



CONSTRUCTION CONTRACT

THIS AGREEMENT, made and entered into this _____ day of _____, 2019 by and between _____ (hereinafter referred to as the OWNER) and _____ (hereinafter referred to as the CONTRACTOR).

OWNER has property specifically described and generally known as:
Address: _____ (PROPERTY)
Parcel Number: _____
which requires improvements as hereinafter set forth; and

CONTRACTOR is qualified and willing to carry out the required repair work, as set forth below, for OWNER on the PROPERTY.

OWNER and CONTRACTOR, in consideration of the stipulations hereinafter set forth, agree as follows:

Section 1. SCOPE OF AGREEMENT AND AGREEMENT SUM: CONTRACTOR shall complete all work as specified or indicated in the attached Scope of Work as Exhibit A: Construction Specifications

CONTRACTOR shall furnish all materials and do all of the work described herein, according to the terms of this Agreement and according to Exhibit A, for the lump price of _____ and no/100----- DOLLARS (\$ _____) which cost shall cover all items of any nature whatsoever to perform the work called for by this Agreement. The CONTRACTOR'S cost breakdown by the categories of the improvements involved is attached to this Agreement as Exhibit B: Construction Costs.

CONTRACTOR shall provide to OWNER all information and documentation stipulated in the bid packet section Federal Requirements.

Section 2. TIME OF COMMENCEMENT AND COMPLETION: No work shall begin until the Notice to Proceed has been issued by the OWNER, and received by the CONTRACTOR. The CONTRACTOR shall commence work within Ten (10) consecutive calendar days of the date of the Notice to Proceed. Work shall be completed by the date specified in the Notice to Proceed.

Section 3. PAYMENTS TO CONTRACTOR: OWNER shall be responsible for payment to the CONTRACTOR for satisfactory completion of the work in current funds as follows:

The payment schedule shall be as follows (10% retainage is required until satisfactory completion of the work):

This payment schedule is only for example. You can adjust progress payments as you wish. Retainage must be withheld, however, and only paid upon Notice of Completion.

- \$ ___ payment upon 30 % completion of work
- \$ ___ payment upon 50 % completion of work
- \$ ___ payment upon 70 % completion of work
- \$ ___ payment upon 90 % completion of work

\$ ___ (100% payment including retainage) shall be paid upon receipt of the filed Notice of Completion

CONTRACTOR shall submit each payment request and the following documentation to the OWNER:

- Release of liens from all subcontractors and suppliers
- Authorization for Payment
- Schedule of items completed, correlating with the payment schedule
- Warranties and manufacturers information (submit only with final payment request)

A Notice of Completion must be filed not less than 30 days and no more than 45 days after the construction work has been completed.

Section 4. CONTRACTOR'S REPRESENTATIONS: CONTRACTOR has familiarized itself with the nature and extent of all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work as outlined in the Scope of Work.

CONTRACTOR must purchase and maintain the stipulated minimum insurance with companies duly licensed to do business in the state of Arizona, without limiting any of their obligations or liabilities and at their own expense. All policies and forms must be satisfactory to the OWNER. Use of alternative insurers requires the OWNER'S prior approval. The CONTRACTOR must carry Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, each occurrence on all vehicles, whether owned or leased, used in performance of the work. Such insurance must include coverage for loading and unloading hazardous materials and wastes.

CONTRACTOR must carry Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 General Aggregate Limit. The policy must include coverage for bodily injury, products/completed operations and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement. The policy must be primary and the coverage shall no exclude Explosion, Collapse, and Underground (X,C,U). In the event the General Liability insurance policy is written on a claims made basis, coverage must extend for two years past completion and acceptance of the work as evidenced by annual Certificates of Insurance.

CONTRACTOR must carry Worker's Compensation insurance to cover obligations imposed by federal and state statutes.

CONTRACTOR shall be fully licensed with the State of Arizona.

CONTRACTOR must be registered with Sam.gov before beginning construction.

CONTRACTOR agrees to furnish to the OWNER, before beginning construction, proof of licensing, registration and certificates of insurance showing that CONTRACTOR has complied with the provisions in the above-written paragraphs.

