

**CONSTRUCTION AGREEMENT FOR
SUPERSTITION SHADOWS PARK IMPROVEMENTS (CDBG SSP #107-25)
BETWEEN CITY OF APACHE JUNCTION AND LOW MOUNTAIN CONSTRUCTION, INC.**

THIS AGREEMENT made and entered into by and between the CITY OF APACHE JUNCTION ("City"), an Arizona municipal corporation, and Low Mountain Construction, Inc., an Arizona Corporation ("Contractor"), who shall be collectively referred to as the "Parties", or individually as a "Party".

RECITALS

A. Contractor has responded to City's Invitation for Bid (the "IFB" and response both being considered the "Contract Documents") via IFB number CDBG #107-25, in which Contractor asserts its willingness, ability and qualifications to provide this work and service (hereinafter referred to as the "Work").

B. City and Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall render the Work.

C. City has complied with the public bidding requirements under Arizona Revised Statutes Title 34 and Apache Junction City Code, Vol. I, Chapter 3: Administration, Article 3-7: Procurement Procedures.

AGREEMENT

NOW, THEREFORE, City retains Contractor to perform, and Contractor agrees to render the services and perform the Work in accordance with the terms and conditions set forth as follows:

1. **PROJECT DESCRIPTION:** Contractor shall do and perform or cause to be done and performed in a good workmanlike manner, the Work in accordance with the Contract Documents as fully described in the Notice Inviting Bid Proposals for CDBG Project No. 107-25 Superstition Shadows Park Improvements project, from Central Arizona Governments ("CAG"), which includes all required specifications.
2. **PROJECT MANAGER – ADMINISTRATION:** The City has designated Angela Gotto, CAG, as "Project Manager." The Project Manager 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.
3. **PAYMENTS & COMPLETION:** The total amount payable by the City to the Contractor shall not exceed \$439,804.39 (the "Contract Sum") for the performance of

the Work under the Contract Documents except for changes authorized by properly executed change orders. Originals of the Applications for Payment are to be submitted no later than each first day of the month this agreement is in effect and a copy emailed to:

Central Arizona Governments
Attention: Angela Gotto, Project Manager
2540 W. Apache Trail, Suite 108
Apache Junction, AZ 85120
agotto@cagaz.org

On a weekly basis, the Project Manager shall review and verify the percentage, progress and quality of work completed and shall verify compliant completion of all necessary documentation required by ADOH, including but not limited to, federal Labor Standards/Davis- Bacon.

The City and Contractor mutually agree that the City will make a progress payment based on a duly certified (by Project Manager) and approved (by a duly authorized representative of the City) 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 Project Manager or 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 Project Manager may recommend or 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 recovery plan describing the cause of schedule slippage or delayed progress and the actions proposed to recover schedule.

All contracts will be operable for their full term at the rates quoted in the initial bid proposal, unless otherwise extended in writing by the City. Upon notice that the Work is ready for final inspection or acceptance, a City representative shall promptly cause an inspection to be made. Once City finds the Work acceptable under the Contract Documents, City shall promptly submit for processing a certificate for payment stating that, to the best of its knowledge, information and belief on the basis of its observation and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that partial payment or the entire balance due the Contractor is payable. Final payment shall not become due until

the Contractor submits to the City all required lien waivers, releases and any other data establishing payment or satisfaction of all Contractor's obligations. If any subcontractor refuses to furnish a release or waiver required by City, Contractor may furnish a bond to indemnify City against any such lien. If any such lien remains unsatisfied after all payments are made, Contractor shall refund to City all monies that the latter may be compelled to pay in discharging such liens, including all costs and reasonable attorney fees.

4. CONTRACT TERM: The Term of this Agreement shall be performed from June 16, 2025, through February 10, 2026. Extensions shall only be allowed as mutually agreed upon in writing by the Parties.

