



CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (the “Contract”), is entered into this October 21, 2025, by and between the City of Bisbee, an Arizona municipal corporation (the “CITY”) KWR Construction Inc., an Arizona corporation (the “CONTRACTOR”). The CITY and CONTRACTOR may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the CITY applied for and obtained Community Development Block Grant (“CBDG”) funding for certain remodel work at the City’s Senior Center, located at 300 Collins Rd., Bisbee, Arizona 85603 (the “Project”); and,

WHEREAS, the CITY issued a Request for Proposals (“RFP”) and CONTRACTOR submitted a responsive bid to the RFP (the “Proposal”), which the City Council has deemed to be the lowest most responsive bid; and,

WHEREAS, the CITY desires to engage the CONTRACTOR to provide all construction services for the Project as detailed in the RFP and the Proposal.

NOW, THEREFORE the Parties, in consideration of the mutual covenants hereinafter set forth, do mutually agree as follows:

AGREEMENT

1. Recitals.

The Recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. Work.

CONTRACTOR shall complete all work as specified or indicated in the Contract Documents, as defined herein. The work is generally described as follows:

The conversion of all remaining Senior Center elements from propane to electric power. This will include the heating and cooling system, appliances (dishwasher, water heater, stove, etc). Improvements to the existing commercial kitchen, which include the replacement of a grease trap, and removal and relocation of one or more non-load bearing walls. The work also includes new flooring for the kitchen and main room areas, bringing the two restrooms into ADA compliance, lighting upgrades, and interior painting.

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.

3. Project Manager – Administration.

The CITY has designated SouthEastern Arizona Governments Organization (“SEAGO”) as administration project manager. SEAGO shall be empowered to perform all administrative functions as required for management of the Project and verification of compliance with Arizona Department of Housing (“ADOH”) requirements.

4. Contract Time.

CONTRACTOR shall submit to CITY, on or before the Notice to Proceed date, a Construction Progress Schedule indicating the times for starting and completing the various stages of the Work. Revisions/updates to the 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. Time is of the Essence.

The work will be completed within one hundred twenty (120) calendar days after the date when the Contract Time commences to run as provided in the Notice to Proceed. The CITY may administratively grant a time extension to the Contract time at its discretion, in writing, after receiving approval of any necessary extension requests with ADOH.

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 the CITY 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.

Failure of the CITY 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.

The CITY’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 the CITY to all the remedies set forth herein or provided by law.

5. Liquidated Damages.

CITY and CONTRACTOR recognize that time is of the essence of this Contract and that the CITY will suffer financial loss if the work is not completed within the time specified, plus any extensions thereof allowed in accordance with the Contract Documents. The Parties also recognize the delays, expense and difficulties involved in proving the actual loss suffered by the CITY if the work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for

delay (but not as a penalty) CONTRACTOR shall pay the CITY \$570.00, or according to Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction, 2022 Edition, Section 108, Table 108-1, whichever is greater, for each day that expires after the time specified for final completion until the work is complete and ready for final payment.

6. Contract Price and Method of Payment.

The CITY 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 Two Hundred Fifty-Eight Thousand Eight Hundred Sixty Dollars and 77/100 cents (\$258,860.77) as more specifically set forth in CONTRACTOR's Proposal, and any additional amounts agreed to pursuant to valid Change Order, approved by the CITY.

Originals of the Applications for Payment are to be submitted no later than the first day of the month to Melissa Hartman, City Housing Planner, 76 Erie Street, Bisbee, Arizona 85624, mhartman@Bisbeeaz.gov. The CITY shall review and verify the percentage, progress and quality of work completed.

The CITY will also submit a copy of the approved Application for Payment to: William D. Osborne, AICP, Community Development Program Manager, at wosborne@seago.org. SEAGO shall verify compliant completion of all necessary documentation required by ADOH, including but not limited to the Federal Labor Standards Act and Davis-Bacon Act. Should there be repeated non-compliance issues on the part of the CONTRACTOR, SEAGO is authorized to advise the CITY to withhold payment until the issues are resolved.

