

CONTRACT

For the Construction of

**City of San Luis
Merrill Avenue Improvements Project Phase II (Rio Sonora and San Felipe)
(CDBG Contract # 114-18)**

THIS AGREEMENT, made and entered into this 14th day of November, 2018, by and between CEMEX Construction Materials South, L.L.C. (CONTRACTOR) of the City of San Luis, County of Yuma, and State of Arizona, party of the first part, hereinafter designated the CONTRACTOR, and the City of San Luis, Arizona, party of the second part, hereinafter designated the OWNER. The CONTRACTOR and the OWNER may be referred to singularly as the "Party" and collectively as the "Parties."

WITNESSETH: That the CONTRACTOR, for and in consideration of the sum to be paid him by the OWNER, in the manner and at the time hereinafter provided, and of the other covenants and agreements herein contained, and under the penalties expressed in the bonds provided, hereby agrees, for himself, his heirs, executors, administrators, successors, and assigns as follows:

ARTICLE I -- SCOPE OF WORK: The CONTRACTOR shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction of **City of San Luis Merrill Avenue Improvements (Rio Sonora and San Felipe) (CDBG Contract # 114-18)** and to completely and totally construct the same and install the materials therein for the OWNER, in a good and workmanlike and substantial manner and to the satisfaction of the OWNER through its engineers ("ENGINEER") and under the direction and supervision of the ENGINEER, or his properly authorized agents and strictly pursuant to and in conformity with the Plans and Specification prepared by the engineers for the OWNER, and with such modifications of the same and other documents that may be made by the OWNER through the ENGINEER or his properly authorized agents, as provided herein.

ARTICLE II -- CONTRACT DOCUMENTS: The ADVERTISEMENT FOR BIDS, BID SCHEDULE, Additive Bid Items, if any, PLANS, SPECIFICATIONS, General Conditions, Special Provisions, Addenda, if any, PROPOSAL, BID SURETY BOND, Yuma County Public Works Standard, Vol. 1, [Details] and Vol. 2, [Specifications], City of Yuma Construction Standard [Detail Drawing], CONTRACT SURETY BOND, LABOR AND MATERIALS SURETY BOND, Certificates of Insurance, and Change Orders, if any, are by this reference made a part of this CONTRACT to the same extent as if set forth herein in full and may be referred to as the "CONTRACT DOCUMENTS" or "AGREEMENT."

ARTICLE III - LEGAL ARIZONA WORKERS ACT COMPLIANCE: To the extent applicable under A.R.S. § 41-4401, the CONTRACTOR and its subcontractors warrant compliance with the federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The CONTRACTOR or 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 Owner. Owner retains the legal right to randomly inspect the papers and records of the CONTRACTOR and its subcontractors who work on the Agreement to ensure that the CONTRACTOR and its subcontractors are complying with the above-mentioned warranty. The CONTRACTOR and its subcontractors warrant to keep the papers and records open for inspection during normal business hours by Owner and to cooperate with Owner's inspection.

ARTICLE IV – CERTIFICATION: Pursuant to A.R.S. § 35-393.01, CONTRACTOR hereby certifies that it does not participate, and agrees not to participate in during the term of this AGREEMENT a boycott of Israel.

ARTICLE V - CONFLICT OF INTEREST: All parties hereto acknowledge that this agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

ARTICLE VI - TIME OF COMPLETION: The CONTRACTOR further covenants and agrees at his own proper cost and expense, to do all work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the PROPOSAL Pamphlet [**120 calendar days** from date of Notice to Proceed].

ARTICLE VII - PAYMENTS: For and in consideration of the faithful performance of the work herein embraced as set forth in the CONTRACT DOCUMENTS, which are a part hereof and in accordance with the directions of the Owner, through its Engineer, and to his satisfaction, the Owner agrees to pay the said CONTRACTOR the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit bid price on the PROPOSAL made a part hereof, and to make such payments within forty-five (45) days after final inspection and acceptance of the work.

ARTICLE VIII – INDEMNIFICATION: The CONTRACTOR hereby agrees to indemnify and save harmless the City of San Luis (OWNER), and any jurisdiction or agency issuing permits for any work included in the PROJECT, their officers, agents and representatives from all suits, action, loss, damage, expense, cost, or claims of any character or any nature brought on account of any injuries or damage sustained by any person or property arising out of the work done in fulfillment of the construction of the improvement under the terms of this agreement, or on account of any act or omission by the CONTRACTOR or his agents, or from any claims of amounts arising or recovered under Workmen's Compensation laws or any other law, bylaw, ordinance, or order or decree.

ARTICLE IX – COMPLIANCE WITH THE LAW: The CONTRACTOR hereby agrees to comply with all federal, state, and local laws, rules and regulation including, but not limited to obtaining a San Luis Business License on or before the effective date of this AGREEMENT.

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ARTICLE X – MISCELLANEOUS PROVISIONS:

10.01 Notices. All notices to be given under this AGREEMENT, or which may be given by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by means of prepaid service by:

- deposit in the United States Postal Service by certified mail, return receipt requested,
- personal delivery by process server or
- sent by a nationally recognized courier (e.g., Federal Express, UPS)

and addressed to the respective Parties as follows:

If to the OWNER -

City Manager
City of San Luis
P.O. Box 1170 (by United States Postal Service)
1090 East Union Street (by personal process or courier)
San Luis, Arizona 85349-1170

Copy to

Jenny Torres, Economic Development Manager and
San Luis City Attorney
Both at the same address above.