5. LABOR AND MATERIALS: Unless otherwise provided in the contract documents, Contractor shall provide, pay and insure under the requisite laws and regulations for all labor, materials, equipment, tools and machinery, utilities, transportation, other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

6. WARRANTY: Contractor shall guarantee the Work against defective workmanship or materials for a period of one (1) 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. Within one (1) year from the date of final acceptance due to faults in workmanship or materials, Contractor shall begin making the necessary repairs to the satisfaction of City within fourteen (14) calendar days of receipt of written notice from City. Such work shall include the repair or replacement of other work or materials damaged or affected by making the above repairs or corrective work all at no additional cost to City. In the case of Work materials or equipment for which warranties are required by the special provisions of the Contract Documents, Contractor shall provide or secure from the appropriate subcontractor or supplier such warranties addressed to and in favor of City and deliver same to City prior to final acceptance of the Work. Delivery of such warranties shall not relieve Contractor from any obligation assumed under any other provision of the contract. The warranties and guarantees provided in this subsection shall be in addition to and not in limitation of any other warranties, guarantees or remedies required by law, and shall survive the expiration of this Agreement for the time period mentioned above.

7. TAXES: Contractor shall pay all license, sales, consumer, use and other similar taxes for the Work or portions thereof provided by Contractor which are legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than City.

8. PERMITS & FEES: Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, government fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the

contract and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. City permits for this Work will be provided to Contractor at no cost. Contractor represents and warrants that any license necessary to perform the Work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Contractor agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement and after termination of this Agreement any time Work is performed pursuant to the warranty provisions set forth in Section 6. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by the city code. Any activity by subcontractors within the corporate city limits will invoke the same licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable licenses. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

9. INDEPENDENT CONTRACTOR: Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent Contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes, or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the contract documents. Contractor shall be responsible to City for the acts and omissions of its employees.

10. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including reasonable attorney and expert witness fees, arising from, or alleged to have arisen from, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, Work or services of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Agreement, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or its subcontractors in the performance of the Work under this Agreement or any subcontract. Contractor's duty to defend, hold harmless and indemnify City, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be

legally liable, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor or any tier of Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable in the performance of the Work under this Agreement or subcontract. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. The rights and obligations under this Section shall survive termination of this Agreement.

11. ENFORCED DELAYS (FORCE MAJEURE): Neither City nor Contractor, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an "Enforced Delay") due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, executive orders, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the Project. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular consultants, subcontractors, vendors or investors desired by Contractor in connection with the Project. Contractor agrees that Contractor alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

12. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney fees, necessary witness fees and court costs to be determined by the court in such action.

13. INSURANCE: Contractor, at its own expense, shall purchase and maintain the minimum

insurance and other additional requirements set forth herein.

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 Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respect to City, and any insurance or self-insurance maintained by 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 City.

The insurance policies, except Workers' Compensation, shall contain 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.

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

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. 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 City's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

The insurance policies, except Workers' Compensation, required by this Agreement, shall name City, its agent, officers, officials and employees as additional insured parties.

REQUIRED COVERAGE

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 Agreement which coverage will be at least as broad as

Insurance Service Office, Inc. Policy Form CG 00011-93 or the equivalent thereof. In addition, automobile liability coverage of at least \$1 million per occurrence or a combined single limit of at least \$1,000,000 is required. The auto liability policy should contain endorsements for hired autos, non-owned autos and scheduled vehicles, as applicable to the Contractor's business.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor 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.'s Additional Insured, Form CG 20101185, or the equivalent thereof, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the work, services or operations, Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Agreement, City and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's General Liability insurance.

Workers' Compensation (Not Applicable to Sole Proprietorships)

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 \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any work is subcontracted, Contractor will require subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of Contractor.

CERTIFICATE OF INSURANCE

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

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance, to be filed with the City Clerk of City.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date. All Certificates of Insurance shall be identified with bid serial number and title.

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City.