Section 5. EQUAL EMPLOYMENT OPPORTUNITY: The CONTRACTOR understands that this Agreement is the result of a Federal financial assistance program and that program obligates the CONTRACTOR to comply with the Federal requirements related to Equal Employment Opportunity. In the hiring of any contractor or laborer to perform the required work involved in this program, CONTRACTOR agrees that he/she or sub- contractors will not discriminate against any employee or applicant because of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status. CONTRACTOR, lessors, vendors and suppliers shall agree to comply with state and federal Equal Employment Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the OWNER'S request.

Section 6. PROTECTION OF WORK, PROPERTY AND PERSONS: CONTRACTOR shall follow all applicable laws and regulations and shall use reasonable methods at the job site, and in the area adjoining the job site, which is under his/her control, to safeguard against injury, damage or loss to the person and/or property of third parties, including OWNER. All damages which result from the negligent or improper discharge of the duty aforementioned shall be paid by the CONTRACTOR.

CONTRACTOR agrees to indemnify, defend and hold the City of Yuma and the OWNER harmless from any claims or damages levied against OWNER by third parties so injured or damaged in their person or property.

CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services or any part hereof, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations.

Section 8. CLEANING UP: CONTRACTOR shall keep the premises free from accumulation of waste material, debris, and rubbish and at the completion of this Agreement shall surrender the premises to OWNER free and clear of all debris, rubbish, implements, equipment and surplus materials and leave the property broom-clean unless otherwise specified in the work documents.

Section 9. SUBSTITUTIONS AND SAMPLES: Substitutions of materials, products and methods specified may occur provided the substitutions are the same in quality and utility to those specified. Any savings involved in the substitutions shall be passed on to the OWNER. All substitutions must first be approved in writing by OWNER, which shall first receive samples, cut sheets and/or drawings from the CONTRACTOR of items proposed to be substituted.

Any changes in the scope of the work required to be performed under this Agreement, whether by means of additions, changes or deletions to the previously agreed upon specifications, must first be authorized by the written approval of the OWNER. Approved additions, changes or deletions shall not relieve or release the CONTRACTOR from the provisions of the Agreement, nor from any guarantee made pursuant to this Agreement's provisions.

Section 10. USE OF UTILITIES: CONTRACTOR must arrange for any utility services, including gas, electricity, water and sewer, required in the conduct of the work. If the required utility services are not available, the CONTRACTOR shall assume responsibility for and pay for all fees necessary for the provision of such services for the conduct of the work.

Section 11. WARRANTY AND CORRECTION OF WORK: CONTRACTOR shall re-execute any work that fails to conform to the requirements of the Agreement and which appears during the progress of the work.

CONTRACTOR warrants and guarantees the work for two (2) years from the date of completion of the Agreement. Any defects due to faulty materials or workmanship which appear within that period shall be promptly remedied by the CONTRACTOR upon notice from OWNER. If the CONTRACTOR fails to correct the defects within five (5) business days after being so notified, OWNER may remedy the defects by whatever reasonable means necessary, including contracting with another CONTRACTOR to perform the work. Whatever costs and damages are incurred by OWNER shall be repaid to OWNER in full by CONTRACTOR. "Work" as defined in this Section shall include the work done by Subcontractors as well as work done by CONTRACTOR.

OWNER, shall be furnished with all manufacturers and suppliers written guarantees and warranties covering materials and equipment furnished under the Agreement, regardless of time.

Section 12. SUBCONTRACTS AND SUPPLIERS: Before execution of this Agreement, the Contractor shall furnish the OWNER a true and correct listing of all Subcontractors and suppliers, indicating the type of work contemplated, and the estimated contract amount. Any changes in Subcontractors or suppliers under this Agreement must first be authorized by the written approval of the OWNER.

