

NEW CITY HALL FOR THE CITY OF BISBEE

118 Arizona Street, Bisbee, Arizona

CONSTRUCTION SERVICES CONTRACT

CONSTRUCTION SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

This CONTRACT is entered into as of the Effective Date set forth below between the CITY OF BISBEE, ARIZONA, a municipal corporation, hereinafter referred to as "BISBEE" and BFL CONSTRUCTION COMPANY, INC., hereinafter referred to as the "CONTRACTOR." BISBEE and the CONTRACTOR may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

BISBEE and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1.0 CONSTRUCTION SERVICES

1.1 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as New City Hall for the City of Bisbee ("Project") and is generally described as follows:

A two story building of approximately 10,800 sq.ft.

1.2 CONTRACTOR shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

2.0 CONTRACT TIME

2.1 CONTRACTOR shall submit to BISBEE, on or before the Notice to Proceed date, a Critical Path Method (CPM) Construction Progress Schedule indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work no less frequently than on a monthly basis as part of the CONTRACTOR's progress payment request.

2.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Final Completion and readiness for final payments as stated in the Contract Documents, are of the essence for the Contract.

2.3 The Work shall be substantially complete within THREE HUNDRED calendar days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within THREE HUNDRED calendar days after the date when the Contract Times commences to run.

- 2.4 Failure of CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling BISBEE to terminate the Contract and to seek all the remedies set forth herein or provided by law, unless CONTRACTOR applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.
- 2.5 Failure of BISBEE to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CONTRACTOR's duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.
- 2.6 BISBEE's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling BISBEE to all the remedies set forth herein or provided by law.

3.0 LIQUIDATED AND SPECIAL DAMAGES

- 3.1 BISBEE and CONTRACTOR recognize that time is of the essence for this Contract and that BISBEE will suffer financial loss, in addition to and apart from the costs described in Paragraph 3.2, if the Work and/or portions of the Work are not performed and completed within the times specified in Section 2, plus any extensions thereof allowed in accordance within the Contract Documents. BISBEE and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by BISBEE if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, BISBEE and CONTRACTOR agree that the amounts per day set forth herein are reasonable estimates of such liquidated damages for delay (but not as a penalty) and that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by BISBEE, and CONTRACTOR agrees to pay such liquidated damages as herein provided.
- 3.1.1 CONTRACTOR shall pay BISBEE ONE THOUSAND TWO HUNDRED dollars and no cents (\$1,200.00) for each calendar day that expires after the time specified for substantial completion, until the Work is substantially complete.
- 3.1.2 After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by BISBEE, CONTRACTOR shall pay BISBEE ONE THOUSAND TWO HUNDRED dollars and no cents (\$1,200.00) for each calendar day that expires after the time the Work has been deemed substantially complete until such time as the Work is finally complete and ready for final payment.

- 3.2 **Special Damages:** In addition to the amounts provided for liquidated damages, CONTRACTOR shall pay BISBEE the actual costs reasonably incurred by BISBEE for BISBEE's CM, if applicable, the A/E and for engineering and inspection forces employed on the Work for each calendar day that expires after the time specified for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this contract is \$150.00 per hour. The rate for the work by the A/E for this Contract is \$ 150.00 per hour. The rate for work by BISBEE's CM, if applicable, is \$150.00 per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours.
- 3.3 BISBEE may withhold and deduct from any payment due to CONTRACTOR the amount of liquidated damages, special damages, and other costs, such as CONTRACTOR's failed testing costs or damages to other BISBEE property, from any moneys due CONTRACTOR under the Contract.

4.0 **CONTRACT PRICE**

BISBEE shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of Three Million-Nine Hundred Ninety Seven Thousand-Eight Hundred Ninety Eight dollars and no cents (\$3,997,898.00) as more specifically set forth in CONTRACTOR's bid, and any additional amounts agreed to pursuant to valid Change Order, approved by BISBEE.