The CITY and CONTRACTOR mutually agree that the CITY will make a progress payment based on the estimate of the work covered by the corresponding Application for Payment, subject to those conditions stipulated below and in other parts of the contract documents. The CITY will make payments in the amount equal to ninety percent (90%) of work completed (i.e. CITY will retain ten percent (10%) of each estimate as additional guarantee for complete performance of the work), less the aggregate of payments previously made and less such deductions as the CITY determines are appropriate to cover claims requiring a greater sum to be retained.

Except as qualified above, upon final completion and acceptance of the work or designated part of the work on which separate final completion and acceptance and contract price are specified and upon compliance with other terms and conditions of the contract documents, payment may be made in full, including retainage withheld less such deductions as the CITY may withhold to cover claims requiring a greater sum to be retained and liquidated damages.

The CITY may deduct from each progress payment and final payment an amount equal to the CITY's estimate of the liquidated damages then due or that would become due based on the CITY's estimate of late completion of the work if CONTRACTOR fails to submit and implement a written schedule 15 recovery plan describing the cause of schedule slippage or delayed progress and the actions proposed to recover schedule.

Applications for progress payments, including amounts to be retained, shall be processed in accordance with A.R.S. § 34-221(C) and the relevant provisions of the General Conditions.

7. Indemnification.

CONTRACTOR shall comply with the requirements of all applicable laws, rules and regulations and shall exonerate, indemnify and hold harmless the CITY and its employees and officers, SEAGO and the ADOH (the "Indemnified Parties") from and for any violation caused by CONTRACTOR and shall assume full responsibility for payment of federal, state and local taxes on contributions imposed or required under the Social Security, workers' compensation and income tax laws.

CONTRACTOR shall indemnify, defend, and hold the Indemnified Parties harmless from any and all claims, demands, suits, actions, proceedings, loss cost, and damages of every kind and description, including any reasonable attorney's fees and/or litigation expenses, which may be brought or made against the CONTRACTOR, its employees and officers, the Indemnified Parties, or any person, regardless of who makes the claim, to the extent they result from the acts of the CONTRACTOR, its employees, agents, representatives, or sub-contractors, their employees, agents or representatives in connection with or incidental to the performance of this Contract. The CONTRACTOR'S obligation under this Section shall not apply to any damages caused by the negligence of CITY or its employees. Neither the contract amount, nor the minimum limits and types of insurance provided for shall limit the scope and extent of indemnity hereunder.

This Indemnity section shall survive any termination of this Contract.

8. Project Familiarity and Identification of Conflicts.

In order to induce the CITY to enter into this Contract, CONTRACTOR makes the following representations:

1. CONTRACTOR has familiarized himself/herself with the nature and extent of the contract documents, work, site, locality and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.
2. CONTRACTOR has given the CITY a written notice of all conflicts, errors or discrepancies discovered in the contract documents and the written resolution thereof is acceptable to the CONTRACTOR.
3. CONTRACTOR has examined and carefully studied the contract documents and other related data identified in the bidding documents including any "technical data."
4. CONTRACTOR is familiar with and satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

9. Insurance.

The CONTRACTOR shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rate of A10, or approved by CITY in its sole discretion and licensed to do business in the State of Arizona with policies and forms satisfactory to the CITY.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the CITY, constitute a material breach of this Contract.

The CONTRACTOR'S insurance shall be primary insurance as respects the CITY, and any insurance or self-insurance maintained by the CITY shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the CITY.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the CITY, its agents, officers, officials and employees for any claims arising out of the CONTRACTOR's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the CITY under such policies. The CONTRACTOR shall be solely responsible for the deductible and/or insured retention and the CITY, at its option, may require the CONTRACTOR to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The CITY reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The CITY shall not be obligated, however, to review same or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of, the CITY's rights to insist on strict fulfillment of CONTRACTOR'S obligations under this Contract.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the CITY OF BISBEE, its agents, officers, officials and employees as Additional Insured.

