

# AGREEMENT

## For the Construction of

### City of San Luis Mesa Street Roadway Improvements-Phase II Project

This agreement ("AGREEMENT") is made and entered into this 28<sup>th</sup> day of November 2022, by and between:

DPE Construction, Inc. 1626 E. 20th Street Yuma, Arizona 85365  a for-profit corporation organized under the laws of Arizona. ("CONTRACTOR")	City of San Luis 1090 East Union Street (Physical Address) P.O. Box 3750 (Mailing Address) San Luis, Arizona 85349  a municipal corporation organized under the laws of Arizona ("OWNER")
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The CONTRACTOR and OWNER may be referred to individually as the Party and collectively as the Parties.

The CONTRACTOR, for and in consideration of the sum of \$197,948.10, 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 – Mesa Street Roadway Improvements- Project Phase II** ("PROJECT"), per the CONTRACTOR's proposal of November 28, 2022, ("PROPOSAL"). CONTRACTOR shall completely and totally construct the same and install the materials therein for the OWNER, in a good and workmanlike manner 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 ENGINEER 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. Work to be performed by the CONTRACTOR consists of completing the installation of vertical curb and gutter, concrete flatwork including cross gutters, driveways, depressed

sidewalks, sidewalk ramps, and spillways, and pavement. The project also includes adjusting existing water valve and existing stormdrain manhole, miscellaneous pavement marking and signing, and other work incidental to the project.

**ARTICLE II – CONTRACT DOCUMENTS:** The plans, specifications, General Conditions, Special Provisions, Addenda, if any, PROPOSAL, the City of San Luis Public Works Standards, the City of San Luis Supplemental to the M.A.G. Uniform Standard Specifications and Details for Public Works Construction and City of Yuma Construction Standard Detail Drawings, Maricopa Association of Governments (M.A.G.) Uniform Standard Specifications and Details for Public Works Construction, City of Yuma Construction Standard Detail Drawings — Edition 2009, performance bond, payment bond, Certificates of Insurance, and Change Orders, if any, are by this reference incorporated and made a part of this AGREEMENT to the same extent as if set forth herein in full.

**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 warranty mentioned above shall be deemed a material breach of the AGREEMENT. It may result in the termination of the AGREEMENT by the 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 warranty mentioned above. The CONTRACTOR and its subcontractors warrant keeping the papers and records open for OWNER's inspection during normal business hours and cooperating with OWNER's inspections.

**ARTICLE IV – 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 V – 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 the date of Notice to Proceed.

**ARTICLE VI – 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 per 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 quoted 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.

The CONTRACTOR agrees that this AGREEMENT is for the stated work and understands that payment for the total work will be made based on the indicated amount[s], as quoted in the PROPOSAL. The OWNER shall pay to the CONTRACTOR, as full consideration for the faithful performance of the AGREEMENT, subject to any additions or deductions as provided in the PROJECT'S documents, the sum of Dollars \$197,948.10.

**ARTICLE VII — INDEMNIFICATION:** The CONTRACTOR agrees to indemnify, hold harmless, and defend the OWNER and any jurisdiction or agency issuing permits for any work included in the PROJECT, their elected officials, officers, employees, 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 Workers' Compensation laws or any other law, bylaw, ordinance, or order or decree. All representations and warranties of CONTRACTOR'S indemnity, hold harmless, and defense obligations shall survive the expiration or earlier termination of this AGREEMENT.

CONTRACTOR shall at its expense, for the performance contracted hereunder: (1) insure the instruments and equipment belonging to CONTRACTOR against loss or damage; (2) carry public liability insurance providing for a minimum of \$1,000,000.00 per person, \$2,000,000.00 per occurrence and/or accident, \$2,000,000.00 aggregate, and \$1,000,000.00 for property damage; and (3) procure a policy for accident or damages on or to the premises of the Project, under the control or use of CONTRACTOR, in the amounts set forth in item (2) above.

CONTRACTOR shall, at the expense of CONTRACTOR, carry the types and amounts of insurance that OWNER may request to insure OWNER against loss or damage by reason of accident, fire, damage, or other casualty during any performance.

CONTRACTOR shall procure, pay for, and deliver to OWNER the policies of insurance covering the risks described in the preceding paragraphs. All insurance companies issuing such policies shall have what is commonly known as an "A" rating with A.M. Best Company and shall insure OWNER. Certificates of insurance shall be delivered to OWNER before the effective date of this AGREEMENT, and new policies shall be delivered fourteen (14) days before the old policies expire. If CONTRACTOR fails to deliver the policies in the manner stated to OWNER, OWNER may obtain the required policies and charge their costs to CONTRACTOR, and OWNER may deduct these costs from any sums due and owing CONTRACTOR. If the policy or policies of insurance is/are a "claims made" policy, it/they shall be maintained for two (2) years following termination of this AGREEMENT.