5.0 **CONTRACT DOCUMENTS**

The following documents are pertinent to the Project:

- 5.1 This Contract, pages 1 to 10, inclusive.
- 5.2 The Project Drawings, Sheets 1 to 57 and dated April 5, 2022.
- 5.3 The project General Conditions, pages 1 to 68, inclusive.
- 5.4 ~~The project Supplementary Conditions.~~
- 5.5 ~~The Project Technical Specifications are on the drawings.~~
- 5.6 Addenda consisting of Numbers 1 to 5 inclusive.
- 5.7 Performance Bond.
- 5.8 Labor and Materials (Payment) Bond.
- 5.9 CONTRACTOR's List of Subcontractors (per bid submission).

5.10 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (per bid submission.)

5.11 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

- A. Written Attachments
- B. Work Change Directives
- C. Change Order(s)

6.0 MISCELLANEOUS

6.1 **Controlling Law:** Any action to enforce any provision of this Contract or to obtain any remedy with respect this Contract shall be brought exclusively in the Superior Court, Bisbee County, Arizona (or, as may be appropriate, in the Justice Courts of Bisbee County, Arizona or in the United States District Court for the District of Arizona, if, and only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

6.2 This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.3 The failure of any Party to enforce against another Party any provision of this Contract shall not constitute a waiver of that Party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

6.4 BISBEE 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 to all covenants, agreements, and obligations contained in these Contract Documents.

6.5 **Independent Contractor:** CONTRACTOR agrees he is an independent contractor and not an agent or employee of BISBEE. CONTRACTOR shall supervise and direct the Work to be done, using his best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures and for coordinating all portions of the Work, required by the Contract Documents. CONTRACTOR shall be responsible to BISBEE for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under any Contract Documents.

6.6 **Attorney's Fees:** Should litigation be necessary to enforce any term or provision of this Contract, or to collect any damages claimed or portion of the amount payable under this Contract, then all litigation and collection expenses, witness fees, court costs, and

attorney's fees shall be paid to the prevailing Party. Nothing herein shall preclude non-binding arbitration if they so elect in the event of a dispute hereunder.

- 6.7 Conflict of Interest: In accordance with the provisions of Arizona Revised Statutes § 38-511, as amended, BISBEE may cancel any contract it is a party to within three years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of BISBEE is, at any time while the contract or any extension thereof is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. In the event BISBEE elects to exercise its rights under Arizona Revised Statutes § 38-511, as amended, BISBEE agrees to immediately give notice thereof to CONTRACTOR.
- 6.8 Notices: Unless otherwise provided herein, all notices, demands, or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given and received either (a) on the date of service if personally served on the Party to whom notice is to be given, or (b) on the third day after the date of the postmark of deposit by first class US mail, registered or certified, postage prepaid, or (c) the following business day after the date given to a recognized and reputable overnight delivery service, and properly addressed as set forth below, or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection:

TO BISBEE:
Stephen J. Pauken
City Manager
City of Bisbee
76 Erie Street
Bisbee, AZ 85603

TO CONTRACTOR:
Brian Tomaszewski
Project Manager
BFL Construction Company, Inc.
700 E. Broadway Blvd., Suite 200
Tucson, AZ 85719-5753

COPIES TO:
Joseph D. Estes
City Attorney
Gust Rosenfeld, PLC
One E. Washington St.
Suite 1600
Phoenix, AZ 85004-2553

If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 6.9 Amendments and Waiver: No amendment or waiver of any provision of these Contract Documents nor consent to any departure by BISBEE shall be effective unless the same shall be in writing and signed by BISBEE. Such waiver or consent shall be effective only

in the specific instance and for the specific purpose for which given. No waiver by BISBEE of any default or breach by CONTRACTOR shall be deemed to be or constitute a waiver of any other or subsequent default or breach. BISBEE specifically reserves and shall have all rights and remedies available to it under the provisions of the Contract Documents.6.10 Severability: The provisions of this Contract are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

6.11 Immigration Law Compliance Warranty:

6.11.1 As required by A.R.S. § 41-4401, CONTRACTOR hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). CONTRACTOR further warrants that after hiring an employee, CONTRACTOR verifies the employment eligibility of the employee through the E-Verify program.

6.11.2 If CONTRACTOR uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.

6.11.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to damages up to and including termination of the Contract. CONTRACTOR is subject to contractual damages of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. BISBEE at its option may terminate the Contract after the third violation. CONTRACTOR shall not be deemed in material breach of this Contract if the CONTRACTOR and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).