REQUIRED COVERAGE

Commercial General Liability

CONTRACTOR shall maintain Commercial General Liability insurance with an unimpaired limit of not **less than \$2,000,000.00 for each occurrence with a \$2,000,000.00 Products/Completed Operations Aggregate** and a **\$2,000,000.00 General Aggregate Limit**. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 0001 or any replacements thereof. The coverage shall not exclude X,C,U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc., Additional Insured, Form B, CG 20101185, and shall include coverage for CONTRACTOR's operations and products and completed operations.

Automobile Liability

CONTRACTOR shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of **not less than \$2,000,000.00 each occurrence** with respect to the CONTRACTOR's owned, hired, and non-owned vehicles assigned to or used in performance of the CONTRACTOR's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001, or any replacements thereof). Such insurance shall include coverage for loading and off-loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and **\$5,000,000.00 per accident limits for bodily injury and property damage** shall apply.

Workers' Compensation

The CONTRACTOR shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR's employees engaged in the performance of the work or services; and, Employer's Liability insurance of **not less than the statutory limits**.

In case any work is sub-contracted, the CONTRACTOR will require the Sub-Contractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the CONTRACTOR.

Certificates of Insurance

Prior to commencing work or services under this Contract, CONTRACTOR shall furnish the CITY with Certificates of Insurance, or formal endorsements as required by the Contract, issued by CONTRACTOR's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by the Contract are in full force and effect.

In the event any insurance policy(ies) required by this Contract, is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the CONTRACTOR's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the CITY fifteen (15) days prior to the expiration date.

Cancellation and Expiration Notice

Insurance required herein shall not expire, be cancelled, or materially changed without thirty (30) days prior written notice to the CITY.

10. Timely Submission of Labor Standard Forms.

All forms necessary for compliance with the Davis-Bacon Act shall be delivered to SEAGO prior to issuance of the Notice to Proceed and on a weekly basis during construction.

11. Contract Documents.

The contract documents which comprise the entire agreement between the CITY and the CONTRACTOR concerning the work consist of the following, with documents listed first taking precedence over subsequent documents in the event there is any inconsistency of any term:

- This Contract and Exhibit A, Terms and Conditions
- Specifications incorporated in the bidding documents
- General Conditions
- Bidding documents including addenda acknowledged in CONTRACTOR bid
- Invitation to Bid
- Information for Bidders
- Bid Proposal
- Bid Bond
- Performance Bond
- Labor & Material Payment Bond
- List of Sub-Contractors
- Notice to Proceed
- LS-2 Contractor Certification
- LS-3 Sub-Contractor Certification
- Certifications
- Wage Rate Determination as provided in the Bid Document
- SLS Form B, Point of Contact Information Sheet
- SLS Form C, Professional Firm's Sub-Firm's Certification
- SLS Form E, Project Wage Rate Classifications and Additional Classifications
- LS-4, Weekly Payroll Reports
- LS-5, Statement of Compliance
- LS-7, Notice to All Employees
- Standard Form 1444, Request to Conform an Additional Classification
- LS-14, Fringe Benefits Documentation
- LS-15, Authorization for Deductions
- LS-17, Certification of Applicable Fringe Benefit Payments
- Non-Discrimination Poster
- EEO - Certification Poster
- EEO – It's the Law Poster
- LS-9, Record of Employee Interviews
- LS-10, On-Site Inspection Report
- LS-11, Labor Standards Investigative Reports
- LS-12, Labor Standards Enforcement Report
- S3B-1, Section 3 Assurance
- S3B-2, Permanent and Project Work Force Breakdown
- S3B-3, Section 3 Business Self-Certification
- S3C-1A, Worker Self-Certification
- S3C-1B, Worker Employer Certification Form
- S3C-1C, Targeted Section 3 Worker Self-Certification

S3C-1D, Targeted Section 3 Worker Employer Certification
S3P-1, Section 3 Notice Employment and Training Positions Available
S3P-2, Sample Employment Survey
S3R-1C, Contractor Report Form
Environmental Conditions (if any are included)

12. Terms and Conditions.

This Contract is subject to the provisions entitled “Terms and Conditions” attached hereto and incorporated by reference herein as Exhibit A. This Addendum shall be interpreted as if Exhibit A were printed in full herein.

