

DESIGN BUILD CONTRACT

THIS CONTRACT is entered into between the City of Page, a body politic and corporate of the State of Arizona, hereinafter called "City", and _____, hereinafter called Contractor, effective this ____ day of _____, 2023.

WITNESSETH

WHEREAS, City requires the services of a Contractor qualified to perform the design build functions for the _____ ("Project", more fully defined below) under the design build method of delivery, and

WHEREAS, Contractor was determined to be the most qualified applicant based on City's evaluation of qualifications submitted in response to the Request for Proposals, and

NOW, THEREFORE, the parties hereto agree to the following:

AGREEMENT

ARTICLE 1. CONTRACT TERM

1.1 Final Completion shall be achieved on or before June 30, 2023, unless this Contract is sooner terminated or further extended pursuant to the provisions of this Contract.

ARTICLE 2. SCOPE

2.1 This Contract is a Design Build Contract for the Project. The Design Build Contract includes a Design Services phase in which design and permitting issues are addressed, and Construction Phase during which the Project shall be constructed. All materials and articles of any kind necessary for the Work are subject to the approval of City.

2.2 The Contractor is responsible for design and construction of a complete Project, including all design services, plans, specifications, construction, including materials, equipment, labor for installation, material testing, training, warranty and as-built drawings.

2.3 Contractor shall perform all design services, construction administration services and construction of the Project in accordance with this Contract and the Project Schedule outlined in attached Exhibit B and the scope of work outlined in attached Exhibit A. Contractor shall perform all work in accordance the terms of the Contract and to the best of Contractor's ability. Contractor shall employ suitably trained and skilled personnel to perform all services under this Contract.

2.5 City Responsibilities.

2.5.1 City shall, throughout the performance of the work, cooperate with Contractor and perform its responsibilities, obligations and services in a timely manner to facilitate Contractor's

timely and efficient performance of the work and so as not to delay or interfere with Contractor's performance of its obligations under the Contract.

2.5.2 City shall provide timely reviews and approvals of interim design submissions and other documents.

2.5.3 City shall provide, to the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines; to the extent available, as-built and record drawings of any existing structure at the site; environmental studies, reports and assessments describing the environmental conditions, including hazardous materials, in existence at the site; and geotechnical studies describing subsurface conditions.

ARTICLE 3. SERVICES

3.1 General Project Administration Services

3.1.1 Contractor will provide and manage the professional design and administer the Project. Contractor will consult with City staff, research applicable design criteria, coordinate and attend meetings as necessary, and communicate with members of the Project Team.

3.1.2. Contractor will incorporate the use of best value design, construction methods and alternate materials during the design build process. Contractor shall focus on budget, aesthetics, constructability, operation and life cycle costs and compatibility with the surrounding environment.

3.1.3. Contractor shall, within twenty (20) days after award of the Contract, submit a project schedule showing the projected design and construction schedule.

3.1.4 All subcontractors and suppliers solicited will be subject to City approval.

3.2 Professional Services.

3.2.1 Contractor shall, consistent with applicable state licensing laws, provide through qualified licensed design professionals employed by Contractor, or procured from qualified, independent, licensed design consultants, the necessary design services for the preparation of the required drawings, specifications and other design submittals to permit Contractor to construct the Project consistent with the City's requirements. The Contractor and its design professionals shall seal with an Arizona registered professional seal all plans and specifications prepared by them for this Contract as required by state law.

3.2.2 The Contractor shall be responsible for the completeness and accuracy of its plans, specifications, supporting data and other work prepared or compiled under its obligation for this Project and shall correct, at its expense, all errors, omissions and acts therein which may be discovered. Correction of any errors, omissions and acts discovered on plans and specifications shall be the responsibility of the Contractor. The cost of the design necessary to correct those

errors attributable to the Contractor shall be charged to the Contractor. Any damage incurred by the City, including additional construction cost caused by such errors, omissions or acts, shall be chargeable to the Contractor. The fact that the City has accepted or approved the Contractor's work shall in no way relieve the Contractor of any of its responsibilities.

3.3 Project Schedule

3.3.1 Correction and updating of the schedule will be done as often as deemed necessary by City.

3.3.2 The Contractor shall furnish sufficient labor force and equipment to ensure the prosecution of the Work in accordance with the approved schedule so as to complete the Project within the Contract Time.