14. 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 AZ20250060 01/03/2025 Mod# 0
- b) HUD 4010
- c) Completed LS2, LS3's, LS4's, and LS5's in Labor Standard File
- d) Signed Certifications
- e) SAM.gov # _____
- f) Contractor's License #ROC _____ Expiration Date _____
- g) Certificate of Insurance
- h) Bid, Payment, and Performance Bonds

15. BUY AMERICA, BUILD AMERICA ACT ("BABA"): The Contractor acknowledges to and for the benefit of the City of Apache Junction ("Owner") and the Arizona Department of Housing (the "Funding Authority") that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as BABA; that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("BABA Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the BABA Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the BABA Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the BABA Requirements, as may be requested by the Owner or the Funding Authority.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph

by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

16. CHANGE ORDERS: A change order is a written order to Contractor, approved by a City representative, issued after execution of this construction agreement authorizing a change in the Work or an adjustment in the construction agreement sum or the construction agreement time. A change order signed by Contractor indicates his agreement therewith. City may, without invalidating this construction agreement, order changes in the Work within the general scope of this construction agreement consisting of additions, deletions or other revisions, the construction agreement sum and the construction agreement being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of this construction agreement. City representative shall have authority to order minor changes in the Work not involving an adjustment in the construction agreement sum or extension of construction agreement time and not inconsistent with the intent of this construction agreement. All such changes shall be effected by written order and shall be binding upon City and Contractor.

17. SUCCESSORS, ASSIGNMENT & DELEGATION: City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the contract shall assign the contract or sublet it as a whole or delegate the duties hereunder without the written consent of the other, nor shall Contractor assign any monies due or to become due to or to become due to it without the previous written consent of City.

18. WRITTEN NOTICE: Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first class postage prepaid to the last business address known to them who gives the notice.

19. SAFETY: Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

20. RIGHTS & REMEDIES: The duties and obligations imposed by the contract documents and

the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches hereunder except as may be specifically agreed to in writing.

21. PAYMENT & PERFORMANCE BONDS: City shall have the right to require Contractor to furnish bonds covering the faithful performance of the contract and the payment of all obligations arising hereunder.

22. TERMINATION OF CONTRACT: If, for any reason, Contractor shall fail to fulfill in a timely and proper manner his/her obligations under the contract, or if Contractor shall violate any of the covenants, agreements, or stipulations of the contract, City shall thereupon have the right to terminate the contract by giving written notice to Contractor of such termination and specifying the effective date thereof.

Notwithstanding the above, Contractor shall not be relieved of liability to City for damages sustained by City by virtue of any breach of the contract by Contractor.

City may terminate the contract at any time by giving at least twenty-four (24) hours notice in writing to Contractor. If the contract is terminated by City as provided herein, Contractor will be paid for the time expended and expenses incurred up to the termination date.

23. APPEALS: All contractual grievances shall be submitted in writing to City Manager within five (5) calendar days after the difference of opinion or grievance occurs relating to any of the provisions of the terms of this Agreement. Within five (5) calendar days of receiving a written grievance, the City Manager shall respond in writing to the company. The City Manager's decision shall be final and binding, subject only to a further appeal in the Pinal County Superior Court pursuant to A.R.S. § 12-901, *et seq.*

24. RECORDS: Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least three (3) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

25. AMENDMENT: It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the parties.

26. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or

agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

28. SEVERABILITY: City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

29. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

30. CONFLICT OF INTEREST: This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

31. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL: The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages, including but not limited to, consequential and liquidated damages.

32. CERTIFICATION PURSUANT TO A.R.S. § 35-394. In accordance with Arizona Revised Statutes § 35-394, Contractor hereby certifies and agrees that Contractor does not currently and shall not for the duration of this Agreement use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China, 2) any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and/or 3) any suppliers, contractors or subcontractors that use the forced labor or any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of this Agreement that Contractor is not in compliance with this Section, then Contractor shall notify

the City within five (5) business days after becoming aware of such noncompliance. If Contractor does not provide the City with written certification that Contractor has remedied such noncompliance within one hundred eighty (180) days after notifying the City of such noncompliance, this Agreement shall terminate, except that if the Agreement termination date occurs before the end of such one hundred eighty (180) day remedy period, this Agreement shall terminate on such contract termination date.

