

## EMERGENCY CONSTRUCTION CONTRACT #2023-153

**City of Flagstaff, Arizona  
and  
Joe Dirt Excavating, Inc.**

The Emergency Construction Contract (“Contract”) is made and entered into this 7<sup>th</sup> day of July 2023, by and between the City of Flagstaff, a political subdivision of the State of Arizona with offices at 211 West Aspen Avenue, Flagstaff, Arizona ("Owner") and Joe Dirt Excavating, Inc., an Arizona Corporation ("Contractor") with offices at 2248 N. Walgreen Blvd., Flagstaff, AZ 86004. Contractor and the Owner may be referred to each individually as a “Party” and collectively as the “Parties.”

### RECITALS

- A. Owner has acquired Public Assistance Grant SD#2303 from the U.S. Department of Homeland Security, Federal Emergency Management Agency (“FEMA”) and Arizona Department of Emergency Management and Military Affairs for assistance with Pipeline West Post-Fire Flooding 2022;
- B. Owner desires to obtain construction services to respond to the Pipeline West Post-Fire Flooding 2022; and
- B. Contractor has available and offers to provide personnel and materials necessary to accomplish the work and complete the Project as described in the Scope of Work and the As-built Report within the required time in accordance with the calendar days included in the Contract.

NOW, THEREFORE, the Owner and Contractor agree as follows:

- 1. **Scope of Work.** Contractor shall furnish any and all labor, materials, equipment, transportation, and services for the **Frances Short Pond - Sediment Removal Project (“Project”)**.
  - 1.1 The Project scope is specific to the Scope of Work and As-built Report, attached as *Exhibit A*. The Project includes dredging the pond to the as-built elevations. A detailed digital elevation file will be shared with the Contractor at a future date.
  - 1.2 Contractor shall construct the Project for the Owner in a good, workmanlike and substantial manner and to the satisfaction of the Owner through its engineers and under the direction and supervision of the City Engineer, or his properly authorized agents including but not limited to project managers and project engineers. Contractor’s work shall be strictly pursuant to and in conformity with the Contract.
  - 1.3 A Pre-Construction Conference will be held with the successful Contractor after the Notice of Award is issued. The date and time of the Conference will be agreed upon between the Contractor and the Engineer at a location identified by the Owner. The meeting will be held at a location identified by the Owner. The purpose of the meeting is to outline specific construction items and procedures that the Owner feels require special attention on the part

of Contractor. Contractor may also present any variations in procedures to improve the workability of the Project, reduce the cost, or reduce inconvenience to the public. Contractor shall submit a written proposal at this conference outlining intended plans for pavement replacement, maintaining continuous access to residences and businesses along the construction site, and traffic control.

**2. Contract; Ownership of Work.** Contractor shall furnish and deliver all of the materials and perform all of the work in accordance with the Contract; Construction Plans; Special Provisions; the City of Flagstaff Engineering Design and Construction Standards and Specifications; the latest version of the Maricopa Association of Governments (“MAG”) Specifications for Public Works Construction and City revisions to the MAG Specifications for Public Works Construction attached as *Exhibit B*; and any Arizona Department of Transportation (“ADOT”) Standards that may be referenced on the plans or in the specifications, incorporated in the Contract by reference, plans and associated documents. All provisions of the Invitation for Construction Bids, Performance Bond, Payment Bond, Certificates of Insurance, Addenda, Change Orders and Field Orders, if any, are hereby incorporated into the Contract. All materials, work, specifications and plans shall be the property of the Owner.