Section 13. LIQUIDATED DAMAGES FOR DELAYS: Since it is impractical or extremely difficult to assess accurately the damage which may be caused by the delay of the CONTRACTOR in fully completing the work required by this Agreement, and since actual damages to OWNER as a result of such delay may be large, it is agreed that the sum, of **\$100.00 per day** for each day in which full and satisfactory completion is delayed beyond the completion date as stipulated in this Agreement as modified by any addenda hereto is the amount of such liquidated damage. The OWNER shall make the determination of the dates when completion was due and when completion occurred, and the decision shall be final and binding on all parties. Liquidated damages shall run until the work is completed satisfactorily and in full by the CONTRACTOR, his assignee, or in the event of termination under Sections 15 or 16 of this Agreement, the subsequent CONTRACTOR on the job. The aggregated amount of liquidated damages shall be present and owing by the CONTRACTOR and his/her sureties to the OWNER and shall stand as the sole and exclusive remedy of the OWNER for the delays of the CONTRACTOR and only for the delays of the CONTRACTOR. Nothing in this Section is intended to affect any other claims or rights of action the OWNER may have against CONTRACTOR for damages other than those caused by delay in completion of the Agreement.

The OWNER may withhold from the final payment the amount of liquidated damages determined to be due the OWNER as a result of delay and/or delays caused by the CONTRACTOR. Failure on the part of the OWNER to withhold any such liquidated damages shall not be construed as a waiver of OWNER'S rights under the terms of this Agreement.

The time during which CONTRACTOR is delayed in said work by the acts of negligence of the OWNER, or by the Acts of Nature, or by other events or happenings which the CONTRACTOR could not have reasonably foreseen or provided for, or by stormy or inclement weather which delays the work, or by strikes or like trouble among laborers which delay said work, and which are not caused by, or the continuance of which is not due to any unreasonable acts or conduct on the part of the CONTRACTOR, shall be added to the time for completion pursuant to Section 3.

Section 14. ASSIGNMENT OF CONTRACT: No assignment by a party hereto of any rights under or interests in this Standard Form of Agreement Between Homeowner and Contractor will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

Section 15. BINDING ARBITRATION: If the parties mutually agree, claims, disputes or other matters in question may be submitted for arbitration and decided according to the Arizona Uniform Rules of Procedure for Arbitration. Demand for arbitration must be filed in writing with the other party to this Agreement.

Section 16. VENUE: The parties must institute and maintain any legal actions or other judicial proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.

Section 17. OPTION TO TERMINATE BY OWNER: Should CONTRACTOR, after seven (7) days have expired following a written notice to perform from OWNER to CONTRACTOR, fail, refuse or neglect to perform any provisions of this Agreement, OWNER, may terminate the Agreement, take possession of all materials, tools, equipment, and appliances and finish said work by the appointment of another contractor. In the event of such termination, all payments presently due CONTRACTOR under this Agreement may be withheld by OWNER until the work has been completed by a subsequent contractor by such other means as the OWNER elects, and the job has been so certified completed. Any and all costs so incurred to complete the job may be deducted from the Agreement sum then or thereafter due CONTRACTOR. Such action shall be without prejudice to any other remedy OWNER may have then or in the future.

Section 18. OPTION TO TERMINATE BY CONTRACTOR: Should performance of this Agreement be stopped by any public authority or act of God for a period of thirty (30) days or more, through no fault of the CONTRACTOR, CONTRACTOR may stop work or terminate this Agreement and recover from the OWNER payment for all work executed according to the work and material estimates herein, and CONTRACTOR shall stand the loss for the uncompleted portion of this Agreement. Should performance be stopped through act or negligence of OWNER, or should OWNER fail to pay CONTRACTOR any payment due within seven (7) days after written notice of CONTRACTOR to pay, CONTRACTOR may



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stop work, terminate this Agreement and recover from OWNER payment for all work executed according to the work and material estimates herein and any damage sustained.

Section 19. ATTORNEY FEES AND COSTS: If either party brings an action or proceeding for failure to observe any of the terms or provisions of this Agreement, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration, and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.

Section 20. GOVERNING LAW: The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance.

Section 21. WAIVER: If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.

Section 22. SEVERABILITY: If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.

Section 23. INTEGRATION: This Agreement contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the parties.

Section 24. CONFLICT OF INTEREST: This contract is subject to the Conflict of Interest provisions of the Arizona Revised Statutes 38-511, as amended.

OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in this Agreement.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed and approved this Agreement.

OWNER

DATE

CONTRACTOR

DATE