All such insurance policies shall be first payable in case of loss by means of a standard noncontributory clause, shall be written by such companies, on such terms, in such form and for such periods and amounts as the OWNER shall from time to time designate or approve, shall be primary and without right of contribution from other insurance which may be available, shall waive any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of CONTRACTOR or OWNER, shall provide that with respect to the OWNER, the insurance shall not be invalidated by any action or inaction by CONTRACTOR, including but not limited to any representations made by CONTRACTOR in the procurement of such insurance, and shall provide that they shall not be cancelled or amended without at least [30] days' prior written notice to the OWNER. CONTRACTOR grants the OWNER full power and authority as attorney irrevocable of CONTRACTOR to cancel or transfer such insurance, to collect and endorse any checks issued in the name of CONTRACTOR and to retain any premium and to apply the same to the obligations promised by this AGREEMENT.

**ARTICLE VIII – RELATIONSHIP OF PARTIES:** CONTRACTOR's employees, agents, and subcontractors shall not be considered employees or agents of OWNER for any purpose and will not be entitled to any of the benefits OWNER provides for its employees. The CONTRACTOR's rights as an independent contractor include but are not limited to control of the work, manner, and methods of the work, and the right to contract with other employers. The OWNER's rights include but are not limited to inspection and approval of work.

**ARTICLE IX – MISCELLANEOUS PROVISIONS:**

A. Notice. The notice required in this AGREEMENT shall be in writing and delivered personally to the other Party, or sent by any commercially reasonable means of receipted delivery, addressed to that Party at the address in the first paragraph of this AGREEMENT or the address most recently provided in writing and delivered the same way as notice is required to be delivered in this paragraph.

B. No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof. 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 any other provision of this AGREEMENT. No waiver and no modification shall be effective unless it is in writing signed by the Parties and then only to the extent expressly set forth in such writing.

C. Amendment of the Agreement. Neither Party shall change or add in whole or in part to this AGREEMENT except by written amendment executed by the Parties or by their successor in interest or assigns.

D. Severability. If any provision of this AGREEMENT is declared void or unenforceable by a court of competent jurisdiction or by operation of legislation, such provision shall be severed from this AGREEMENT. The remainder of this AGREEMENT will not be affected by that invalidity or unenforceability, and each

provision of this AGREEMENT will be valid and will be enforced to the extent permitted by the law.

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

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

G. Venue. Venue for any action commenced in connection with this AGREEMENT shall be proper only in a court of competent jurisdiction in Yuma County, Arizona. In such legal action, the Parties shall waive any right to object to such venue. Nothing in this paragraph shall be deemed to have authorized the bringing of any legal action in a court which does not have jurisdiction to adjudicate it.

H. Attorneys' Fees and Costs. If either Party finds it necessary to bring any action at law, arbitration, or other proceeding against the other Party to enforce any of the terms, covenants, or conditions in this AGREEMENT, the non-prevailing Party shall pay all reasonable costs, reasonable financial services fees, and reasonable attorney's fees. If the prevailing Party secures a judgment, all such costs and fees shall be included in the judgment, set by the court and not by jury.

I. Assignment nor Assumption. The rights of each party under this AGREEMENT are personal to that Party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other Party.

CONTRACTOR shall not assign the benefits of or delegate the obligations arising under this AGREEMENT to any person or entity without the OWNER's consent.

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

K. No Partnership. This AGREEMENT does not intend to, and nothing contained in this AGREEMENT shall create any agency, partnership, joint venture, or other similar arrangement between the Parties. No term or provision of this AGREEMENT is intended to, nor shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

L. No Personal Liability. No member, official or employee of the OWNER shall be personally liable to CONTRACTOR, or any successor or assignee, (a) in the event of any default or breach by the OWNER, (b) for any amount which may become due to the

CONTRACTOR or its successor or assign, or (c) pursuant to any obligation of the OWNER under the terms of this contract.

M. Time is of the essence. Time is of the essence in this AGREEMENT. CONTRACTOR agrees to use the utmost diligence and dispatch to speedily complete the PROJECT and have all the work specified in this AGREEMENT entirely completed within 120 days of the Notice to proceed.

N. 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.

O. Force Majeure. If CONTRACTOR or 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. *Force majeure* includes (but is not limited to) 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 emergency orders.

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

Q. Interpretation. This AGREEMENT shall be interpreted as though prepared by both Parties.

R. 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.

S. Entire Agreement. This AGREEMENT, including the incorporated documents referenced in Article II, constitutes the Parties’ entire AGREEMENT. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are superseded and merged in this AGREEMENT.

T. 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.

This AGREEMENT shall inure to the benefit of and be binding on the respective Parties' heirs, legal representatives, assignees, and successors. The Parties have executed this AGREEMENT in Yuma County, Arizona, on the day and year set forth above, which is the day the last Party signed this AGREEMENT.

	<p><b>City of San Luis, Arizona</b></p> <hr/> <p>Ralph Velez, Acting City Manager</p> <p>Date: _____</p>
<p>ATTEST:</p> <hr/> <p>Sonia Cornelio, City Clerk</p>	<p>APPROVED AS TO FORM:</p> <hr/> <p>Kay Marion Macuil, City Attorney</p>
<p>Witness</p> <hr/> <p>Print Name and Title</p>	<p><b>DPE Construction, Inc.</b></p> <hr/> <p>Signature</p> <hr/> <p>Print Name</p> <hr/> <p>Title</p> <hr/> <p>Date: _____</p>