The following exhibits are incorporated by reference and are expressly made a part of the Contract:

- 2.1.1 Scope of Work and As-built Report Exhibit A
- 2.1.2 Revisions of MAG Standard Specifications for Public Works Construction (“Flagstaff Addendum to MAG”) Exhibit B
- 2.1.3 FEMA/ADEMA Public Assistance Grant Provisions SD#2303 Exhibit C

**3. Payments.** In consideration of the satisfactory performance of the work described in the Contract, the Owner shall pay **three hundred ninety-seven thousand seven hundred eighty-four dollars and forty-four cents (\$397,784.44), plus additional costs and fees**, to the Contractor for work and materials provided in accordance with the Scope of Work and As-built Report, attached as *Exhibit A*, which amount includes federal, state, and local taxes, as applicable. This amount shall be payable through progress payments, subject to the following conditions:

- 3.1 This Project is funded by Public Assistance Grant SD#2303 from the U.S. Department of Homeland Security, Federal Emergency Management Agency (“FEMA”) and Arizona Department of Emergency Management and Military Affairs for assistance with Pipeline West Post-Fire Flooding 2022.
- 3.2 Contractor shall promptly submit to the Owner all proper invoices necessary for the determination of the prices of labor and materials as identified and in conjunction with the cost estimation included in the Scope of Work and As-built Report, attached as *Exhibit A*;
- 3.3 The City Engineer shall have the right to determine the final amount due to Contractor;
- 3.4 Monthly progress payments shall be made by the Owner, on or before fourteen (14) calendar days after the receipt by the Owner of an approved estimate of the work completed;

3.5 Contractor agrees that title to materials incorporated in the work, and stored at the site, shall vest with the Owner upon receipt of the corresponding progress payment; and

3.6 The remainder of the Contract price, after deducting all such monthly payments and any retention, shall be paid within sixty (60) days after final acceptance of completed work by the Owner. The release of retention or alternate surety shall be made following the Owner's receipt and acceptance of: Contractor's Affidavit Regarding Settlement of Claims, Affidavit of Payment, Consent of Surety for Final Payment, and Unconditional Full and Final lien waivers from all subcontractors and suppliers who have filed an Arizona Preliminary 20 Day Lien Notice in accordance with A.R.S. §§ 33-992.01 and 33-992.02.

**4. Time of Completion.** Contractor agrees to complete all work as described in the Contract by **July 24, 2023**, to proceed free of all liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or persons, in the manner and under the conditions specified within the time or times specified in this Contract.

**5. Performance of Work.** All work covered by the Contract shall be done in accordance with the latest and best accepted practices of the trades involved. Contractor shall use only skilled craftsmen experienced in their respective trades to prepare the materials and to perform the work.

**6. Acceptance of Work; Non-Waiver.** No failure of the Owner during the progress of the work to discover or reject materials or work not in accordance with the Contract shall be deemed an acceptance of, or a waiver of, defects in work or materials. No payment shall be construed to be an acceptance of work or materials which are not strictly in accordance with the Contract.

**7. Delay of Work.** Any delay in the performance of the Contract due to strikes, lockouts, fires, or other unavoidable casualties beyond the control of the Contractor and not caused by any wrongful act or negligence of Contractor shall entitle Contractor to an extension of time equal to the delay so caused. Contractor shall notify the Owner in writing specifying such cause within twenty-four (24) hours after its occurrence. In the event such delay is caused by strikes, lockouts, or inability to obtain workmen for any other cause, the Owner shall have the right but shall not be obligated to complete the work on the same basis as is provided for in Section 13 below (Contract Violations).

**8. Failure to Complete Project in Timely Manner.** If Contractor fails or refuses to execute the Contract within the time specified in Section 4 above (Time of Completion), or such additional time as may be allowed, the proceeds of Contractor's performance guaranty shall become subject to deposit into the Treasury of the municipality as monies available to compensate the Owner for damages as provided by A.R.S. § 34-201 for the delay in the performance of work under the Contract, and the necessity of accepting a higher or less desirable bid from such failure or refusal to perform the Contract as required. If Contractor has submitted a certified check or cashier's check as a performance guaranty, the check shall be returned after the completion of the Contract.