6.11.4 BISBEE retains the legal right to inspect the papers of any CONTRACTOR or subcontractor employee who works on the Contract to ensure that the CONTRACTOR or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.

6.11.5 If state law is amended, the Parties may modify this paragraph accordingly.

6.12 Equal Treatment of Workers: CONTRACTOR shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Work. CONTRACTOR shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration

("OSHA") and the Fair Labor Standards Act ("FLSA"). CONTRACTOR shall protect and indemnify BISBEE and its representatives against any claim or liability arising from or based on the violation of such, whether by CONTRACTOR or its employees.

- 6.13 Equal Employment Opportunity Provisions: The following provisions, contained in Section 301 of Executive Order No. 11246, dated September 24, 1965, as amended, govern performance of work under BISBEE contracts, are applicable to all BISBEE contracts, and must be included in all contracts executed by BISBEE for the performance of work. In this document, the term "contract" means all contracts awarded by the City, and the term "Contractor," means parties awarded contracts by the City.
- 6.13.1 CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. Such action includes the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post notices provided by BISBEE, setting forth the provisions of this Equal Opportunity clause, in conspicuous places available to employees and applicants for employment.
- 6.13.2 CONTRACTOR will state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or disability, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR.
- 6.13.3 CONTRACTOR will comply with all provisions of Executive Order No. 11246, dated September 24, 1965, as amended, and with all the rules, regulations, and relevant orders of the Secretary of Labor.
- 6.13.4 CONTRACTOR will furnish all information and reports required by Executive Order No. 11246, dated September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, and will allow BISBEE and the Secretary of Labor to access his books, records, and accounts in order to ascertain compliance with such rules, regulations, and orders.
- 6.13.5 The Contract may be canceled, terminated, or suspended, in whole or in part if the CONTRACTOR does not comply with the provisions of this document. Other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, dated September 24, 1965, as amended, under rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law. Further, CONTRACTOR may be declared ineligible for further City of Bisbee Contracts in accordance with procedures authorized in Executive Order No. 11246, dated September 24, 1965, as amended.
- 6.13.6 CONTRACTOR must include the provisions of subdivisions 6.14.1 through 6.14.6 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontract or vendor.

- 6.14 Boycott of Israel: The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 35-393.01. CONTRACTOR certifies that it is not engaged in a boycott of Israel as of the effective date of this Contract, and agrees for the duration of this Contract to not engage in a boycott of Israel.
- 6.15 CONTRACTOR understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CONTRACTOR agrees to comply with these laws in performing this Contract and to permit BISBEE to verify such compliance.
- 6.16 Provisions Required by Law: Each and every provision of law and any clause required by law to be in the Contract will 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 will promptly be physically amended to make such insertion or correction.
- 6.17 Force Majeure: The Parties shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by the government, when satisfactory evidence is presented to BISBEE, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Party not performing.

(Signatures on Following Page)

CONTRACTOR NAME

By: BTSK
(Signature Required)

Name: Brian Tomaszewski
(Please Print)

Title: Project Manager

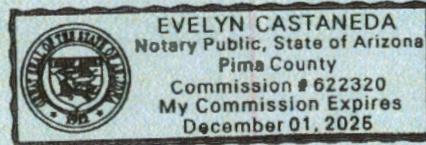
ACKNOWLEDGMENT

STATE OF ARIZONA
COUNTY OF Pima

On 11/15/2023, 2023, Brian Tomaszewski as Project Manager of BFL Construction Company, Inc. an Arizona corporation, personally appeared before me whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of BFL Construction Company, Inc.

Notary Public Evelyn Castaneda

(Affix notary seal here)



CITY OF BISBEE

IN WITNESS WHEREOF, the Parties have this Contract as of this 21st day of November, 2023 (the "Effective Date").

BY: [Signature]
Ken Budge, Mayor, City of Bisbee

ATTEST: [Signature]
Ashlee Coronado, City Clerk

APPROVED AS TO FORM: [Signature]
Joseph D. Estes, City Attorney