13. Certifications.

This Contract is subject to the provisions entitled “Certifications” which were submitted by the CONTRACTOR in the bid dated August 5, 2025, and are incorporated by reference herein and shall be interpreted as if the Certifications were printed in full herein.

14. 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:

IF TO THE CITY:	City Manager City of Bisbee 118 Arizona Street Bisbee, Arizona 85603 Email: spauken@bisbeeaz.gov
WITH A COPY TO:	City Attorney City of Bisbee 118 Arizona Street Bisbee, Arizona 85603 Email: joe@piercecoleman.com
IF TO DEVELOPER:	KWR Construction, Inc. Attn: _____ 72 N. Ten Pond Rd. Sierra Vista, Arizona 85635 Email: _____

WITH A COPY TO:

Attn: _____

Email: _____

The address to which any notice, demand or other writing may be given, made or sent to any Party may be changed by written notice as above provided. 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.

15. Compliance with Immigration Laws and E-VERIFY Requirement.

As mandated by Arizona Revised Statutes ("A.R.S.") § 41-4401, the CITY is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. Section 23-214(A). The CITY must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). Therefore, in signing or performing any Contract (including this Contract) for the CITY, CONTRACTOR fully understands that:

1. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A).
2. A breach of the warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract.
3. The CITY or its designee retains the legal right to inspect the papers or any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under this paragraph.

16. Safety.

The safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 651-678) as promulgated by the Federal government, and as implemented by the State of Arizona, apply to all work performed under this Contract. The CONTRACTOR will be solely responsible for implementing and enforcing the safety requirements of this Act at all times.

17. Miscellaneous Provisions.

1. Controlling Law: This Contract shall be construed under and in accordance with the laws of the State of Arizona and all obligations of the Parties created hereunder are performable in Cochise County, Arizona. Venue and jurisdiction for any conflict resolution proceeding, formal or informal, shall occur in Cochise County, Arizona.

2. This Contract shall be binding upon and ensure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.
3. In any case one (1) or more of the provisions contained in this Contract shall, for any reason, be held to be invalid, illegal or unenforceable said holding shall not affect any other provision thereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
4. Attorneys Fees: If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, the prevailing Party shall be entitled to reasonable attorney's fees, expert witness fees, costs and necessary disbursements in addition to any other relief to which such Party may be entitled.
5. Amendments: This Contract may be amended only by mutual agreement of the Parties hereto in writing to be attached to and incorporated into this Contract.
6. CONTRACTOR shall retain all work materials and records relating to the performance of the Scope of Work of the Contract for a period of not less than three (3) years after the final payment is made under the Contract.
7. Conflict of Interest: In accordance with the provisions of A.R.S. § 38-511, as amended, the CITY 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 the CITY 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 the CITY elects to exercise its rights under A.R.S. § 38-511, as amended, the CITY agrees to immediately give notice thereof to CONTRACTOR.
8. Boycott of Israel: The Parties shall comply with the applicable requirements of A.R.S. § 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.
9. Forced Labor of Ethnic Uyghurs Prohibited: By entering into this Contract, CONTRACTOR certifies and agrees CONTRACTOR does not currently use and will not use for the term of this Contract: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
10. It is clearly understood that CONTRACTOR will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the CITY. No employee or agent of CONTRACTOR or CITY shall be deemed or construed to be the employee or agent of the other Party for any purpose whatsoever.
11. Amendments and Waiver: No amendment or waiver of any provision of these Contract Documents nor consent to any departure by the CITY shall be effective unless the same shall be

in writing and signed by the CITY. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver by the CITY of any default or breach by CONTRACTOR shall be deemed to be or constitute a waiver of any other or subsequent default or breach. The CITY specifically reserves and shall have all rights and remedies available to it under the provisions of the Contract Documents.

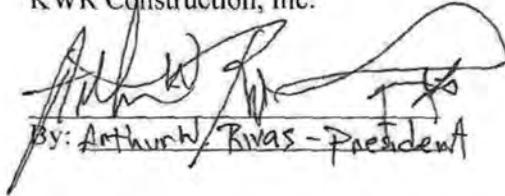
12. Severability: The provisions of this Contract are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.
13. 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.
14. 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 the CITY, 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)

IN WITNESSETH HEREOF, the Parties have hereunto set their hands and seals, and each person signing this Contract warrants that he/she has the capacity and authority to execute this Contract.

