

## CONTRACTOR CONTRACT

This contract is between **Mountain High Excavating LLC**, (referred to in this contract as the CONTRACTOR), warranting itself to be licensed and qualified to perform the work specified herein, and **the Town of Jerome**, (referred to in this contract as GRANTEE).

WHEREAS, GRANTEE is in receipt of a Community Development Block Grant from the Arizona Department of Housing to **construct water line improvements to Deception Lane**.

NOW, THEREFORE;

IN CONSIDERATION OF THEIR MUTUAL PROMISES, THE PARTIES AGREE AS FOLLOWS:

### PART I. Specific Terms

**1. EFFECTIVE DATE.** This Contract shall have no force or effect unless and until executed by both the CONTRACTOR and GRANTEE and, in addition, GRANTEE issues a Notice to Proceed. GRANTEE shall have no obligation to issue a Notice to Proceed and may choose to do so only after all grant funding requirements have been satisfied.

The date on which the Notice to Proceed is executed shall be referred to as the Effective Date. The CONTRACTOR shall not be compensated under this Contract for work commenced or materials delivered to the Property before the Effective Date. When a properly executed copy of the Notice to Proceed is executed, the CONTRACTOR is bound by this Contract.

**2. THE CONTRACT.** This Contract consists only of this Part I (Specific Terms), Part II (General Conditions), and the following exhibits:

- |                           |   |  |
|---------------------------|---|--|
| A. Scope of Work          | <input type="checkbox"/> not applicable | <input checked="" type="checkbox"/> applicable |
| B. Notice to Proceed      | <input type="checkbox"/> not applicable | <input checked="" type="checkbox"/> applicable |
| C. Engineered Drawings    | <input type="checkbox"/> not applicable | <input checked="" type="checkbox"/> applicable |
| D. Contractor Bid Package | <input type="checkbox"/> not applicable | <input checked="" type="checkbox"/> applicable |
| E. Schedule of Work       | <input type="checkbox"/> not applicable | <input checked="" type="checkbox"/> applicable |

**3. SCOPE OF WORK.** CONTRACTOR shall complete all work as specified or indicated in the contract documents. See attached Proposal Form and complete Contractor Bid Package.

**4. CONTRACT PRICE.** The CONTRACTOR agrees to accomplish the work as described in the Contract Documents for a total price of **Three Hundred Forty Four Thousand One Hundred Seventy Two** dollars (**\$344,172.00**), excluding Change Orders.

**5. PAYMENTS.** Applications for Payment are to be submitted to:

Southwestern Environmental Consultants, Inc.  
Attention: Krishan Ginige  
825 Cove Parkway  
Cottonwood, AZ 86326

Additionally, a copy of the Application for Payment is to be emailed to: Rich Ormond, NACOG, email: rormond@nacog.org.

Upon submission of an Application for Payment, and upon approval by the ENGINEER and the GRANTEE of the completed work, GRANTEE shall pay the CONTRACTOR ninety percent (90%) of the approved estimate of the work performed, and retain ten percent (10%) until final completion and acceptance of all material, equipment and work covered by the contract, less such amounts as the GRANTEE shall determine for all incomplete work and unsettled claims. After fifty percent (50%) completion, the GRANTEE may decrease the retainage to five percent (5%) providing CONTRACTOR is making satisfactory progress, coupled with such deductions as ENGINEER determines are appropriate to cover claims requiring a greater sum to be retained. All payments to the CONTRACTOR shall be made within thirty (30) days of the submission of an Application for Payment, provided said Application for Payment is approved by the GRANTEE as allowed by A.R.S. Section 34-221. GRANTEE shall not withhold payment except for non-compliance with the terms of this Contract, and the GRANTEE shall not request the CONTRACTOR to perform work outside the scope of this Contract as a condition of receiving payment.

**6. TIME FOR COMMENCEMENT AND COMPLETION.** The CONTRACTOR agrees to commence, or cause to be commenced, the actual work described in the Scope of Work within 20 consecutive calendar days after the Effective Date. The CONTRACTOR agrees to complete, free of liens or rights of liens of contractors, mechanics, material men or laborers, all work listed above within 120 consecutive calendar days after the Effective Date of this Contract, subject to extensions approved by GRANTEE in writing for the period of any excusable delays (including strikes, acts of God or other reasons beyond the control of the GRANTEE or CONTRACTOR). The CONTRACTOR agrees that time is of the essence in this Contract.