3.4 Design Services

3.4.1 Contractor and City shall agree upon interim design submissions that City may wish to review.

3.4.2 Within seven (7) days after a scheduled submission, the Contractor and City shall meet and confer about the submissions, with Contractor identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Project requirements or previously submitted design submissions.

3.4.3 City shall review and comment upon the interim design submissions in a time that is consistent with the turnaround times set forth in Contractor's Project Schedule. Contractor shall revise such interim design submissions (at its cost) to address comments by the City that identify any aspect that does not comply with the Project requirements.

3.4.4 City's review and approval of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither City's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability to the City.

3.4.5 The Project design must meet all applicable Specifications, Details and Drawings, including all City building and technical standards, City codes and specifications.

3.4.6 The Contractor shall avoid specification of construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative thereof, unless specifically approved in writing by the City.

3.4.7 The Contractor shall coordinate with City and any other necessary utilities regarding standard utility issues and incorporate pertinent information in the plans.

3.4.8 The drawing format will be a 24" x 36" sheet size, unless otherwise authorized in writing by the City.

3.4.9 Contractor shall obtain all necessary permits, approvals and licenses required for the prosecution of the work by any government or quasi-government entity having jurisdiction over the Project.

3.4.10 Copies of these permits and notices must be provided to the City's Representative prior to starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

3.4.11 Contractor is responsible for the cost of all permits and review fees.

ARTICLE 4. BONDING REQUIREMENTS

4.1 In accordance with A.R.S. § 34-610, the Contractor shall provide Payment and Performance Bonds ("Bonds") for not less than one hundred percent (100%) of the costs of the construction phase of the Project. Copies of the Bonds shall be attached to and become a part of this Contract upon acquisition of the Bonds by Contractor and prior to commencement of any work on the Project. The Bonds shall be issued by a surety authorized to do business in the State of Arizona who is acceptable to City.

ARTICLE 5. COMPLIANCE WITH LAWS

5.1 The Contractor shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract shall be brought in a court of the State of Arizona and Coconino County.

ARTICLE 6. INDEPENDENT CONTRACTOR

6.1 The status of the Contractor shall be that of an independent contractor. Neither Contractor, nor Contractor's officers, agents, or employees, shall be considered an employee of City or be entitled to receive any employment-related fringe benefits under City's personnel policy. Contractor shall be responsible for payment of all Federal, State and local taxes associated with the compensation received pursuant to this Contract, and shall indemnify and hold City harmless from any and all liability which City may incur because of Contractor's failure to pay such taxes.

ARTICLE 7. CONSULTANTS AND SUBCONTRACTORS

7.1 Contractor will be fully responsible for all acts and omissions of any member of the Design-Build Team and/or all engineers, subcontractors and consultants and of persons directly or indirectly employed by any subcontractor or consultant and of persons for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract shall create any obligation on the part of City to pay any money due any of Contractor's consultants or subcontractors, except as may be required by law.

ARTICLE 8. CONTRACT AMOUNT

8.1 Contract Amount.

8.1 The Contract Amount shall not exceed _____ Dollars (\$_____). The Contract shall include all costs of any nature necessary to the performance of the Work required hereunder, including all costs of design and construction of the Project.

8.2 Liquidated Damages.

8.2 Liquidated damages as used herein shall be _____ Dollars (\$____) per calendar day for each day the Project is not finally complete after the expiration of the Contract Time for Final Completion.

ARTICLE 9. GENERAL CONDITIONS

9.1 Engineer.

9.1 Any necessary Engineer(s) will be employed by the Contractor and the Engineer's fees and reimbursable expenses for services required hereunder are included in the Contract Amount.

9.2 Modifications.

9.2 A Modification is any of the following:

- .1 A written amendment to the Design Build Contract signed by all parties; or
- .2 A Change Order properly signed by the parties.

9.3 Contract and General Conditions.

9.3 The contract and general conditions for construction of the Project consist of this Contract and the Bonds, Insurance Certificates and Plans and Specifications prepared by Contractor ("Contract Documents"). This Contract represents the entire and integrated agreement between the parties hereto for design and construction of the Project and supersedes all prior negotiations, representations, or agreements, either written or oral.