**9. Labor Demonstration.** It is understood that the work covered by the Contract is for the Owner's business purposes and that any unfavorable publicity or demonstrations in connection with the work will have a negative effect upon the Owner. If Contractor's actions in performance of the

Contract result in any public demonstration on behalf of the laborers or organized labor in the vicinity of the Owner's premises, whether such demonstration is in the form of picketing, posting of placards or signs, violence, threats of violence or in any other form, which in the Owner's judgment, might convey to the public the impression that the Owner or Contractor or any subcontractor is unfair to laborers or to organized labor, the Owner shall have the right to terminate the Contract immediately, unless the Contractor shall have caused such demonstration to be discontinued within two (2) days after request of the Owner to do so. In the event any such demonstration is attended by violence, the Owner may fix lesser time within which a discontinuance shall be accomplished. In the event of Contract termination, Contractor agrees to remove from the Premises within twenty-four (24) hours of termination, all machinery, tools, and equipment belonging to it or to its subcontractors. All obligations or liabilities of the Owner to the Contractor shall be discharged by such termination, except the obligation to pay to the Contractor a portion of the Contract price representing the value based upon the Contract price of labor and materials incorporated in the work as established by the Owner, less the aggregate of all previous payments, but subject to all of the conditions pertaining to payments generally.

**10. Material Storage.** During the progress of the work, the Contractor shall arrange for office facilities and for the orderly storage of materials and equipment. Contractor shall erect any temporary structures required for the work at its own expense. Contractor shall, at all times, keep the premises reasonably free from debris and in a condition which will not increase fire hazards. Upon completion of the work, Contractor shall remove all temporary buildings and facilities and all equipment, surplus materials and supplies belonging to Contractor. Contractor shall leave the Premises in good order, clean, and ready to use by the Owner. The establishment of any temporary construction yard, material storage area or staging area to be located within City of Flagstaff limits and outside the public right-of-way or Project limits generally requires a Temporary Use Permit. (See Exhibit B, Section 107.2.1.)

**11. Maintenance During Winter Suspension of Work.** A "Winter Shutdown" is the period of time typically including December through March. The Owner and Contractor will comply with the requirements of the Flagstaff Amendments to MAG, Section 105.16, relating to Maintenance During Winter Suspension of Work.

**12. Assignment.** No right or interest in the Contract shall be assigned, in whole or in part, by Contractor without prior written permission of the Owner and no delegation of any duty of Contractor shall be made without prior written permission of the Owner. The Owner shall not unreasonably withhold consent to such assignment. Contractor agrees that any assignment agreement between Contractor and the Assignee shall include and subject to the assignee to all obligations, terms and conditions of the Contract and that Contractor shall also remain liable under all obligations, terms and conditions of the Contract.

**13. Notices.** Many notices or demands required to be given, pursuant to the terms of the Contract, may be given to the other Party in writing, delivered in person, sent by facsimile transmission, emailed, deposited in the United States mail, postage prepaid, or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph. However, notices of termination, notices of default and any notice regarding warranties shall be sent via registered or certified mail, return receipt requested at the address set

forth below *and* to legal counsel for the party to whom the notice is being given.

**If to Owner:**

Emily Markel  
Procurement Specialist  
211 West Aspen Avenue  
Flagstaff, AZ 86001  
[EMarkel@flagstaffaz.gov](mailto:EMarkel@flagstaffaz.gov)

**If to Contractor:**

Jamie Williamson, Estimator/PM  
Joe Dirt Excavating, Inc.  
2248 North Walgreens Street  
Flagstaff, AZ 86004  
Phone: 928-607-5319  
[jamie@joedirtx.com](mailto:jamie@joedirtx.com)

**A Copy to:**

Adam Miele, PE  
Senior Project Manager – Public Works  
City of Flagstaff  
3200 West Route 66  
Flagstaff, AZ 86001  
[amiele@flagstaffaz.gov](mailto:amiele@flagstaffaz.gov)

