice

Each Claim	$1,000,000
Annual Aggregate	$3,000,000

NOTE: Medical Malpractice Insurance for Detention Health must specify that the Insurance Specifically covers Detention Health Facilities.

2.31.2 ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

2.31.2.1 On insurance policies where the County of Cochise is named as an additional insured, the County of Cochise shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

2.31.2.2 The Contractors insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

2.31.2.3 Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

2.31.3 NOTICE OF CANCELLATION: Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the County of Cochise. Within two (2) business days of receipt, Contractor must provide notice to the County of Cochise if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Cochise County Procurement Department, , 1415 Melody Lane, Bldg C, Bisbee, Arizona 85603.

2.31.4 ACCEPTABILITY OF INSURERS: Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The County of Cochise in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

2.31.5 VERIFICATION OF COVERAGE: Contractor shall furnish the County with certificates of insurance (valid ACORD form or equivalent approved by the County) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

All such certificates of insurance and policy endorsements must be received by the County before work commences. The County's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Cochise County Procurement Department, 1415 Melody Lane Bldg C, Bisbee, Arizona 85603. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time**. DO NOT SEND CERTIFICATES OF INSURANCE TO THE COUNTY'S RISK MANAGEMENT DIVISION.**

2.31.6 **APPROVAL and MODIFICATIONS:** Any modification or variation from the insurance requirements in this Agreement shall be made by the Contracting Agency in consultation with the Risk Management Department, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

3.0 Contract Performance

3.1 Delivery

Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

3.2 E-Verify Requirements

In accordance with A.R.S. § 41-4401, the Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.3 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the County shall be considered the creator of such Intellectual Property. The agency, department, division, or Board of Supervisors of the County requesting the issuance of this contract shall own (for and on behalf of the County) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the County, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the County and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the County. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity that is not the County without the express written authorization of the agency, department, division, or Board of Supervisors of the County requesting the issuance of this contract.

3.4 Facilities Inspection and Materials Testing

The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The County shall also have the right to test, at its own cost, the materials to be supplied under this Contract.

Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the County determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the County for testing and inspection.

3.5 Subcontracts

The Contractor shall not enter into a subcontract with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the County. 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 Contractor referred to herein. The Contractor is responsible for Contract performance whether or not sub-consultants are used. The County shall not unreasonably withhold approval and shall notify the Contractor of the County's position within 15 days of receipt of written notice by the Contractor.

3.6 Assignment - Delegation

The Contractor, without prior written permission of the County shall assign no right or interest in this Contract, and no delegation of any duty of the Contractor shall be made without prior written permission of the County. The County shall not unreasonably withhold approval and shall notify the Contractor of the County's position within 15 days of receipt of written notice by the Contractor.

3.7 Agreement Assignment

No assignment of this Agreement or sub-agreement shall be made by the Contractor with any other party for furnishing any of the services herein contracted for without the advance written approval of the Procurement Department. All subcontractors shall comply with Federal and State laws and regulations which are applicable to the services covered by the sub-agreement and shall include all the terms and conditions set forth herein which shall apply with equal force to the sub-agreement, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for Agreement performance whether or not sub-contractors are used.

3.8 Risk of Loss

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

3.9 Liens

The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

3.10 Quality

Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the County of the services or materials, they shall be:

- Of a quality to pass without objection in the trade under the Contract description;
- Fit for the intended purposes for which the materials are used;
- Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
- Adequately contained, packaged and marked as the Contract may require; and
- Conform to the written promises or affirmations of fact made by the Contractor.

3.11 Fitness

The Contractor warrants that any material supplied to the County shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

3.12 Nonconforming Tender

Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the County may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code or pursue any other right or remedy available to it.

3.13 Inspection/Testing

Any warranties set forth in in this Contract are not affected by inspection or testing of or payment for the materials by the County.

3.14 Compliance with Applicable Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

3.15 Purchase Orders

The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the County prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Department, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

3.16 Right to Assurance

If the County, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the County's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

3.17 Stop Work Order

The County may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the County after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Department shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

3.18 Warranties

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

3.19 Licenses

Vendors shall maintain, in current status, all Federal, State, and Local licenses and permits required for the operation of the business conducted by the vendor as applicable to the Contract.

3.20 Notice to Proceed

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

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

3.21 Guarantee

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

4.0 Legal

4.1 Force Majeure

Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

Force Majeure shall not include the following occurrences:

- Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be 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 amendment or 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.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

4.2 Antitrust Violations

The Contractor assigns to the County any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

The County maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the County any and all claims for such overcharges as to the goods or services used to fulfill the Contract.

4.3 Non-exclusive Remedies

The rights and the remedies of the County under this Contract are not exclusive.

