

**Project No. 18-001  
Street Overlay Project**

**Appendix No. 2**

## **Example Contract Documents**

This section includes an example agreement and other related documents that the Successful Bidder will use or may use. Please contact Mr. Tom Palmer at 928-424-2235 if you have questions. The example documents included in this packet are listed below:

- Construction Agreement
- Payment Bond
- Performance Bond
- Notice of Award
- Notice to Proceed
- Change Order
- Certificate of Substantial Completion
- Punch List and Exceptions
- Certificate of Final Acceptance
- Settlement of Claims
- Notice of Non-award

## Construction Agreement

**THIS AGREEMENT**, made and entered into this 30<sup>th</sup> day of December, 2018, by and between XYZ Company of Sunshine, Arizona hereinafter designated the **CONTRACTOR**, and the **Town of Thatcher**, a municipal corporation, organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated the **TOWN**.

**WITNESSETH:** That the **CONTRACTOR**, for and in consideration of the sum to be paid him by the **TOWN**, 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 all labor, materials, equipment, transportation, utilities, services and facilities required to construct the project for the **TOWN**. The **CONTRACTOR** shall perform all work in a good and substantial manner to the satisfaction of the **TOWN** through its Engineer or other authorized representative. Work shall conform to the **Contract Documents** and such modifications or clarifications that may be made by the **TOWN** through the Engineer. The **CONTRACTOR** agrees to perform the work at his own expense, as called for by this agreement, free and clear of all claims, liens, and charges.

### **ARTICLE II - TIME OF COMPLETION**

The **CONTRACTOR** agrees to perform the work in the manner specified within the time stated in the proposal pamphlet.

### ARTICLE III - CONTRACT DOCUMENTS

This **Agreement** makes by reference the following documents, as accepted by the Mayor and Council, a part of this **Agreement** to the same extent as if set forth herein in full:

- Invitation to Bid
- General Conditions to the Construction Agreement
- Supplementary Conditions to the Construction Agreement
- Schedule of Events
- Plans
- Specifications (Standard and Special)
- Details (Standard and Special)
- Special Provisions
- Addenda (if any)
- Project Time Line Chart (if any)
- Bid Proposal
- Bid Schedule
- Scope and Cost Schedule Accepted by Town
- Performance Bond
- Payment Bond
- Certificate of Insurance
- Change Orders (if any)
- Clarifications (if any)

### ARTICLE IV - PAYMENTS

In consideration of the performance of the work described in the **Contract Documents**, and in accordance with the directions of the **TOWN**, the **TOWN** agrees to pay the **CONTRACTOR** the amount earned. The amount will be computed according to the **Bid Schedule** from actual quantities of work performed and accepted or materials furnished, and to make such payment within forty-five (45) days after final inspection and acceptance of the work.

The **CONTRACTOR** may be paid partial payments as provided in the **Contract Documents**. The **TOWN** shall retain 10% of all payments to be paid to the **CONTRACTOR** until 50% of the project is physically completed. When the contract is 50% completed, one-half of the amount retained shall be paid to the **CONTRACTOR** upon the **CONTRACTOR's** request provided that the **CONTRACTOR** is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is 50% completed, the **TOWN** shall retain five per cent 5% of the amount of any subsequent progress payments made to the **CONTRACTOR**, providing the **CONTRACTOR** is making satisfactory progress on the project. At any time that the **TOWN** determines that satisfactory progress is not being made then 10% retention will be reinstated for all progress payments made under the contract subsequent to the determination.

#### **ARTICLE V - INDEMNIFICATION**

The **CONTRACTOR** agrees to indemnify the **TOWN** for any work included in the project, their officers, agents and representatives, also, from all suits, action, loss, damage, expense, cost, or claims of any character or any nature due to or arising from any of the following:

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**,

Any act or omission by the **CONTRACTOR** or his agents, and

Any claims or amounts arising or recovered under Workmen's Compensation laws or any other law, bylaw, ordinance, or order or decree.

The **CONTRACTOR** agrees to likewise indemnify other jurisdictions and agencies issuing permits associated with this project.

**IN WITNESS WHEREOF**, two identical counterparts of this **Agreement**, each of which shall be for all purposes deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

The **CONTRACTOR** agrees that this **Agreement** is for the stated work, and understands that payment for the total work will be made on the basis of the rates indicated in the **Bid Schedule**.

**ATTEST FOR THE CONTRACTOR:**

\_\_\_\_\_  
Signature of **CONTRACTOR**'s Representative

\_\_\_\_\_  
Date

**ATTEST FOR THE TOWN:**

\_\_\_\_\_  
Heath Brown, Town Manager

\_\_\_\_\_  
Date

## Payment Bond

The Contractor must submit a payment bond in the amount of 100% of the contract value. Bonds must be prepared according to current Arizona Revised Statutes, Title 34, Chapter 2, Article 2 and duly executed by the Contractor's authorized representative. A bond form is attached for the convenience of the Contractor.