CONTRACTOR

KWR Construction, Inc.


By: Arthur W. Rivas - President

CITY OF BISBEE

Ken Budge, Mayor

ATTEST:

Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

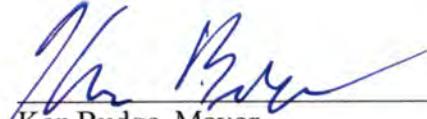
Joseph D. Estes, City Attorney
Pierce Coleman, PLLC

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CONTRACTOR
KWR Construction, Inc.

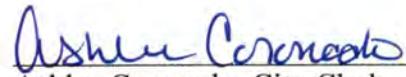
By: _____

CITY OF BISBEE



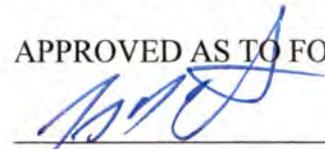
Ken Budge, Mayor

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



Joseph D. Estes, City Attorney
Pierce Coleman, PLLC

EXHIBIT "A"

TERMS AND CONDITIONS

1. Termination of Contract

- a. If, for any reason, the CONTRACTOR shall fail to fulfill in a timely and proper manner his/her obligations under this contract or if the CONTRACTOR shall violate any of the covenants, agreements or stipulations of this contract, the CITY shall thereupon have the right to terminate the contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof. In such event, all finished or unfinished site or structural improvements, as well as all materials or equipment acquired or stored by the CONTRACTOR under this contract shall, at the option of the CITY, become CITY'S property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.
Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the contract by the CONTRACTOR and the CITY may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the CITY from the CONTRACTOR is determined.
- b. The CITY may terminate this contract at any time by giving at least ten (10) days written notice to the CONTRACTOR. If the contract is terminated by the CITY as provided herein, the CONTRACTOR will be paid as provided in this Addendum for the time expended and expenses incurred up to the termination date. If this contract is terminated due to the fault of the CONTRACTOR, Paragraph 1.a hereof relative to termination shall apply.
- c. This contract may be terminated per A.R.S. §38-511, Conflict of Interest.

2. Sanction, Penalties and Debarment

A breach of the Contract provisions concerning violations of federal labor standards may be grounds for termination of the Contract and result in sanctions, penalties including liquidated damages and/or debarment of the CONTRACTOR.

3. Changes

The CITY may request changes in the scope of the services of the CONTRACTOR to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONTRACTOR's compensation, which are mutually agreed upon by and between the CITY and the CONTRACTOR, shall be incorporated in written amendments (Change Orders) to this contract.

4. Personnel

- a. The CONTRACTOR represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

- b. All of the services required hereunder will be performed by the CONTRACTOR or under his/her supervision and all personnel engaged in the work shall be fully qualified, authorized and permitted for such work under state and local law to perform such services.
- c. None of the work or services covered by this Contract shall be sub-contracted without the prior written approval of the CITY. Any work or services sub-contracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

5. Assignability

The CONTRACTOR shall not assign any interest on this Contract and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of the CITY thereto: provided, however, that claims for money by the CONTRACTOR from the CITY under this Contract may be assigned to a bank, trust company or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

6. Reports and Information

The CONTRACTOR, at such times and in such forms as the CITY may require, shall furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this Contract.

7. Records Maintenance and Retention

The CONTRACTOR shall maintain accounts and records including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the CITY to assure proper accounting for all project funds, both federal and non-federal shares. These records will be retained for at least three (3) years following the grant contract closeout between ADOH and U.S. Department of Housing and Urban Development (HUD) unless permission to destroy them is granted in writing by the CITY.

8. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the CONTRACTOR under this Contract are confidential and the CONTRACTOR agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY, ADOH, or HUD.

9. Copyright

No report, plan, drawing or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the CONTRACTOR.