9.4 Work.

9.4 The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the design and construction required by the Contract and furnishing and installing all materials and equipment incorporated, or to be incorporated in such construction to complete the Project.

9.5 Project.

9.5 The Project refers to all phases of the design and construction, as designed by the Contractor and depicted and described by the Contract Documents, through Final Completion and warranty.

9.6 Execution, Correlation, Intention and Interruption of the Contract Documents.

9.6.1 By executing the Contract, the Contractor represents and warrants that it has examined closely the site, has familiarized itself with the local conditions under which the Work is to be performed, has correlated all of its observations with the provisions and requirements of the Contract Documents. Where discrepancies in quantities, materials, sizes or other conditions exist between the Plans and Specifications, the Contractor shall accomplish the Work required to carry out the intent of the Contract Documents; however, the Contractor shall not be responsible for discrepancies in pre-existing site conditions that could not be reasonably discovered or anticipated. Should concealed conditions encountered below the surface of the ground or concealed within existing construction be at variance with the conditions indicated by the Contract Documents or differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract then the Contract Amount and/or Contract Time shall be equitably adjusted by Change Order upon claim by Contractor. Contractor shall not be entitled to any such adjustment if the condition should have been discovered by the Contractor during the design phase utilizing investigative techniques normally employed in the design of a project of this nature and scope.

9.6.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items necessary for the proper execution and completion of the Work. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. In the event that any Contract Document conflicts with or contradicts this Contract, this Contract shall control.

9.6.3 By executing this Contract, the Contractor warrants that it has determined that it can prepare Plans and Specifications which will describe a completely buildable Project which will function to achieve its intended purpose and which can be completed for the Contract Amount. The Contractor shall at once report to City any error, inconsistency or omission it may discover. The Contractor shall be liable to the City for any damage resulting from any such errors, inconsistencies or omissions.

ARTICLE 10. CONTRACTOR

10.1 Compliance with Laws.

10.1 The Contractor agrees to comply fully with all applicable federal, state and local laws, regulations, codes and standards. The Contractor agrees to indemnify and hold harmless City from all claims of whatever nature involving failure of the Contractor, its Engineer, consultants, or any of its Subcontractors to comply with any federal, state or local law, regulation, code or ordinance in connection with this Project.

10.2 Supervision and Construction Procedures.

10.2 The Contractor shall supervise the Work, using its best skill and attention. It shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

10.3 Warranty.

10.3.1 The Contractor warrants to the City that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. Contractor shall guarantee the work against defective workmanship or materials for a period of one year from the date of its final acceptance under the contract, ordinary wear and tear and unusual abuse or neglect excepted. Any omission on the part of City to condemn defective work or materials at the time of construction shall not be deemed an acceptance, and Contractor will be required to correct defective work or materials at any time before final acceptance and within one year thereafter.

10.3.2 The warranty provided in this Subparagraph 10.3 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract.

10.4 Taxes.

10.4 The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law arising out of construction or other business activities of the Contractor in connection with the performance of Design Build Contract.

10.5 Cleaning Up.

10.5.1 The Contractor at all times during the progress of the Work shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work it shall remove all waste materials and rubbish from and about the Project as well as all tools, construction equipment, machinery and surplus materials not specified to be left at the site, and shall clean as or materials as specified, and leave the Work "broom-clean" or its equivalent, except where more stringent cleaning requirements are provided by the Contract Documents.

10.5.2 If the Contractor fails to satisfactorily clean up, City will do so and the cost thereof shall be charged to the Contractor.

10.6 Indemnification.

10.6.1 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless and defend City, its agents, officers and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in

whole or in part by negligent acts or omissions of the Contractor, Engineer, Consultants, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph.

10.6.2 In claims against any person or entity indemnified under this Subparagraph by an employee of the Contractor, Engineer, consultants, subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Subparagraph 10.6 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor, Engineer, Consultants, or Subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11. SUBCONTRACTORS

11.1 Definition.

11.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or to perform any of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

11.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or his authorized representative.

11.1.3 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between the City and the Contractor, Engineer or any Subcontractor or Sub-subcontractor.

11.2 Subcontractual Relations.

11.2.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

.1 preserve and protect the rights of the City under the Contract Documents with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.