**14. Contract Violations.** If any of the provisions of the Contract are violated by Contractor or by any of Contractor’s subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate such Contract (“Notice to Terminate”). The Contract shall terminate within five (5) days of the date Contractor receives the Notice to Terminate, unless the violation ceases and Contractor makes arrangements for correction satisfactory to the Owner. In the event of any such termination, the Owner shall immediately serve notice of the termination upon the Surety by registered mail, return receipt requested. The Surety shall have the right to take over and perform the Contract. If the Surety does not commence performance within ten (10) days from the date of receipt of the Owner’s notice of termination, the Owner may complete the work at the expense of Contractor, and Contractor and his or her Surety shall be liable to the Owner for any excess cost incurred by the Owner to complete the work. If the Owner completes the work, the Owner may take possession of and utilize such materials, appliances and plants as may be on the worksite site and necessary for completion of the work.

**15. Termination for Convenience.** The Owner may terminate the Contract at any time for any reason by giving at least **five (5) calendar days** written notice to Contractor. If termination occurs, Contractor shall be paid fair market value for work completed by Contractor as of the date of termination. The Parties agree that fair market value shall be determined based on Contractor’s original bid price, less any work not yet completed by Contractor as of the date the written notice of termination is given to Contractor.

**16. Contractor's Liability and Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, save and hold harmless the “City of Flagstaff” and its officers, officials, agents, and employees (as the “Indemnitee”) from and against liabilities, damages, losses and costs, including reasonable attorneys' fees, but only to the extent caused by the, recklessness or intentional wrongful conduct of Contractor, subcontractor or design professional or other persons employed or used by Contractor, subcontractor or design professional in the performance of the Contract. The amount and type of insurance coverage requirements set forth in

the Contract (Exhibit B, Section 103.6) will in no way be construed as limiting the scope of Contractor's Liability or Indemnification.

**17. Non-Appropriation.** In the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner to meet the Owner's obligations under the Contract, the Owner will notify Contractor in writing of such occurrence, and the Contract will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under the Contract are exhausted. No payments shall be made or due to the other party under the Contract beyond these amounts appropriated and budgeted by the Owner to fund the Owner's obligations under the Contract.

**18. Amendment of Contract.** The Contract may not be modified or altered except in writing and signed by duly authorized representatives of the Parties.

**19. Subcontracts.** Contractor shall not enter into any subcontract, such as for earth working excavating equipment or disposal of materials from the pond, or issue any purchase order for the completed work, or any substantial part of the work, unless in each instance, Contractor has received prior written approval from the Owner. Contractor shall be fully responsible to the Owner for acts and omissions of Contractor's subcontractors and all persons either directly or indirectly employed by them.

**20. Cancellation for Conflict of Interest.** The Contract is subject to the cancellation provisions of A.R.S. § 38-511.

**21. Compliance with All Laws.** Contractor shall comply with all applicable laws, statutes, ordinances, regulations and governmental requirements in the performance of the Contract.

**22. Employment of Aliens.** Contractor shall comply with A.R.S. § 34-301, which provides that a person who is not a citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal public works project.

**23. Compliance with Federal Immigration Laws and Regulations.** Contractor warrants that it has complied with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Contractor acknowledges that pursuant to A.R.S. § 41-4401 a breach of this warranty is a material breach of the Contract subject to penalties up to and including termination of the Contract, and that the Owner retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

**24. Contractor's Warranty.** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A, Verification of Employment Eligibility. Contractor shall not employ aliens in accordance with A.R.S. § 34-301, Employment of Aliens on Public Works Prohibited. Contractor acknowledges that pursuant to A.R.S. § 41-4401, Government Procurement; E-Verify Requirement; Definitions, a breach of this warranty is a material breach of the Contract subject to penalties up to and including termination of the Contract, and that the Owner retains the legal right to inspect the papers of any employee who works on the Contract to ensure compliance with this warranty.