10. Compliance with Local Laws

The CONTRACTOR shall comply with all applicable laws, ordinances and codes of the state and local governments and the CONTRACTOR shall hold the CITY harmless with respect to any damages arising from any tort done by the CONTRACTOR or representatives in performing any of the work embraced by this Contract.

11. Section 3 Compliance with the Provision of Training, Employment and Business Opportunities

- a. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The Parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Contract, the Parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The CONTRACTOR agrees to send to each labor organization or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the CONTRACTOR's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The CONTRACTOR agrees to include this Section 3 clause in every sub-contract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the Sub-Contractor in this Section 3 clause, upon a finding that the Sub-Contractor is in violation of the regulations in 24 CFR part 135. The CONTRACTOR will not sub-contract with any Sub-Contractor where the CONTRACTOR has notice or knowledge that the Sub-Contractor has been found in violation of the regulations in 24 CFR part 135.
- e. The CONTRACTOR will certify that any vacant employment positions, including training positions, that are filled: 1) after the CONTRACTOR is selected but before the contract is executed; and 2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the CONTRACTOR's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: 1) preference and opportunities for training and employment shall be given to Indians; and 2) preference in the award of contracts and sub-contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible but not in derogation of compliance with Section 7(b).

12. Interest of Members of a Governing Body

No member of the governing body of the CITY and no other officer, employee or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct, or indirect, in this Contract and the CONTRACTOR shall take appropriate steps to assure compliance.

13. Interest of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract and the CONTRACTOR shall take appropriate steps to assure compliance.

14. Interest of CONTRACTOR and Employees

The CONTRACTOR covenants that he/she presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his/her services hereunder. The CONTRACTOR further covenants that no person having any such interest shall be employed in the performance of this Contract.

15. Access for Persons with Disabilities

In performing all construction CONTRACTOR agrees to comply with the 2010 ADA Standards for Accessible Design. CONTRACTOR represents that he understands said standard specifications and same are incorporated herein by this reference.

16. Clean Air Act, Clean Water Act

The CONTRACTOR shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and EPA regulations which prohibit the use of non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision requires reporting of violations to the US EPA Assistant Administrator for Enforcement.

17. Federal Labor Standards Provisions

This Contract is subject to the Federal Labor Standards Provisions, Davis-Bacon Act of 1931, contract Work Hours and Safety Standards Act of 1962, Copeland Act of 1934 and the Fair Labor Standards Act of 1939.

The CONTRACTOR agrees to comply with the Federal Labor Standards Provisions (HUD Form 4010) which is incorporated by reference herein. The CONTRACTOR shall supply information to the CITY as necessary for monitoring of compliance to include, but not be limited to, submission of Labor Standard Forms included in the bid package, on-site inspections, investigations and/or enforcement by the CITY. The CONTRACTOR agrees to comply with Wage Rate Determination included in the bid package and incorporated by reference.

SEAGO will monitor compliance with such provisions and standards on behalf of the City of Bisbee. The successful bidder will be required, at a minimum, to complete the forms listed below in order to comply. (A brief explanation of the form and when the form is to be submitted to SEAGO is noted below). Should you have any questions concerning Federal Labor Standards or the forms to be submitted, please feel free to contact William D. Osborne, AICP, SEAGO, at wosborne@seago.org.

LS2 CONTRACTOR's Certification Concerning Labor Standards and Prevailing Wage Requirements

A separate form is to be completed by the CONTRACTOR and **submitted as a part of the bid package.**

LS3 Sub-Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements

This form is to be completed by **each** Sub-Contractor and **submitted to SEAGO within ten (10) days of execution of the subcontract and a minimum of seven (7) days prior to the date the Sub-Contractor is scheduled to start work on site.**

LS4 Weekly Payroll Report

This form is to be completed by **each** CONTRACTOR and Sub-Contractor weekly for the contract duration. **Forms must be complete, correctly signed, and submitted to SEAGO within seven (7) days of the end of the work week.**

Weekly Payroll Reports will be verified by SEAGO and ADOH to confirm payment of the required wages. The Weekly Payroll Reports must include all employees who have worked on the job site, including persons exempt from Davis-Bacon and Related Acts wage rate. Exempt persons are:

- a. Business Owners: This person must be listed in Section 5C of the LS2 or LS3 as an owner, partner or principal, owning at least a bona fide twenty percent (20%) equity interest in the business and must also be able to document the business via a tax ID number. This person must also be actively engaged in the business's management and must not meet the Davis-Bacon definition of a "laborer or mechanic". Relatives of the owner who are not listed in Section 5C must be paid Davis-Bacon and Related Acts wages. A Sub-Contractor who cannot document that the business is bona fide

must be listed as an employee on the prime CONTRACTOR's Weekly Payroll Report.