*Please print clearly or type to complete this form, then sign at the bottom. Attach statements of Power-of-Attorney, etc. as needed. Other forms may be used. Call Tom Palmer at 928-424-2235 if you have questions.*

### **KNOW ALL MEN BY THESE PRESENTS THAT**

XYZ Company (hereinafter **Contractor**), as **Contractor**, and

\_\_\_\_\_, (hereinafter **Surety**),  
(Name of Contractor's Surety Agency)

a corporation organized and existing under the laws of the State

of \_\_\_\_\_, with its principal offices in

the City of \_\_\_\_\_, holding a certificate of authority to

transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to **Title 20, Chapter 2, Article 1**, as **Surety**, are held and firmly bound unto the Town of Thatcher (hereinafter **Town**), in the sum of one hundred percent (100%) of the value of the contract in the amount of

**Xxx Thousand and 00/100 Dollars (\$xxx,000),**

for the payment whereof, the said **Contractor** and **Surety** bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the **Contractor** has entered into a certain written contract with the **Town** dated the 30<sup>th</sup> day of December, 2018, for which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the **Contractor** shall promptly pay all moneys due to all persons supplying labor, rental equipment, or materials to him or his subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FOR THE CONTRACTOR**

\_\_\_\_\_  
Signature of Contractor's Representative

\_\_\_\_\_  
Title of Contractor's Representative

**FOR THE SURETY**

\_\_\_\_\_  
Signature of Surety's Attorney or Attorney-in-Fact

## Performance Bond

The Contractor must submit a performance bond in the amount of 100% of the contract value. Bonds must be prepared according to current Arizona Revised Statutes, Title 34, Chapter 2, Article 2 and duly executed by the Contractor's authorized representative. A bond form is attached for the convenience of the Contractor.

*Please print clearly or type to complete this form, then sign at the bottom. Attach statements of Power-of-Attorney, etc. as needed. Other forms may be used. Call Tom Palmer at 928-424-2235 if you have questions.*

### **KNOW ALL MEN BY THESE PRESENTS THAT**

XYZ Company (hereinafter **Contractor**), as **Contractor**, and

\_\_\_\_\_ (hereinafter **Surety**), a  
(Name of Contractor's Surety Agency)

corporation organized and existing under the laws of the State

of \_\_\_\_\_, with its principal offices in the

City of \_\_\_\_\_, holding a certificate of authority to

transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to **Title 20, Chapter 2, Article 1**, as **Surety**, are held and firmly bound unto the Town of Thatcher (hereinafter **Town**), in the sum of one hundred percent (100%) of the value of the contract in the amount of

**Xxx Thousand and 00/100 Dollars (\$xxx,000.00),**

for the payment whereof, the said **Contractor** and **Surety** bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the **Contractor** has entered into an agreement dated the 30<sup>th</sup> day of October, 2017 for the above-named project, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the **Contractor** shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guarantee required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter and Article, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the Court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FOR THE CONTRACTOR**

\_\_\_\_\_  
Signature of Contractor's Representative

\_\_\_\_\_  
Title of Contractor's Representative

**FOR THE SURETY**

\_\_\_\_\_  
Signature of Surety's Attorney or Attorney-in-Fact

## Notice of Award

**Bidder's Company Name: XYZ Company of Sunshine, AZ**

The Common Council of the Town of Thatcher has awarded you the construction contract for the above-named project. Please review and comply with the information below. Add alternates accepted are noted in the package. We look forward to doing business with you. Please call Tom Palmer at 928-424-2235 if you have any questions.

\_\_\_\_\_  
Tom Palmer  
Town Engineer

\_\_\_\_\_  
Date

A contract package is enclosed with this Notice of Award. Please complete it according to the checklist. Once the Town has received the package, including copies of the Construction Agreement with signatures, the Town will countersign the Construction Agreement and return one copy to you with a Notice to Proceed.

Because of the statutory-required protest period, a contract package is not enclosed. Following this period of \_\_\_\_ days, the package will be sent to you. When you receive it, please complete it according to the checklist.

Note: Failure of the Successful Bidder to execute and return the required documents within the time noted on the *Schedule of Events* will be construed by the Town as abandonment of your proposal and the Bid Security will be exercised.

