



CITY OF BISBEE PUBLIC WORKS DEPARTMENT

Professional Services Agreement Roadway Construction Services

THIS AGREEMENT is made and entered into this 18th day of August, 2020 by and between CITY OF BISBEE, hereinafter referred to as the "City", and KE&G Construction, Inc, hereinafter referred to as the "Contractor".

I. SCOPE OF SERVICES

Subject to the terms and conditions set forth in this agreement, Contractor shall provide services as a General Contractor, all material, labor and transportation as more specifically described in Exhibit "A" Scope of Services.

II. COMPENSATION AND METHOD OF PAYMENT

In consideration for the performance of the services described in Attachment "A" the City shall pay the Contractor **\$570,485.64**.

The City will pay the Contractor following the submission of itemized invoices(s) for the services and material rendered. No payment shall be issued prior to receipt of material or service and correct invoicing. Each invoice must bear written certification by an authorized City representative confirming the services and material for which payment is requested have been performed and received. The City agrees to pay all properly documented invoices, for accepted work and material within thirty (30) days of receipt.

All notices, invoices and payment shall be made in writing and may be given by personal delivery, mail or e-mail.

The designated recipients for such notices, invoices and payments are as follows:

Contractor: KE&G Construction, Inc
1601 Paseo San Luis
Sierra Vista, AZ 85635
520-458-9594

City: City of Bisbee
Jesus Haro
Public Works Director
915 S. Toreaville Rd.
PO Box 4601
Bisbee, AZ 85603
jharo@cityofbisbee.com
520-432-8002

III. Notice to Proceed

The Contractor shall not commence any billable work or provide any material or services under this Agreement until Contractor receives written notice from the Public Works Director to proceed

IV. TERMINATION

A. The City may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating

the Agreement on behalf of the City is or becomes, at any time while the Agreement or any extension of the Agreement is in effect any employee of, or Contractor to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when written notice from the City is received by the parties to this Agreement, unless the notice specifies a later time.

- B. This Agreement may also be terminated at any time by mutual written consent.
- C. The City reserves the right to cancel the whole or any part of this Agreement due to failure of the Contractor to carry out any term, promise or condition of the Agreement. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act any of the following, in the opinion of the City:
 - 1. Contractor provides personnel who do not meet the requirements of the Agreement;
 - 2. Contractor fails to adequately perform the stipulations, conditions, or services/specifications required in the Agreement;
 - 3. Contractor attempts to impose on the City personnel, materials, products, or workmanship that is not of an acceptable quality;
 - 4. Contractor fails to furnish the required service and/or product within the time stipulated in the Agreement;
 - 5. Contractor fails to make progress in the performance of the requirements of the Agreement and/or gives the City a positive indication that Contractor will not or cannot perform to the requirements of the Agreement.

V. ENFORCEMENT, LAWS AND ORDINANCES

This agreement shall be enforced under the laws of the State of Arizona. Contractor must comply with all applicable federal, state, and local laws, ordinances, and regulations. Contractor shall ensure payment of all taxes licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

VI. MODIFICATIONS

This Agreement may only be modified by a written amendment signed by the City and the Contractor.

VII. WAIVER

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

VIII. INDEMNIFICATION

To the fullest extent permitted by law, Contractor agrees to indemnify, and hold harmless the City of Bisbee, 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 Agreement, 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. The City of Bisbee reserves the right, but not the obligation, to participate in defense without relieving Contractor of any obligation hereunder.

The amount and type of insurance required shall not in any way be construed as limiting the scope of the indemnification set forth above.

IX. INSURANCE

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

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City 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 agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **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.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

• General Aggregate \$1,000,000

• Each Occurrence \$ 500,000

a. The policy shall be endorsed to include the following additional insured language: "The City of Bisbee, its departments, agencies, boards, officers, officials, agents and employees shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$500,000

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

1. On insurance policies where the City of Bisbee is named as an additional insured, the City of Bisbee 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 Contract. Contractor shall provide the City with certificates naming it as an additional insured.

2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

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

C. **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the

insurance policies above shall require (30) days written notice to the City of Bisbee. Such notice shall be sent directly to the Bisbee City Public Works Department, 118 Arizona Street, Bisbee, Arizona 85603.

- D. **ACCEPTABILITY OF INSURANCE:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "AM.

Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. 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 Bisbee City Public Works Department, Bisbee, Arizona 85603. **The City project/contract number and project description shall be noted on the certificate of insurance.** The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies **or** Contractor shall furnish to the City separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above

- G. **APPROVAL:** 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.

X. **MISCELLANEOUS PROVISIONS**

- A. 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 Public Works Department. All sub-contractors 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 sub-contractor were the Contractor referred to herein. The Contractor is responsible for Agreement performance whether or not sub-contractors are used.
- B. The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the 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 City.
- C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Agreement shall be the property of the City and shall not be used by the Contractor or any other person except with the prior written permission of the City.

- D. This Agreement is subject to the provisions of A.R.S. §38-511.
- E. The Contractor 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.

XI. LEGAL ARIZONA WORKERS ACT COMPLIANCE

Contractor hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws") The Contractor shall further ensure that each sub-Contractor who performs any work for the Contractor under this Agreement likewise complies with the State and Federal Immigration Laws.

The City shall have the right at any time to inspect the books and records of the Contractor and any sub-Contractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Contractor's 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 Agreement subjecting the Contractor to penalties up to and including suspension or termination of this Agreement. If the breach is by a sub-Contractor, and the sub-agreement 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-agreement or retain a replacement sub-contractor, (subject to City approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

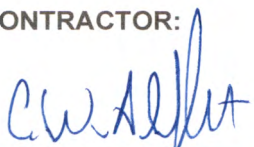
The Contractor shall advise each sub-contractor of the City's rights, and the sub-contractor's obligations, under this Section by including a provision in each sub-agreement substantially in the following form:

"The sub-Contractor hereby warrants that it will at all times during the term of this Agreement comply with all federal laws applicable to the sub-contractor's employee and the requirements of A.R.S. § 23-214(A). The sub-contractor further agrees that the City may inspect the sub-contractor's books and records to insure 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 Agreement subjecting the sub-contractor to penalties up to and including suspension or termination of this Agreement."


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 Agreement represents the entire agreement between the CITY and the CONTRACTOR relating to this requirement and shall prevail over any and all previous verbal and written agreements.

CONTRACTOR:


 Written Name: CHRIS ALBRIGHT, PRESIDENT 9/3/2020

APPROVED BY:


 David Smith, Mayor 8-20-2020
 Date

ATTEST:

Ashlee Coronado 8/20/19
Ashlee Coronado, City Clerk Date

APPROVED AS TO FORM:

James Ledbetter 8/18/20
James Ledbetter, City Attorney Date

Exhibit "A" Scope of Services and Fee

- Apply a two-inch asphalt overlay to approximately 1.75 miles of Tombstone Canyon, Main St. and Naco Rd.
- Provide traffic control as needed.
- Mill approximately 0-2 inches of existing roadway as needed.
- Apply tack to the existing roadway to bond new asphalt to the existing asphalt roadway.
- Adjust City of Bisbee owned manholes and fire suppression water system valves to grade after applying asphalt overlay.
- Re-apply pavement markings with thermoplastic.
- Contractor shall field verify all measurement.