

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into this 6 day of September 2023, by and between M.R. Tanner Development & Construction, LLC., (hereinafter referred to as "Contractor") and the City of El Mirage, Arizona, a municipal corporation, (hereinafter referred to as "City").

Whereas, City issued Request for Proposal (hereinafter "RFQ") No. PW23-RFQ-JOC01 seeking proposals from contractors to provide Job Order Contracting for asphalt, concrete, and grading projects on property owned and/or controlled by City; and,

Whereas, Contractor submitted a response to City RFQ No. PW23-RFQ-JOC01 offering to provide Job Order Contracting for asphalt, concrete, and grading projects from identified property owned and/or controlled by City (hereinafter "Proposal"); and,

Whereas, City has determined that Contractor's Proposal is in conformance with the requirements of RFQ No. PW23-RFQ-JOC01 and best meets the needs of the City.

NOW, THEREFORE, Contractor and City hereby agree as follows:

1. Contractor agrees, at its own cost and expense, to do all the work and furnish all the equipment, personnel and materials necessary to provide, in a good and substantial manner and to the satisfaction of the City, the following work, Job Order Contracting for asphalt, concrete, and grading projects, in accordance with the City of El Mirage RFQ No. PW23-RFQ-JOC01 and Contractor's Proposal in response to RFQ No. PW23-RFQ-JOC01, which are hereby specially referred to and by such reference made a part hereof in their entirety. RFQ No. PW23-RFQ-JOC01 shall consist of the following documents, which are incorporated herein by this reference: Notice of Request for Proposals; Instructions and Proposal Conditions; Scope of Work and Project Specifications; General Terms and Conditions; Proposal; Bid Tab; Appendix's; and Exhibit's.
2. City agrees to pay Contractor, and Contractor agrees to accept, as full compensation for furnishing all equipment, personnel, and materials and for doing all the work contemplated and embraced in this Agreement, the amounts set forth in Contractor's Proposal in response to RFQ No. PW23-RFQ-JOC01.
3. The City hereby promises and agrees with the Contractor to retain, and does hereby retain, Contractor to provide the equipment, and personnel and materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions as provided; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.
4. It is further expressly agreed by and between the parties that should there be any conflict between the terms of this Agreement, RFQ No. PW23-RFQ-JOC01 or the Proposal, then this Agreement and the provisions terms of RFQ No. PW23-RFQ-JOC01 shall control, and nothing herein shall be considered as an acceptance of the terms of the said Proposal conflicting herewith or RFQ No. PW23-RFQ-JOC01, unless expressly so stated herein.
5. Time is of the essence to the terms of this contract.
6. **FEDERAL AND STATE EMPLOYMENT IMMIGRATION LAWS.** To the extent applicable under A.R.S. § 41-4401, Contractor warrants its and its subcontractors compliance with all federal immigration laws and regulations that relate to their compliance with the E-verify requirements under A.R.S. § 23-214(A). Contractor's or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City of El Mirage. The City of El Mirage retains the legal right to randomly inspect the papers and records of Contractor and its subcontractors to ensure that the Contractor and its subcontractors are complying with the above-mentioned warranty.

The Contractor warrants to keep the papers and records open for random inspection during normal business hours by the City of El Mirage. The Contractor shall cooperate with the City of El Mirage's random inspections including granting the City entry rights to Contractor's property to perform the random inspections and waiving its right to keep such papers and records confidential. The failure of Contractor to comply with this warranty regarding the keeping of papers and records and cooperating with the City's random inspections shall constitute a material breach of the Agreement and the City shall have the right to immediately terminate the Agreement.

The Contractor further agrees to include the following language in all subcontracts entered into by Contractor with any person or entity to perform work on the Agreement and to terminate the agreement with any subcontractor who violates any of the warranties set forth in said language below.

To the extent applicable under A.R.S. § 41-4401, Subcontractor warrants to Contractor and the City of El Mirage Subcontractor's compliance with all federal immigration laws and regulations that relate to its compliance with the E-verify requirements under A.R.S. § 23-214(A). Subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the subcontract by Contractor at the direction of the City of El Mirage. Subcontractor further acknowledges the City of El Mirage's right to randomly inspect the papers and records of Subcontractor to ensure that Subcontractor is complying with the above-mentioned warranty.

Subcontractor warrants to keep the papers and records open for random inspection during normal business hours by City of El Mirage. Subcontractor shall cooperate with City of El Mirage's random inspections including granting the City entry rights to Subcontractor's property to perform the random inspections and waiving their respective rights to keep such papers and records confidential. The failure of Subcontractor to comply with this warranty regarding the keeping of papers and records and failure to cooperate with the City's random inspections shall constitute a material breach of the Agreement and the City shall have the right to immediately require Contractor to terminate the Agreement with Subcontractor.

7. ATTORNEY'S FEES & DISPUTE RESOLUTION. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

As an alternative to filing a lawsuit to resolve the dispute, the parties may elect to arbitrate the dispute. Each party shall select a competent and impartial arbitrator. The two selected arbitrators shall appoint a third arbitrator. If the two appointed arbitrators cannot agree on a third, they may petition a judge having competent jurisdiction to select the third arbitrator, or they may resign their appointment jointly or individually so that the parties may renew the selection process. The written award of two of the three arbitrators shall bind the parties. The cost of the arbitrators and any expert witnesses shall be borne by the party that hired them. The cost of the third arbitrator and other expenses of the arbitration shall be shared equally by the parties. The arbitration shall take place in the City of El Mirage. State court rules of procedure and evidence shall be governing.

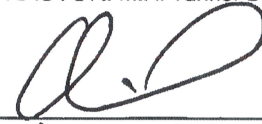
Executed and entered into on the date first written above.

CITY:

CONTRACTOR: M.R. Tanner Development & Construction, LLC

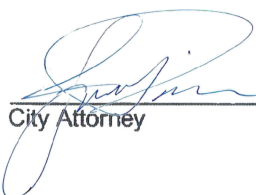
  
By: Crystal Dyches

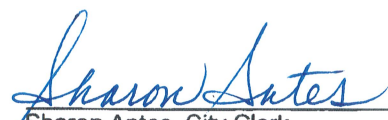
Its: City Manager

  
By: ALAN EVANS  
Its: PRESIDENT

Approved as to form:

Attest:

  
City Attorney

  
Sharon Antes, City Clerk