.2 require that such Work be performed in accordance with the requirements of the Contract Documents.

11.3 Payments to Subcontractors.

11.3 City shall not have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be provided by law.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1 Successors and Assigns.

12.1 The City and the Contractor each binds itself, its successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents.

12.2 City's Right to Complete the Work.

12.2 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Amendment, City, after providing seven days' written notice to the Contractor and his surety, and the opportunity to cure, which cure must commence within said seven day period, and without prejudice to any other remedy City may have, may proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including City's attorneys' fees and other costs.

12.3 Royalties and Patents.

12.3 The Contractor shall pay all royalties and license fees. Contractor shall defend all suits or claims from infringement of any patent right and shall save City harmless from loss on account thereof, including the City's attorneys' fees and court costs.

12.4 Tests.

12.4.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, the Contractor shall give City timely notice of its readiness and of the date arranged so City may observe such inspection, testing or approval. All inspections or tests required by the Engineer or the authority having jurisdiction shall be paid for by City.

12.4.2 The Contractor shall be responsible that all equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended.

ARTICLE 13. TIME

13.1 Contract Time, Liquidated Damages and Related Provisions.

13.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the City or the date of this Amendment if no Notice to Proceed is issued, and shall be completed by the Contractor within the time specified in Article 1 herein (the "Finish Date"). The date of beginning, rate of progress, and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

13.1.2 If the Final Completion Date occurs after the expiration of the Contract Time, the Contractor shall pay City the appropriate sum specified in Subparagraph 8.2 herein as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. These amounts are agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages City would sustain. Said amounts may be retained by City from final payment due the Contractor, provided the Contractor does not waive any rights or claims against such amounts withheld should there be a dispute.

13.1.3 The Final Completion Date is the calendar date when all items of the Work is one hundred percent (100%) finished.

13.2 Delays and Extensions of Time.

13.2 All claims for extension of time shall be made in writing to City. The notice of claim must be submitted no more than twenty (20) days after the occurrence of the delay and a detailed claim including a breakdown of all known costs involved shall be submitted no more than twenty (20) days after the occurrence; otherwise, such claim shall be waived. In the case of a continuing cause of delay, only one claim is necessary, although the Contractor shall promptly notify City in writing of the date of the termination of the continuing cause of delay.

ARTICLE 14. PAYMENTS AND COMPLETION

14.1 Progress Payments.

14.1.1 The Contractor shall submit to City an itemized application for payment supported by such data substantiating the Contractor's right to payment as City may require. The Contractor shall also submit a release of claim and lien waiver covering all work performed to date, including the work of each Subcontractor, laborer and material supplier. If lien waivers from all subcontractors, materials or equipment suppliers do not equal the aggregate sum of the previous progress payment, the Contractor shall submit the following statement along with the current progress payment request: "I hereby certify as General Contractor on this Project that I have paid all subcontractors, materials or equipment suppliers for the Work provided in conjunction with this Project for which I have previously received payment."

14.1.2 Payments shall be based on the work actually performed during the preceding calendar month.

14.1.3 The Contractor warrants and guarantees that title for all work, materials and equipment covered by an Application for Payment shall pass to City either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, except for claims arising out of City's failure to pay as required herein.

14.2 Approvals for Payment.

14.4.2 The City shall make a payment to the Contractor on the basis of the value of the Work actually performed during the preceding calendar month less the amount of retention. Such payments shall be made within twenty-one (21) days after receipt of application for payment.

14.4.4 The City shall retain ten percent (10%) of the amount of each application for payment as insurance of proper performance of the Contract. Once the Work is fifty percent (50%) complete, one-half of the retention then held shall be paid to the Contractor provided the Contractor is making satisfactory progress and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty percent (50%) complete, five percent (5%) of the amount of each subsequent application for payment shall be retained providing the Contractor is making satisfactory progress on the Project. If at any time the City determines that the Contractor is not making satisfactory progress, then the City may retain ten percent (10%) of all subsequent applications for payment.

14.4.5 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the City, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

14.3 Payments Withheld.

14.3.1 The City may decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in its opinion because of

- .1 defective work not remedied,
- .2 claims filed or reasonable evidence indicating probable filing of claims,
- .3 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount,
- .4 damage to another contractor,
- .5 reasonable indication that the Work will not be completed within the Contract Time, or
- .6 failure to carry out the Work in accordance with the Contract Documents.