4.4 Suspension or Debarment

The County may, by written notice to the Contractor, immediately terminate this Contract if the County determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the County.

4.4.1 Suspension or Debarment with the Federal Government

For any contract using federal funding, The Contractor agrees that it is not currently suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any transaction by any Federal department or agency in accordance with Uniform Guidance, 2 CFR 200 Subpart C, or any predecessor regulation, and will not become suspended, debarred, proposed for department, declared ineligible or voluntarily excluded from participation in any transaction by any Federal department or agency during the performance of this contract. The Contractor shall immediately notify the Contracting Officer in writing if at any time during the performance of this contract it becomes suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any transaction by any Federal department or agency. Failure to comply with this clause may result in termination of this contract for default.
The Contractor shall include this clause, in all subcontracts and lower-tier subawards.

4.5 Claims and Disputes

County Contract Representative's Resolution of Claims and Disputes; Review by Procurement Director

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

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

Claims by either party must be made within fourteen (14) days after the event giving rise to the claim or within fourteen (14) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

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

The County Procurement Department Representative shall, within fourteen (14) days of receipt of a claim, do one of the following:

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

The County Buyer may require the submission of additional documentation from either party to facilitate a decision. In each case, the County Procurement Department Representative will submit reasons and/or documentation supporting its action and the deadline shall be extend by the time it takes to obtain a response thereto.

The parties shall have ten (10) days from the date of the County Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of a party to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If either party rejects the decision of the County Procurement Representative in writing within such ten (10) day period, the matter shall be referred to the Procurement Director for *de novo* review.

The Procurement Director shall have sixty (60) days from receipt of a written objection by the Contractor to the County Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Section 15 of the Cochise County Procurement Code. During such period, the Procurement Director may require such additional documentation or testimony as deemed necessary to support his/her response.

4.6 Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

4.7 Certification Pursuant to A.R.S. § 35-393.01

If Contractor engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of $100,000 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

4.8 Non-Collusion

Firms submitting proposals shall warrant that their offer is made without any previous understanding, agreement or connection with any person, firm or corporation submitting a separate proposal for the same project and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action. This condition shall not apply to proposals which are submitted by firms who have partnered with others to submit a cooperative proposal that clearly identifies a primary Consultant and the associated sub-consultant(s).

4.9 Protests and Appeals

In accordance with Section 15 of the Cochise County Procurement Policy Manual, any actual or prospective Contractor or offeror who is aggrieved in connection with the solicitation or award of a contract may appeal to the Procurement Director. The protest shall be submitted in writing to the Procurement Director within five (5) working days after such aggrieved person or company knows, or should have known, of the facts giving rise thereto.

4.10 Contract

The Contract shall be based upon the solicitation issued by the County and bid/offer submitted by the Contractor in response to the solicitation. The bid/offer shall substantially conform to the terms; conditions and other requirements set for with the rest of the solicitation, the contract, and any attachments to either document. The County reserves the right to clarify any contractual terms with the concurrence of the Contractor. However, any substantial non-conformity in the bid/offer shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the County and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

4.11 Legal Remedies

If the CONTRACTOR and the COUNTY are unable to mutually resolve disputes arising under this CONTRACT, all disputes arising under or relating to this CONTRACT shall be settled by binding Arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such Arbitration shall be conducted by an experienced and knowledgeable Arbitrator(s) and shall include a written record of the Arbitration hearing. If the CONTRACTOR and the COUNTY can mutually agree upon an Arbitrator, that Arbitrator shall be selected. If not, the CONTRACTOR and the COUNTY shall each select an Arbitrator and those two Arbitrators shall select a third Arbitrator (or the CONTRACTOR and COUNTY shall request a third Arbitrator from the Arizona Arbitration Association). All Arbitrations will be held in the State of Arizona and under the Arizona Rules of Arbitration. All claims and controversies shall be subject to A.R.S. § 12-1518 et. seq.

Any additional costs attributable directly or indirectly to remedial action under this Section shall be responsibility of the CONTRACTOR. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the CONTRACTOR's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the CONTRACTOR shall be entitled to an extension of time, but not costs.

This CONTRACT shall be governed by, and the COUNTY and CONTRACTOR or shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this CONTRACT or in statutes pertaining specifically to the State. The Law of the State of Arizona shall govern this CONTRACT, and suits pertaining to this CONTRACT shall be brought only in Federal or State Courts in the State of Arizona. This provision does not supersede or invalidate the arbitration requirement.

4.12 Rights and Remedies

No provision in this document or in the Contractor's offer 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 of 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, or the payment for materials or services, shall not release either party from any responsibilities or 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.

4.13 Cooperative Use

Any contract entered into with the County may be available for cooperative use to other entities that the County is in cooperative agreement with.
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