

CONSTRUCTION CONTRACT

THIS AGREEMENT, made and entered into this 3RD day of January, 2023, by and between City of Bisbee (CITY) and Rustic Adobe Masonry (CONTRACTOR). The CITY and CONTRACTOR may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, the CITY owns real property located and generally known as:

Address: 2118 West Newell Street

Parcel Number 10257305B (PROPERTY); and

WHEREAS, the PROPERTY requires repairs as set forth hereafter in the Scope of Work; and

WHEREAS, CONTRACTOR is qualified and willing to carry out the required repairs for CITY,

CITY and CONTRACTOR agree as follows:

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

CONTRACTOR shall furnish all materials and do all of the work described in the Scope of Work according to the terms of this Agreement for the lump sum price of Forty-one thousand five hundred sixty-two and 00/100----- DOLLARS (\$ 41,562.00). The CONTRACTOR'S cost breakdown by the categories of the improvements or repairs involved is attached to this Agreement as Exhibit B.

Section 2. TIME OF COMMENCEMENT AND COMPLETION: No work shall begin until the Notice to Proceed has been issued by the CITY and received by the CONTRACTOR. The CONTRACTOR shall commence work within Five (5) consecutive calendar days of the date of the Notice to Proceed.

Work shall be completed by the date specified in the Notice to Proceed. Such date shall be deemed the completion date.

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

1/3 at start - \$13,545, 1/3 progress payment \$13,545, 1/3 balance at completion \$13,545

Upon completion of the work, CONTRACTOR shall submit the following documentation to the CITY:

Release of liens from all subcontractors and suppliers
Authorization for Payment
Notice of Completion

Warranties and manufacturers information (submit only with final payment request)

The CITY shall inspect the work prior to approval of payment.

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 affect cost, progress, performance or furnishing of the work as outlined in the Scope of Work.

Section 5. INSURANCE:

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 CITY and name the CITY as an additional insured. Use of alternative insurers requires the CITY'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. 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. If any part of the Work to be done under this Contract is subcontracted, the CONTRACTOR shall only use subcontractors licensed to perform the Work under the laws and regulations of the State of Arizona in connection with the Work

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

Section 6. EQUAL EMPLOYMENT OPPORTUNITY AND LEAD-BASED PAINT: The CONTRACTOR understands that this Agreement is the result of a Federal financial assistance program that obligates the CONTRACTOR to comply with the Federal requirements pertaining 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 subcontractors 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 CITY'S request.

Lead-Based Paint: The CONTRACTOR agrees to comply with lead-based paint regulations, 24 CFR Section 35 and is expected to comply with *HUD's Regulation on Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance*, HUD Guidelines, and all other relevant policies. The CONTRACTOR shall follow procedures, instructions, and standards for high-quality work. The use of lead-based paint for any improvements under this Agreement is prohibited.

Section 7. 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 others including CITY.

CONTRACTOR agrees to indemnify, defend, and hold the City of Bisbee harmless from any claims or damages levied by third parties so injured or damaged in their person or property as a result of the negligence or improper discharge of the duties of CONTRACTOR or employees or agents of CONTRACTOR.

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 CITY 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 credited back to the CITY. All substitutions must first be approved in writing by CITY, 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 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 CITY. 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: The CITY shall allow the CONTRACTOR access to and pay for CONTRACTOR'S use of all existing utility services, including gas, electricity, water, and sewer, required

in the conduct of the work, if available. If the required utility services are not available, the CONTRACTOR shall assume responsibility for and pay all fees necessary for the provision of such services during the course of work.

Section 11. WARRANTY AND CORRECTION OF WORK: During the progress of the work, CONTRACTOR shall re-execute any work that fails to conform to the requirements of this Agreement.

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 CITY. If the CONTRACTOR fails to correct the defects within five (5) business days after being so notified, CITY 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 CITY shall be repaid to CITY in full by CONTRACTOR. "Work" as defined in this Section shall include the work done by Subcontractors as well as work done by CONTRACTOR.

Section 12. SUBCONTRACTS AND SUPPLIERS: Before execution of this Agreement, the Contractor shall furnish the CITY 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 CITY.

Section 13. ASSIGNMENT OF CONTRACT: No assignment of rights or interests in this Standard Form of Agreement will be binding on any party 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 14. 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 Cochise County, Arizona.

Section 15. OPTION TO TERMINATE BY CITY: Should CONTRACTOR, after seven (7) days have expired following a written notice to perform from CITY to CONTRACTOR, fail, refuse or neglect to perform any provisions of this Agreement, the CITY may terminate the Agreement, take possession of all materials 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 CITY until the work has been completed by a subsequent contractor, and the job has been 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 CITY may have then or in the future.

Section 16. 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 CITY payment for all work completed 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 CITY, or should CITY fail to pay CONTRACTOR any payment due within seven (7) days after written notice of CONTRACTOR to pay, CONTRACTOR may stop work, terminate this Agreement, and recover from CITY payment for all work completed according to the work and material estimates herein and any damage sustained.

Section 17. 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 18. GOVERNING LAW/JURISDICTION: The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought exclusively in the Superior Court, Cochise County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the exclusive jurisdiction and venue of such Court.

Section 19. 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 20. 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 21. 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.

Section 22. MODIFICATIONS: All modifications, changes, and amendments to this Agreement are not effective unless in writing, signed and endorsed by the Parties.

Section 23. CONFLICT OF INTEREST: This Agreement is subject to the Conflict-of-Interest provisions of the Arizona Revised Statutes 38-511, as amended.

Section 24. NOTIFICATIONS: Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals, and other communications (Notices) required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or ten (10) calendar days after mailing, whichever comes first, in the case of notices that are mailed. Notice of change of address must be provided thirty (30) days prior to the effective date.

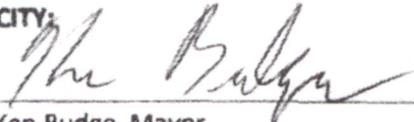
City:
City of Bisbee
Attn: City Manager
76 Erie St
Bisbee, Arizona 85603

Contractor:
Rustic ADOBE MASONRY
Attn: Daniel T. Pena, Owner
943 W Silverlake Road
Tucson, Arizona 85713

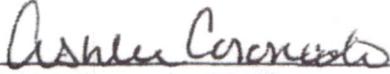
Section 25. COMPLIANCE WITH LAW: CONTRACTOR must comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. CONTRACTOR will comply with the Americans with Disabilities Act (ADA) and will indemnify the CITY for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. CONTRACTOR will not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Agreement, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964). In addition, CONTRACTOR must include similar requirements of subcontractors in any contracts entered into for performance of the CONTRACTOR's obligations under this Agreement. CONTRACTOR agrees not to participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. In addition, CONTRACTOR must include similar requirements of all subcontractors in contracts entered for performance of the CONTRACTOR's obligations under this Agreement.

CITY 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.

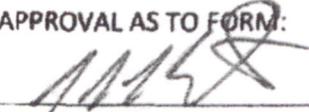
IN WITNESS WHEREOF, CITY and CONTRACTOR have signed and approved this Agreement.

CITY:


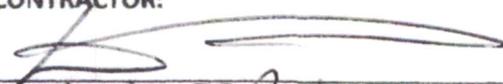
Ken Budge, Mayor

ATTEST:


Ashlee Coronado, City Clerk

APPROVAL AS TO FORM:


Joseph Estes, City Attorney

CONTRACTOR:


By: Daniel T. Pena
Its: Owner