- b. Apprentices: The CONTRACTOR/Sub-Contractor must provide written evidence of the registration of the program with the DOL Employment and Training Administration (ETA), Office of Apprenticeship Training, Employer and Labor Services (OA) or a state apprenticeship agency recognized by the ETA/OA. For additional information concerning apprentices, please call SEAGO.
- c. Youth Employment: These individuals must be employed in a bona fide summer youth employment or opportunity program.
- d. Other: On-site but non-construction (non-hands on) superintendents, inspectors, engineers, watch persons, water carriers, messengers, clerical workers and working foremen who devote less than twenty percent (20%) of their time to construction work are exempt. If a foreman devotes more than twenty percent (20%) of his/her time to mechanic or laborer duties, they must be paid the applicable wage rate(s) for all hours worked.

LS5 Statement of Compliance

This form is the certification for the Payroll Form LS-4. A separate form is to be completed by **each** CONTRACTOR and SUB-CONTRACTOR weekly for the duration of the Contract. **Forms must be complete and correct, signed by the appropriate person, and submitted to SEAGO WITH THE LS-4 within seven (7) days of the end of the work week.**

The LS-5 must list all deductions indicated on the LS-4 and must indicate whether the fringes were paid in cash or to an approved fringe benefit plan. The LS-5 must be signed in ink by the owner or officer as listed on the LS-2 or LS-3 or by an employee designated in writing by the owner/officer as authorized to sign.

LS7 Notice to All Employees

This notice must be **posted** on the job site prior to the start of construction and must **remain posted** during construction.

LS15 Authorization for Deductions

This form is to be completed by **each** CONTRACTOR and Sub-Contractor and is to be **submitted to SEAGO one (1) week prior to the first payroll.** Please note that each employee who authorizes payroll deductions for items other than standard state and federal taxes must sign the form. This form may be required again if changes in deductions occur during the construction period.

The following information or action is also required in order to comply with Federal Labor Standards.

Verification of Fringe Benefit Plan

If fringe benefits are not paid in cash, each CONTRACTOR and Sub-Contractor must submit verification of each fringe benefit plan at least one (1) week prior to the first payroll by submitting the following information:

a. A copy of the most recent remittance statement from the company holding the fringe benefit plan such as a bank, union, etc. The remittance statement must verify the employees covered by the plan and the amount paid into the plan for each employee by the CONTRACTOR or Sub-Contractor.

OR

b. A letter addressed to SEAGO from each bank, union, etc. holding the fringe benefit plan. The letter must verify which employees are covered by the plan and the amount paid into the plan for each employee by the CONTRACTOR or Sub-Contractor.

Pre-construction Conference

The purpose of the pre-construction conference is to provide a forum for SEAGO, the CITY, CONTRACTOR and Sub-Contractors to discuss the technical nature of the construction project and all of the compliance requirements of the Contract.

CONTRACTOR and Sub-Contractor representatives shall attend. It is very important that the person preparing the Weekly Payroll Sheets attend this conference as well.

Notice Provisions

The Federal Labor Standards Provisions as well as the General Wage Decision included in this bid package must be posted on site during construction as well as the Equal Opportunity Employment/Non-Discrimination Notice. All postings shall be clearly visible and easily accessible to employees.

During construction, SEAGO will monitor compliance with the federal Labor Standards/Davis-Bacon. This monitoring shall include, but not be limited to, CONTRACTOR and Sub-Contractor employee interviews, on-site inspections, review of the weekly payroll, etc., as required. Copies of the LS forms to be completed during monitoring are available from SEAGO.