**7. INSURANCE.** Certificate(s) of Insurance naming the GRANTEE and NACOG as co-insured verifying the minimum coverages as listed below shall be delivered as specified in the Notice of Award prior to issuance of the Notice to Proceed:

- |    |   |  |
|----|---|--|
| a. | Worker's Compensation                           | statutory  |
| b. | Protective Bodily Injury                        | \$2,000,000 each occurrence and annual aggregate |
| c. | Personal Property                               | \$2,000,000 each occurrence and annual aggregate |
| d. | Automobile Bodily Injury<br>and Property Damage | \$2,000,000 each occurrence and annual aggregate |

**8. WARRANTY.** The CONTRACTOR warrants that all improvements, hardware and fixtures of whatever kind or nature to be installed or constructed on the Property by the CONTRACTOR or the CONTRACTOR'S subcontractors will be of good quality, suitable for their purpose and free from defects in workmanship or materials, or other deficiencies. This is a full warranty extending to the GRANTEE and subsequent GRANTEE(s) of the Property; provided, however, that the warranty set forth in this paragraph shall apply only to deficiencies and defects about which the GRANTEE or subsequent GRANTEE(s) shall have notified the CONTRACTOR at the address stated above within two years as required by the Arizona State Registrar of Contractors. Manufacturer warranties will apply to any materials or equipment installed.

**9. LIQUIDATED DAMAGES.** If the CONTRACTOR fails to complete the work within the time specified in Paragraph 6 of this Contract, or within the time to which such completion may have been extended by the GRANTEE in writing, the CONTRACTOR must pay to the GRANTEE the sum of one hundred dollars (\$100) for each and every calendar day that the time consumed in completing the work exceeds the time allowed therefore; which said sum, in view of the difficulty of accurately ascertaining the loss which the GRANTEE will suffer by reason of delay in the completion of the work hereunder is hereby fixed and agreed as the liquidated damages that the GRANTEE will suffer by reason of such delay, and not as a penalty. The GRANTEE will deduct and retain out of the monies which may become due hereunder the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the GRANTEE, the CONTRACTOR shall be liable to pay the difference upon demand by the GRANTEE.

**10. TERMINATION.** The CONTRACTOR agrees that the GRANTEE shall have the right to declare the CONTRACTOR in default if the CONTRACTOR fails to furnish materials or perform work in accordance with the provisions of this Contract. In such event the GRANTEE shall be responsible for providing written notice to the CONTRACTOR by registered mail of such default. If the CONTRACTOR fails to remedy such default within 15 days of such notice, the GRANTEE shall have the right to select one or more substitute contractors. If the expense of finishing the work exceeds the balance not yet paid to the CONTRACTOR on this Contract, the CONTRACTOR shall pay the difference to the GRANTEE.

**11. PARTIES TO CONTRACT.** The CONTRACTOR and GRANTEE agree that they are the sole parties to this Contract and are solely responsible for its performance. The parties agree that the United States Department of Housing and Urban Development assumes no liability or responsibility whatsoever for the performance of any term of this Contract.

**12. PROJECT GRANT ADMINISTRATOR.** The GRANTEE has designated NACOG as grant administrator. The grant administrator shall be empowered to perform all administrative functions as required for management of the grant and verification of compliance with CDBG requirements.

**13. LABOR STANDARD AND MISCELLANEOUS REQUIREMENTS.** This agreement 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 following information, required by or included in the Bid Package for this project, is a part of this contract:

- a. Wage Rate Determination # AZ20240061 Mod # 4
- b. HUD 4010.
- c. Completed LS2, LS3's, LS4's, LS5's and Section 3 documentation in Labor Standard File.
- d. Signed Certifications.
- e. Contractor's License # ROC 185256 Expiration Date 05/31/2027
- f. Certificate of Insurance.
- g. Bid, Payment and Performance Bonds.



## **PART II. General Conditions**

- 1. ASSIGNMENT.** The CONTRACTOR agrees not to assign the Contract without written consent of the GRANTEE.
- 2. CHANGE ORDERS.** The CONTRACTOR shall not make any changes in the Scope of Work or the Specifications without written authorization of the GRANTEE.
- 3. PERMITS AND CODES.** The CONTRACTOR agrees to secure all necessary permits required for the performance of this Contract in compliance with applicable local requirements, including local building and housing codes, where applicable, whether or not specified in the Scope of Work or Specifications. Prior to construction, required permit(s) and the Scope of Work shall be posted and available at the job site.
- 4. AMERICANS WITH DISABILITIES ACT (ADA).** CONTRACTOR shall comply with the requirements of the Americans with Disabilities Act (ADA).
- 5. LEAD-BASED PAINT.** The CONTRACTOR agrees to use no lead-based paint in the CONTRACTOR's performance of this Contract, including the performance of any subcontractor. "Lead-based paint" means any paint containing more than six one hundredths of one percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.
- 6. CONDITION OF PREMISES.** The CONTRACTOR agrees to keep the premises broom clean and orderly and to remove all debris as needed during the course of the work, in order to maintain work conditions which do not cause health or safety hazards.
- 7. ACCIDENT PREVENTION.** Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Association of General Contractors of America, and the requirements of the Occupational Safety and Health Administration.
- 8. DRUG FREE WORKPLACE.** The CONTRACTOR shall maintain a Drug Free Workplace for all employees.
- 9. INSPECTION.** The GRANTEE and their designees shall have the right to inspect all the work performed under this Contract. By such inspection, the GRANTEE assumes no responsibility for defective material or work under this Contract or for any breach of this Contract by the CONTRACTOR.
- 10. GOOD FAITH EFFORT.** The CONTRACTOR agrees to provide for the fair utilization of minority/women owned business enterprises in the performance of work on this project and, where a contract is awarded, engage in a "good faith effort" to ensure that minority/women/disadvantaged-owned business enterprises have the maximum opportunity to participate in the performance of work under this Contract.
- 11. HOLD HARMLESS.** The CONTRACTOR agrees to defend, indemnify, and hold the GRANTEE harmless from any liability or claim for damages because of bodily injury, death, property damage, sickness, disease or loss and expense arising from the CONTRACTOR'S performance of this Contract. The CONTRACTOR further agrees to protect, defend, and indemnify GRANTEE from any

claim by laborers, subcontractors or material men for unpaid work or labor performed or materials supplied in connection with this Contract.

CONTRACTOR shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the GRANTEE and its agency members, NACOG, the ENGINEER and the Arizona Department of Housing from and for any violation caused by him and shall assume full responsibility for payment of Federal, State and local taxes on contributions imposed or required under the Social Security, workmen's compensation and income tax laws.

**12. 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.

**13. NON-RESPONSIBILITY OF THE GRANTEE.** Indebtedness incurred for any cause in connection with this work must be paid by the CONTRACTOR, and the GRANTEE is hereby relieved at all times from any indebtedness or claims other than payments under contract.

**14. ACCESS TO INFORMATION.** It is agreed that all information, data reports, records and plans as existing, available and necessary for carrying out of the work outlined above have been furnished to the CONTRACTOR by the GRANTEE and its agencies. CONTRACTOR hereby acknowledges receipt of same. No charge will be made to the CONTRACTOR for such information and the GRANTEE and its agencies will cooperate with the CONTRACTOR in every way possible to facilitate the performance of the work described in the Contract.

**15. CONTRACTOR'S RECORDS.** CONTRACTOR agrees to keep and maintain all records arising from or relating to this construction Contract, including, but not limited to, receipts from material suppliers and subcontracts, for a period of five years after the date of close out of the grant or resolution of all audit findings of that grant, whichever occurs last. CONTRACTOR further agrees to allow the Arizona Department of Housing, HUD, and/or the Office of the Inspector General or their designated representatives to have access to all such records for review, monitoring, and audit, during normal working hours.

**16. PROPERTY RIGHTS IN MATERIAL.** Nothing in the Contract shall be construed as vesting in the CONTRACTOR any right of property in the materials used after they have been attached or affixed to the work or the soil and accepted. All such materials shall become the property of the GRANTEE upon being so attached or affixed and accepted.

**17. IMMIGRATION COMPLIANCE WARRANTY.** As required by A.R.S. § 41-4401, CONTRACTOR hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). CONTRACTOR further warrants that after hiring an employee, CONTRACTOR verifies the employment eligibility of the employee through the E-Verify program. If CONTRACTOR uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. If state law is amended, the parties may modify this paragraph consistent with state law.

**18. ISRAEL BOYCOTT CERTIFICATION.** CONTRACTOR hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by GRANTEE up to and including termination of this Contract.

**19. STATUTORY REQUIRED PROVISIONS AND REQUIREMENTS.** This Agreement is subject to termination pursuant to A.R.S. § 38-511, as may be amended. Pursuant to A.R.S. § 35-394, as may be amended, unless exempt, Contractor hereby certifies that it does not use, and agrees not to use during the term of this Contract, any of the following: forced labor of ethnic Uyghurs in the People's Republic of China; any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or 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.

**20. "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 the 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; and 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 subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The CONTRACTOR will not subcontract with any subcontractor where the CONTRACTOR has notice or knowledge that the subcontractor 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.

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 (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts 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).

## **21. MISCELLANEOUS PROVISIONS.**

- a. 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, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
- b. In any case one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or un-enforceability shall not affect any other provisions thereof and this Contract shall not be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.