## Notice to Proceed

**Contractor Company Name: XYZ Company of Sunshine, Arizona**

The Town authorizes the Contractor to mobilize and begin work on the above-named project on or before:

**September 11, 2017**

The Contractor, sub-contractors, and quality control firm shall attend a pre-construction conference at the Thatcher Town Hall on:

**August 30, 2017**

The Contractor shall substantially complete the work by:

**October 12, 2017**

The Contractor shall fully complete the work by:

**October 19, 2017**

## **Authorization to Proceed**

\_\_\_\_\_  
Tom Palmer  
Town Engineer

\_\_\_\_\_  
Date

**Change Order No. x**

Contractor: XYZ Company of Sunshine, Arizona

**Scope Change**

Scope change described here.

**Time Change**

Time change described here.

**Cost Change**

The total cost of this change order will be based on amount measured in the field times the unit costs. See the attached estimate.

**Authorization**

\_\_\_\_\_  
Heath Brown, Town Manager

\_\_\_\_\_  
Date

## Certificate of Substantial Completion

The date of substantial completion of a project (or specified part of a project) is the date when the construction is sufficiently completed so that the owner has full and unrestricted use and benefit of the project, both from the operational and safety standpoint, in accordance with the contract documents.

Date of Completion required by Contract: October 19, 2017

Date of Substantial Completion: October 12, 2017

This project is declared to be substantially complete on the above date. The project remains subject to inspection, audit, and acceptance by the Town's representatives. The Date of Final Acceptance by the Town is the date upon which all guarantees and warranties begin. The Town may assess liquidated damages for work not completed by the required date.

Exceptions to this certificate as well as a tentative list of items to be completed or corrected are attached as the *Punch List and Exceptions*. This list may not be exhaustive. The failure to include an item on it does not alter the responsibility of the Contractor to complete all the work in accordance with the contract documents. The Contractor shall complete these items by November 30, 2015. The Contractor shall notify the Town in writing upon completion of these items.

### **Certification**

\_\_\_\_\_  
Tom Palmer  
Town Engineer

\_\_\_\_\_  
Date

The Contractor accepts this Certificate of Substantial Completion and agrees to complete and correct these items on the tentative list within the time indicated.

\_\_\_\_\_  
Contractor Representative Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Punch List and Exceptions

### **Punch List**

Items needing completion or correction before Town will accept:

1. Item
2. Item

### **Exceptions**

Items in the Scope of Work to be excluded from this tentative acceptance to be handled later or in a different manner than in the original contract documents:

1. Item
2. Item

### **Other**

Town or Contractor responsibilities not listed above:

1. Item
2. Item

## Certificate of Final Acceptance

This project is hereby declared to be complete, relieving the Contractor of any further work. The Town does accept the work performed as outlined in the Construction Agreement and the punch list contained in the Certificate of Substantial Completion. The warranty period begins as of the date noted beside the signature. No exceptions are associated with this Certificate.

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Tom Palmer  
Town Engineer

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Date

## Settlement of Claims

Contractor: XYZ Company of Sunshine, Arizona

Type or print clearly when completing this form. Call Tom Palmer at 928-424-2235 if you have questions.

By signing and returning this affidavit, the CONTRACTOR certifies that all claims for materials, rental of equipment, and labor used in connection with the construction of the above project, whether by the CONTRACTOR, any subcontractors, suppliers, or claimants have been duly discharged.

For the consideration of \$ xxx,000.00 as set out in the final pay estimate, as full and complete payment under the terms of the contract, the undersigned waives and relinquishes any further claims or right of lien in connection with the above-described project. The undersigned agrees to indemnify the Town of Thatcher against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which the Town may suffer arising out of the failure of the undersigned to pay for all labor, performance, and materials furnished for the project.

The return of this signed affidavit satisfies the requirements of the Payment Bond. However, the Performance Bond will still be in effect for the warranty period stated in the Bid Package.

\_\_\_\_\_  
Signature of Contractor's Representative

\_\_\_\_\_  
Date

## Notice of Non-Award

Bidder's Company Name: \_\_\_\_\_

This notice is to inform you that you were not the low bid for the above-named project. Please note the information below. Thank you for your participation. Call Tom Palmer at 928-424-2235 if you have questions.

\_\_\_\_\_  
Tom Palmer  
Town Engineer

\_\_\_\_\_  
Date

- The Town has executed a contract with the lowest bidder.
- Although you did not tender the lowest bid, your proposal was one of the three lowest bids submitted. The Town will keep your bid security until the successful bidder executes a contract at which time your bid security will be returned. If the successful bidder does not execute a contract with the Town, there is the possibility that you will be selected as the successful bidder. The Town will keep you informed of the outcome.
- Your bid was not one of the three lowest bids; therefor your bid will no longer be considered.
- Your bid security is enclosed with this notice if it was cash.