33. COMPLIANCE WITH FEDERAL AND STATE LAWS: Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

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 will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, 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 Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

34. TERMS AND CONDITIONS: This Agreement is subject to the provisions listed below.

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) calendar 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 to this contract.

4) Personnel

- a) The Contractor represents that he/she has, or will secure at his 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 subcontracted 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) Contractor will comply with the requirements of the 2010 ADA Standards for Accessible Design.

11) Interest of Members of a City 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.

12) 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.

13) 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.

14) 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.

15) 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 USEPA Assistant Administrator for Enforcement.

16) Mandatory Standards and Policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

17) Federal Labor Standards Provisions

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 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 the Wage Rate Determination included in the bid package and incorporated by reference.

THIS PROJECT IS IN WHOLE OR IN PART FEDERALLY FUNDED AND THE SUCCESSFUL BIDDER WILL BE REQUIRED TO ADHERE TO FEDERAL LABOR STANDARD/DAVIS-BACON PROVISIONS.

Central Arizona Governments (CAG) will monitor compliance with such provisions and standards on behalf of the City. The successful bidder will be required to complete the following forms in order to comply. A brief explanation of the form and when the form is to be submitted to CAG is listed below. Should you have any questions concerning Federal Labor Standards or the forms to be submitted, please feel free to call CAG, Angela Gotto at phone number: (480) 474-9300; or e-mail: agotto@cagaz.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 subcontractor and submitted to CAG within ten (10) calendar days of execution of the subcontract and a minimum of seven (7) calendar days prior to the date the subcontractor 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 CAG within seven (7) calendar days of the end of the work week.

Weekly Payroll Reports will be verified by CAG 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 CAG.

c. Youth Employment: These individuals must be employed in a bona fide summer youth employment or opportunity program. For additional information concerning youth employment, please call CAG.

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 subcontractor weekly for the duration of the contract. Forms must be complete and correct, signed by the appropriate person, and submitted to CAG WITH THE LS-4 within seven (7) calendar 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 fringe was 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 CAG 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.

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 subcontractor.

OR

b. A letter addressed to CAG 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.

18) Pre-construction Conference

The purpose of the pre-construction conference is to provide a forum for CAG, the City of Apache Junction, Project Manager, 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.

19) 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, CAG 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 CAG.

33. CERTIFICATIONS: This Agreement is subject to the provisions entitled "Certifications" which were submitted by the Contractor in the bid dated April 4, 2025, and are incorporated by reference herein and shall be interpreted as if the Certifications were printed in full herein.

34. COOPERATIVE USE OF CONTRACT: City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures ("SAVE") cooperative. This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. City shall not be responsible for any disputes arising out of transactions made by others.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized representative as of this 16th day of June, 2025.

CONTRACTOR:

Low Mountain Construction, Inc., an
Arizona corporation:



By: Shane Hatch

Title: Vice President

CITY:

CITY OF APACHE JUNCTION, an Arizona municipal
corporation:

By: Walter "Chip" Wilson

Title: Mayor

ATTEST:

Yvette McKinney, City Clerk

APPROVED AS TO FORM:

Richard J. Stern
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was subscribed and sworn to before me this _____ day of _____, 2025, by Shane Hatch as the Vice-President of Low Mountain Construction, Inc., an Arizona corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was subscribed and sworn to before me this _____ day of _____, 2025, by Walter “Chip” Wilson, as Mayor of the City of Apache Junction, Arizona, an Arizona municipal corporation.

Notary Public

My Commission Expires:
