

**STANDARD TERMS AND CONDITIONS
CITY OF BISBEE CONTRACT**

1. Contract Documents

1.1 The Contract shall be based upon the Notice of Solicitation issued by the City and the Offer submitted by the Contractor in response. The Offer shall substantially conform to the terms, conditions and specifications and other requirements specified by the City, unless expressly noted by the Contractor and specifically agreed to in writing by the City.

1.2 In the event of any conflict in the provisions of the Contract as accepted by the City and as it may be amended, the following shall prevail in the order set forth below:

- a. Special Terms and Conditions, if any.
- b. Standard Terms and Conditions, City of Bisbee Contract
- c. Specifications, Scope of Work or Requirements
- d. Notice of Solicitation
- e. Offer and response from the Contractor

1.3 This Contract may be modified only by a written contract amendment signed and approved by the parties in the same manner as the original Contract was approved.

1.4 This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall alter the express written terms. No prior oral or written understanding that has not been specifically incorporated into this Contract shall be of any force or effect.

1.5 This Contract shall be interpreted and applied based upon the laws of the State of Arizona. Each and every provision of law and any clause required to be included in the Contract shall be read and enforced as though it were include herein. This shall include, but not be limited to, the requirement to comply with all conditions that may be imposed as a requirement for the use of any grant or other specific public funds that may be expended in connection with this Contract.

2. Relationship of the Parties

2.1 The Contractor under this Contract is an independent contractor and shall act only in its individual capacity. Neither party to this Contract shall be deemed to be the employee or agent of the other party and no employee of one party shall be, or be deemed to be, the employee or agent of the other party for any purpose.

2.2 The City will not withhold taxes, Social Security payments or any other types of employee withholding from payments made by the City under this Contract. The

Contractor is required to make arrangements for the direct payment of all such taxes and expenses.

2.3 Pursuant to A.R.S. § 38-511, as applicable, the provisions which are incorporated herein by reference, all parties are hereby put on notice that this Contract is subject to cancellation by the City 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 is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

3. Payment and Costs

3.1 Unless otherwise specified, all prices shall be “F.O.B. Destination” and shall include all freight delivery costs and unloading expenses at the destination.

3.2 The Contractor shall be responsible for paying all applicable state, local and federal taxes. Transaction privilege or sales taxes that apply to the sale, if any, are the responsibility of the Contractor to remit.

3.3 In order to receive a payment from the City, the Contractor shall have a current W9 form on file with the City, as applicable.

3.4 A separate invoice shall be issued by the Contractor for each shipment of material or services. No payment shall be issued by the City prior to the receipt of the subject material or services and the submission of a correct and accurate invoice. The tender of a bill of lading shall not operate as the tender of the materials.

4. Performance Requirements

4.1 No subcontract shall be entered into by the Contractor with any other party to furnish any of the materials or services specified without the prior written approval of the City. All subcontractors that are identified in the Offer shall be deemed to be approved, unless otherwise noted. All subcontractors shall comply with all applicable terms of this Contract, including all requirements of state or federal law, in the same manner as the Contractor. The Contractor is fully responsible for the Contract performance whether or not subcontractors are used.

4.2 No right or interest in this Contract shall be assigned by the Contractor without the prior written permission of the City and no delegation of any duty of the Contractor shall be made without the prior written approval of the City.

4.3 The Contractor shall at all times keep all public areas within the City of Bisbee and all City property free from the accumulation of waste material or rubbish. Prior to the completion of any work, the Contractor shall remove any rubbish and waste from the site of the work and all tools, equipment and materials that are not the property

of the City. Upon completion of the work, the Contractor shall leave all City and public property used in connection with the work in a clean, neat and workmanlike condition.

4.4 The Contractor shall maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor, including a City business license, as applicable to this Contract.

4.5 All materials or services provided by the Contractor are subject to final inspection and acceptance by the City. The title and risk of loss or material and service shall not pass to the City until the City actually receives the materials and service at the point of delivery and accepts them, unless otherwise expressly provided in this Contract. Any material or service failing to conform to the specification of this Contract shall be held at the Contractor's sole risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor.

4.6 The Contractor warrants that all materials and service delivered under this Contract shall conform to the specifications of this Contract and are fit for the intended purposes for which the materials are used. The mere receipt of a shipment of materials or services shall not alter or affect the obligations of the Contractor or the rights of the City under this Contract.

4.7 Unless otherwise specified in this Contract, all items provided under this Contract shall be guaranteed for a minimum period of one (1) year from the date of acceptance by the City against defects in material and workmanship. At any time during this period, if a defect should occur in any item, that item shall be replaced or repaired at no additional cost to the City except where it may be demonstrated that the defect was caused by misuse and not by faulty workmanship or design. Additional warranty requirements may be set forth in the Contract Documents.

5. Risk and Liability

5.1 The Contractor shall provide such insurance as may be required by law and as may be specifically required by the Contract.

5.2 The Contractor shall defend, hold harmless, and indemnify the City, its officers, agents and employees, from all claims, demands, suits, damages and expenses, including attorney's fees, which arise, or are alleged to have arisen, from the negligent acts, errors or omissions or intentional torts of the Contractor, its agents, subcontractors, officers and employees, in the performance of this Contract. This indemnity shall not include the negligence or intentional torts, if any, of the City, its officers, agents and employees, or that portion of any joint liability which is attributable to them. The extent of the foregoing Contractor liabilities shall be limited to and determined by the respective fault of the parties, their agents, subcontractors and employees, in comparison with others, including, but not limited to, the other party, who may have contributed to or in part caused any such claim to arise. It is agreed that the Contractor will be responsible for

primary loss investigation, defense and judgment costs where this indemnification is applicable, in whole or in part.

5.3 The Contractor shall indemnify, defend and hold harmless the City against any liability, including defense costs and expenses, for any the infringement, or alleged infringement of any patent, trademark or copyright or other property rights of any third parties arising out of the performance of this Contract or the use by the City of any materials or services furnished by the Contractor to the City.

5.4 Notwithstanding any limitation in the term of this Contract, paragraphs 5.2 and 5.3 shall remain in full force and effect with regard to any such claims that may arise under these provisions.

5.5 The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim or controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The recipient shall have seven (7) days to prepare and deliver a response. Thereafter, if the parties fail to resolve the claim or controversy following a reasonable period for such resolution, but not less than ten (10) days, the aggrieved party may pursue its legal remedies, if any.

6. General and Miscellaneous Terms

6.1 The provisions of this Contract are severable. Any term that may be held to be invalid shall not affect any other provision or application of the Contract or the enforcement of the remainder of this Contract.

6.2 The venue for any legal action brought by either party for the enforcement of this Contract, or any portion of it, shall be in Cochise County, Arizona.

6.3 This is a non-exclusive agreement. The City reserves the right to obtain like goods and services from another source, in its sole discretion.

6.4 The Contractor assigns to the City any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor and are ultimately delivered to the City under this Contract.

6.5 All services, information, programs, elements, reports, plans and other deliverables which may be created under this Contract are the sole property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.

6.6 The Contractor who provides “services” in this state, as defined at A.R.S. § 41-4401D.(5), hereby warrants that the Contractor and all Subcontractors are in compliance with all federal immigration laws and regulations that relate to the employees

of the Contractor and any Subcontractors. The Contractor further warrants that the Contractor and all Subcontractors have complied with the verification of employment eligibility requirements of Arizona law, as required by A.R.S. § 23-214. Pursuant to A.R.S. § 41-4401, the Contractor acknowledges and agrees that any breach of this warranty shall be deemed to constitute a material breach of the Contract and may cause the Contract to be terminated. If the Contractor establishes that the Contractor and all Subcontractors have complied with the employment verification provisions prescribed by Sections 274.A and 274.B of the federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-241.A, the Contractor shall not be deemed to be in material breach of the Contract on these grounds. The Contractor also acknowledges and agrees that the City retains the legal right and obligation to inspect the papers of any employee of the Contractor or any Subcontractors who perform work on this Contract and to conduct random verification reviews to ensure that the Contractor and Subcontractors are complying with these requirements.

7. Suspension and Termination of the Contract

7.1 The City may, without cause and for its convenience, order the Contractor in writing to suspend, delay or interrupt its performance in whole or in part for such period of time as the City may determine. In any such event, the City shall make an equitable adjustment in the delivery schedule or the Contract price, or both.

7.2 Upon receipt of a suspension or termination notice from the City, the Contractor shall promptly discontinue all services (unless the notice directs otherwise), and deliver or otherwise make available to the City, as requested by the City and at the City's cost, copies of all data, design calculations, drawing, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this Contract.

7.3 The City may terminate the Contract for cause if the Contractor:

- (a) persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials, as applicable, to perform this Contract;
- (b) fails to make payment to subcontractors for materials or labor in accordance with respective agreements between the Contractor and the subcontractors, as applicable;
- (c) persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- (d) otherwise is guilty of a substantial breach of a provision of the Contract.

When any of the above reasons exist, the City may without prejudice to any other rights or remedies of the City and after giving the Contractor ten (10) days written notice and an opportunity to respond, terminate the Contract. The Contractor shall be entitled to receive payment for its performance, subject to any damages incurred by the City.

7.4 The City, by written notice to the Contractor, may terminate this Contract in whole or in part when in the sole discretion of the City it is in the City's best interests to do so. In such case, the Contractor shall be paid for all material, equipment and services provided or work performed to that date.

7.5 The Contractor may terminate the Contract if the performance is stopped for a period of fourteen (14) days through no act or fault of the Contractor or its agents or employees or any other persons performing portions of the Contract, for any of the following reasons:

- (a) issuance of an order of a court or other public authority having jurisdiction;
- (b) an act of government, such as a declaration of national emergency, making material unavailable;
- (c) because the City has not made payment within the time stated in the Contract;
- (d) if repeated suspensions, delays or interruptions by the City constitute in the aggregate more than 25% of the total number of days scheduled for completion.

If one or more of the above reasons exists, the Contractor may, upon ten (10) days written notice to the City terminate the Contract and recover from the City payment for its performance.

End of Standard Terms and Conditions, City of Bisbee Contract