If to the CONTRACTOR

David J. Shippet
CEMEX Construction Materials South, LLC
2088 E. 20th Street (by personal process or courier)
Yuma, Arizona 85366-2521

or such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

10.02 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this AGREEMENT shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this AGREEMENT.

10.03 Headings. The descriptive headings of the paragraphs of this AGREEMENT are inserted for convenience only, and shall not control or affect the meaning or construction of the provisions of this AGREEMENT.

10.04 Authority. The undersigned represent to each other that they have full power and authority to enter into this AGREEMENT and that all necessary actions have been taken to give full force and effect to this AGREEMENT.

10.05 Amendment of the AGREEMENT. No change or additions are to be made to this AGREEMENT except by written amendment executed by the Parties.

10.06 Severability. If any other provision of the AGREEMENT is declared void or unenforceable, such provision shall be severed from this AGREEMENT, which shall otherwise remain in full force and effect.

10.07 Reformation. Reformation. Should any term, provision, covenant or condition of the AGREEMENT be held to be void or invalid, the Parties shall reform this AGREEMENT to conform as closely as possible to the original intent of this AGREEMENT.

10.08 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this AGREEMENT.

10.09 Venue. The Parties agree that venue for any action commenced in connection with this AGREEMENT shall be proper only in a court of competent jurisdiction in Yuma County, Arizona or in the United State District Court for the District of Arizona at the election of the plaintiff in such legal action and the Parties waive any right to object to such venue. Nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

10.10 Attorney's Fees and Costs. In the event any Party finds it necessary to bring any action at law or other proceeding, including arbitration, against the other Party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the Party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorney's fees by the other Party, and in the event any judgment is secured by said prevailing Party, all such costs and attorney's fees shall be included therein, such fees to be set by the court and not by jury.

10.11 No Third-Party Beneficiaries. There are no third-party beneficiaries to this AGREEMENT, and no person or entity not a Party shall have any right or cause of action under this AGREEMENT.

10.12 No Agency Created. It is not intended by this AGREEMENT to, and nothing contained in this AGREEMENT shall create any agency, partnership, joint venture or other similar arrangement between the Parties.

10.12 No Personal Liability. No member, official or employee of the OWNER shall be personally liable to the CONTRACTOR, or any successor or assignee, (a) if any default

occurs or breach by the OWNER, (b) for any amount which may become due to the CONTRACTOR or its successor or assign, or (c) under any obligation of the OWNER under this AGREEMENT. Notwithstanding anything contained in this AGREEMENT to the contrary, the liability of the CONTRACTOR under this AGREEMENT shall be limited solely to the assets of CONTRACTOR and shall not extend to or be enforceable against: (i) the individual assets of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of the CONTRACTOR; (ii) the shareholders, members or managers or constituent partners of the CONTRACTOR; or (iii) officers of the CONTRACTOR.

10.13 Survival. All representations and warranties of the CONTRACTOR, CONTRACTOR's indemnity, hold harmless and defense obligations shall survive the expiration or earlier termination of this AGREEMENT.

10.14 Time is of the essence. Time is of the essence in this AGREEMENT and CONTRACTOR agrees to use the utmost diligence and dispatch to speedily have all the work specified in this AGREEMENT entirely completed on or before the completion date. Unless otherwise specifically provided in this AGREEMENT, any consent to delay in the performance of the CONTRACTOR of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.

10.15 Further Acts. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this AGREEMENT.

10.16 Force Majeure. If the CONTRACTOR or the OWNER are prevented or materially restricted from performing any of their obligations under this AGREEMENT by an event of force majeure, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "force majeure" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by the exercise of reasonable diligence. This includes, but is not limited to, acts of God, fire, flood, explosions, strikes or labor disputes over which the affected Party has no control, sabotage, riots, civil commotion, acts of civil or military authority, wars or material changes in applicable business laws or regulations.

10.17 Entire Agreement. This AGREEMENT, including the documents, which are incorporated by reference, constitutes the entire AGREEMENT between the Parties. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded and merged in this AGREEMENT.

10.18 Counterparts. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be

removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document.

IN WITNESS WHEREOF, the original CONTRACT will be filed with the City of San Luis Clerk.

The CONTRACTOR agrees that this CONTRACT, as awarded, is for the stated work, and understands that payment for the total work will be made on the basis of the indicated amount[s], as bid in the PROPOSAL. The OWNER shall pay to the CONTRACTOR, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Project documents, the sum of Dollars (\$ 286,569.39).

This ____ day of _____, 2018

CEMEX Construction Materials South, L.L.C.
CONTRACTOR

Signature

Name and Title

Witness [If CONTRACTOR is an individual] [Date]

Name and Title

This ____ day of _____, 2018

City of San Luis
Owner,

Tadeo A. De La Hoya, City Manager

ATTEST:

Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

Kay Marion Macuil, City Attorney