**25. Jurisdiction and Venue.** The Contract shall be administered and interpreted under the laws of the State of Arizona. Contractor hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

**26. Attorneys' Fees.** If suit or action is initiated in connection with any controversy arising out of the Contract, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

**27. Time is of the Essence.** Contractor acknowledges that the completion of the Contract by the dates specified final completion is critical to the Owner, time being of the essence of the Contract.

**28. No Third-Party Beneficiaries.** The Parties acknowledge and agree that the terms, provisions, conditions, and obligations of the Contract are for the sole benefit of, and may be enforceable solely by, the Parties to the Contract, and none of the terms, provisions, conditions, and obligations of the Contract are for the benefit of, or may be enforced by, any person or entity not a Party to the Contract.

**29. Headings.** The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Contract.

**30. Severability.** If any part of the Contract is determined by a court to be in conflict with any statute or constitution or to be unlawful for any reason, the Parties intend that the remaining provisions of the Contract shall remain in full force and effect unless the stricken provision leaves the remaining Contract unenforceable.

**31. Force Majeure.**

31.1 There may be events that occur during the term of the Contract that are beyond the control of both the Owner and Contractor, including events of war, floods, labor, disputes, earthquakes, epidemics, pandemics, adverse weather conditions not reasonably anticipated, forest fires, and other acts of God ("Events"). These Events may result in a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables that are the subject of the Contract.

31.2 There shall be no claims arising from a temporary delay of contractual deliverables, or the permanent inability to provide the contractual deliverables caused by the Events and the Owner shall not pay additional costs incurred by Contractor as a result of such Events.

31.3 The Parties shall act in good faith to extend the Contract completion date without any penalty to Contractor and that the extension will be in an amount of time equal to any temporary delay. This provision of the Contract supersedes all other terms regarding temporary delay, permanent shut down, or increased costs.

**32. No Boycott of Israel.** Pursuant to A.R.S. §§ 35-393 and 35-393.01, if Contractor has over ten (10) employees and the Contract is worth at least one-hundred thousand dollars and no

cents (\$100,000), Contractor shall certify that it is not currently engaged in, and agrees, for the duration of the Contract, will not engage in a boycott of Israel.

**33. Contract to Contract.** The Contract shall not be modified within the first year after Contract award where: (a) an amendment may result in a competitive advantage that was not made available to other proposers/bidders; or (b) requests for changes may delay commencement of performance.


**34. Forced Labor of Ethnic Uyghurs.** If Contractor engages in for-profit activity and has ten (10) or more employees, pursuant to A.R.S. § 35-394, the Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use: (a) the forced labor of ethnic Uyghurs in the People’s Republic of China; (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and (c) 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. If Contractor becomes aware during the term of the Contract that the company is not in compliance with the written certification, the company shall notify the Owner within five business days after becoming aware of the noncompliance. If Contractor does not provide the Owner with a written certification that the Contractor has remedied the noncompliance within 180 days after notifying the Owner of the noncompliance, the Contract terminates, except that if the contract termination date occurs before the end of the remedy period the Contract terminations on the Contract termination date.

*(Remainder of Page Intentionally Left Blank)*

**IN WITNESS WHEREOF**, the Owner and Contractor, by their duly authorized representatives, have executed the Contract as of the date written above.

*(Please sign in blue ink. Submit original signatures – photocopies not accepted)*

**Owner, City of Flagstaff**

 Greg Clifton  
2023.07.07 11:50:11  
-07'00'


Greg Clifton, City Manager

Attest:

 Digitally signed by Stacy  
Saltzburg  
Date: 2023.07.07 16:19:42 -07'00'

City Clerk

**Joe Dirt Excavating, Inc.**

  
Signature

Jamie Williamson  
Printed Name

Project Manager  
Title

Approved as to form:

Christina A.  
Kinneer

 Digitally signed by Christina A. Kinneer  
DN: cn=Christina A. Kinneer, o=City of  
Flagstaff, ou=City Attorney,  
email=christina.kinneer@flagstaffaz.gov, c=US  
Date: 2023.07.07 12:35:12 -07'00'

City Attorney