14.3.2 When the grounds in Subparagraph 14.3.1 are removed, or in the case of 14.3.1.3, when the City is satisfied that the Contractor will complete the Project at the agreed-upon price, payment shall be made for amounts withheld because of them.

14.3.3 If the Contractor is not paid within fourteen (14) days after any amount is approved for payment and has become due and payable, then the Contractor may, upon seven additional days' written notice to the City, stop the Work until payment of the amount owing has been received. The Construction Amount shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up.

14.4 Substantial Completion and Final Payment.

14.4.1 When the Contractor determines that the Work or a designated portion thereof acceptable to the City is substantially complete, the City shall prepare for submission to the Contractor one punch list of items to be completed or corrected on the Project, or designated portion thereof. The punch list shall be the basis for determination of the Date of Final Completion. Any item on such list shall be completed or corrected before the Final Completion Date. The failure to include any items on such punch list does not relieve the responsibility of the Contractor to complete all work in accordance with the Contract Documents. When the City, on the basis of an inspection, determines that the Work is substantially complete, it will then prepare a Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Contractor for his written acceptance.

14.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the City will promptly make such inspection and, when the City finds (1) the Work in accordance with and acceptable under the Contract Documents, (2) the Work completed under the Contract fully performed and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 13.1.3, then, and only then, the City shall promptly state in writing that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents, and that the entire balance found to be due the Contractor is payable.

14.4.3 The making of final payment shall constitute a waiver of all claims by the City except those arising from:

- .1 unsettled claims,
- .2 faulty or defective Work,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any guarantees required by the Contract Documents.

14.4.4 The acceptance of final payment shall constitute a waiver of all claims by the Contractor, except claims made but not settled.

14.4.5 No earlier than three weeks before the expiration of the guarantee period specified in Subparagraph 10.3.1 herein, or at such other additional earlier time or times as the City may

agree, the City, in company with the Contractor and Engineer, shall make an inspection of the Project and certify that all defects in material and workmanship occurring during this period have been satisfactorily corrected.

14.4.6 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting Final Completion, the City shall, upon application by the Contractor and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the City prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims. If a Change Order extending the time for Substantial Completion is issued within 90 days of the Contract Time specified for Substantial Completion, the Contractor shall be entitled to payment of retention based upon the date of Substantial Completion disregarding the change in Contract Time resulting from the Change Order, providing that all other conditions to the payment of retention have been satisfied. Where retention is paid prior to Final Completion, the City may retain an amount equal to two hundred percent (200%) of the value of the Work that remains incomplete.

ARTICLE 15. PROTECTION OF PERSONS AND PROPERTY

15.1 Safety Precautions and Programs.

15.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

15.2 Safety of Persons and Protection of Property.

15.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss, to:

1. all persons engaged in the Work and all other persons who may be affected thereby;
2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

15.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection,

including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying City and users of adjacent utilities.

15.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

15.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

15.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the City.

15.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

15.3 Emergencies.

15.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided by the applicable provisions of the Contract Documents.

ARTICLE 16. INSURANCE

16.1 Contractor's Insurance.

16.1.1 The Contractor shall procure and shall maintain during the entire life of this Contract the insurance of the kind and amount specified herein. The cost of all such insurance shall be borne by the Contractor. The cost of any deductible associated with any insurance provided hereunder shall be borne by the Contractor.

16.1.2 Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed and subject to legal process within the State of Arizona, possessing a current A.M. Best, Inc. Rating of A- or better. The form of any insurance policies and forms must be acceptable to the City.

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

Contractor's insurance shall be primary insurance in regard to City, and any insurance or self-insurance maintained by City shall not contribute to it. The insurance policies shall contain a

waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, work or services.

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

If a policy does expire during the life of this Contract, a renewal certificate must be sent to City fifteen days prior to the expiration date. Insurance required herein shall not expire, be cancelled, or materially changed without thirty (30) days written notice to City.

The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name City, its agents, representatives, officers, directors, officials and employees as Additional Insured's. Contractor waives all rights against City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

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 Contractor's work or services and as evidenced by annual Certificates of Insurance.

Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 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. 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 shall include coverage for the 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 \$1,000,000 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.

Workers' Compensation

Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over the Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit. In case any work is subcontracted, this Contract will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of Contractor.

Errors and Omissions /Professional Liability

Contractor shall maintain Errors and Omissions/Professional Liability Insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by Contractor, or any person employed by Contractor, with a limit of not less than \$1,000,000 each claim.

ARTICLE 17. CHANGES IN THE WORK AND CLAIMS

17.1 Change Orders.

17.1.1 A Change Order is a written amendment to the Contract signed by City and the Contractor, issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract Amount and the Contract Time may be changed only by Change Order.

17.1.2 The cost or credit, as the case may be, to City resulting from a change in the Work shall be determined in one or more of the following ways as mutually agreed:

- .1 by mutual acceptance of a lump sum properly itemized in a form acceptable to City;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- or
- .3 by actual cost and a mutually acceptable fixed or percentage fee covering overhead and profit.

ARTICLE 18. UNCOVERING AND CORRECTION OF WORK

18.1 Uncovering of Work.

18.1.1 If any Work should be covered contrary to the request of City, it must, if required in writing by City, be uncovered for his observation and replaced all at the Contractor's expense.

18.2 Correction of Work.

18.2.1 The Contractor shall promptly correct all Work rejected by City as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of

correcting such rejected Work, including the cost of City's consultants, additional services made necessary thereby.

18.3 Acceptance of Defective or Non-Conforming Work.

18.3 If City prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 19. GENERAL PROVISIONS

19.1.1 In the event any provision in this contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

19.1.2 Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and subcontractors and warrants its compliance with A.R.S. § 41-4401 including the E-verify program. A breach of this section shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. City retains the legal right to inspect the papers of Contractor or any subcontractor employee who works on the Contract to ensure compliance with this provision.

19.1.3 Pursuant to A.R.S. § 35-393 et seq., Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel.

ARTICLE 20. AUTHORITY TO CONTRACT

20.1 Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that City does not have authority to enter into this Contract, City shall not be liable to any third party by reason of such determination or by any reason of this Contract.

ARTICLE 21. FULL AND COMPLETE PERFORMANCE

21.1 The failure of either party to insist at any time on the full and complete performance of the terms or conditions of this Contract to be performed on the part of the other, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of the sums less than may be due and owing it at any time shall not be construed as an accord and satisfaction.

ARTICLE 22. CANCELLATION FOR CONFLICT OF INTEREST

22.1 This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into and made part of this Contract by reference.

ARTICLE 23. OWNERSHIP OF DOCUMENTS

23.1.1 All information, data, studies, reports, patents, copyrights, plans and specifications prepared or obtained by the Contractor for the purpose of performing services under this Contract, shall become the property of City. Further, it is expressly understood that the City has exclusive control of all information developed during design and construction.

23.1.2 Contractor and City in entering into this Contract have relied upon information provided in RFP Design Build Trail and on information provided in the Contractor's proposal/bid in response to said RFP. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract. Subsequent to submitting its Response to the RFP, Contractor has made a thorough and complete investigation of the Project site and all information furnished by City and does not rely upon any information furnished by City in entering into this Contract but rather is relying upon its own investigation and due diligence.

ARTICLE 24. ORDER OF PRECEDENCE

24.1 In the event of a conflict or inconsistency between or among the documents incorporated into this Contract, the Contract Documents shall take precedence in the following order:

1. This Contract
2. Bonds
3. Insurance Certificates
4. Specifications
5. Plans and Drawings
6. Standard Details

ARTICLE 25. ENTIRE AGREEMENT

25.1 This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the parties.

ARTICLE 26. PROVISIONS REQUIRED BY LAW

26.1 Each and every provision of law and any clause required by law to be in the Contract shall 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 shall forthwith be physically amended to make such insertion or correction.

City:

By: _____

Printed Name:

Its:

Date: _____

CONTRACTOR:

By: _____

Printed Name: _____

Its _____

Date: _____

EXHIBIT A
SCOPE OF WORK

**EXHIBIT B
PROJECT SCHEDULE**

Submit 90% Design Documents	_____	, 2023
Submit Final Design Documents to City	_____	, 2023
Commence Construction	_____	, 2023
Construction Complete	_____	, 2023