

AMES CONSTRUCTION, INC.
STANDARD SUBCONTRACT AGREEMENT FOR LABOR AND MATERIALS
(Short Form)

This Agreement, hereinafter called the Contract, effective this 18th day of August 2010 by and between **Ames Construction, Inc.** (hereinafter "Ames"), a Minnesota corporation having an office at 8333 E. Hartford Dr., Scottsdale, AZ 85255, and **Gila County Sherrif's Department**, ("Supplier") having an office at P.O. Box 311, Globe, AZ 85501

Whereas Ames has entered into a Contract agreement with **Arizona Department of Transportation** (hereinafter "Owner") to perform certain labor and furnish certain material for the construction of **260 GI 262 H469901C NH-260-B(201)B PAYSON-SHOW LOW HIGHWAY (SR 260) LITTLE GREEN VALLEY SECTION** (hereinafter "Project") pursuant to plans, specifications, general conditions, special conditions and addenda.

Now, therefore, in consideration of the mutual covenants contained herein, Ames and Supplier agree as follows:

1. **CONTRACT DOCUMENTS.** The plans, drawings, specifications, invitation to bidders, instructions to bidders, general conditions, special conditions, addenda, amendments, bonds, and all other documents supplied to potential bidders by Owner and/or Engineer are hereinafter collectively referred to as the General Contract Documents, General Contract or Contract Documents.
 - 1.1 All of the General Contract Documents have been made available to Supplier, and Supplier has carefully examined these Contract Documents.
 - 1.2 Supplier agrees to be bound to Ames by all terms and conditions, technical and commercial, of the General Contract Documents and to conform to, and comply with their provisions and to assume toward Ames all the obligations and responsibilities Ames assumes in and by the General Contract Documents toward the Owner insofar as they are applicable to this Contract. Where any provision of this Contract is inconsistent with any provision of the General Contract Documents, the more stringent provision shall govern.
2. **SCOPE OF SUPPLY.** Supplier agrees to furnish all supervision, labor, materials, tools, services, equipment and all other items necessary to perform the scope of work listed below in accordance with all applicable plans and specifications.

| Item | Quantity | Description | Unit | Unit Price | Extension |
|---------|----------|--------------------------------------|------|------------|-------------|
| 7016078 | 500 | Flagging Service (officer & vehicle) | HR | 59.25 | \$29,625.00 |

_____ percent (0%) retention will be withheld from all payments. Retention will be paid to Supplier thirty (30) days after completion of Supplier's work provided all terms of the Contract have been complied with.

3. **DELIVERY/ COMPLETION SCHEDULE.** Time is of the essence in this Contract and Supplier shall be required to begin the work as soon as the project is ready for such work, or within three (3) calendar days after being notified in writing by Ames, and shall prosecute and complete the work as required by job progress, within the time limits set by Ames and the Owner in the General and Subcontract Documents and in accordance with schedules set by Ames.

The following schedule shall apply to this Subcontract.

Supplier shall perform its work in a diligent, efficient, and skillful manner in accordance with job progress. If at any time Supplier fails to perform its work or furnish sufficient skilled workers, equipment, or materials as determined by Ames to be necessary to meet the Contract schedule, Ames may direct Supplier to accelerate its work by whatever means as may be necessary to return the work to schedule and ensure compliance with the Contract completion schedule without an increase in cost to Ames.

4. **PAYMENTS.** Upon Supplier's presentation of a proper pay request, Supplier will be paid on a monthly basis according to the pricing provisions stated in Paragraphs 1 and 2 of this agreement for the work actually performed on the project during the applicable pay period. Retainage on progress payments shall be in accordance with the provisions of Paragraph 2.

Ames may withhold payment of the whole or part of any sum due or claimed by Supplier and to offset any such payment to such extent as may be necessary to protect Ames or Owner from loss on account of any of the following:

- A) Defective work not remedied or guarantees not met.
 - B) Claims filed by either party against the other or reasonable evidence indicating probable filing of claims.
 - C) Failure of Supplier to make prompt payment to his employees, suppliers or subcontractors.
 - D) Failure of Supplier to diligently prosecute the work and maintain satisfactory progress required to meet the Contract delivery/completion schedule.
 - E) Any other material breach by Supplier of its obligations under the Contract Documents.
5. **CHANGES.** Supplier agrees to make any and all changes, furnishing the materials that Ames may require without nullifying this Contract, at an equitable price adjustment or time extension to which Supplier is entitled. No changes or modifications shall be made without the written authorization of Ames.
6. **GENERAL OBLIGATIONS.** Subject to the provisions of this Contract, Supplier shall manufacture, produce, test, sell deliver and install the materials as required by the identified scope of work in strict accordance with the applicable documents as specified to the satisfaction of Ames and the Owner, and shall comply with all Federal and State laws, codes and regulations where the work is to be performed, and Supplier shall pay all fees, taxes including sales and use taxes and expenses connected with such compliance.
7. **INSPECTION AND TESTS.** Supplier shall allow Ames access to its premises at all reasonable times to inspect the manufacture, productions, testing and packing of the material and shall honor Ames' reasonable requests for information and documentation relating thereto. Ames specifically reserves the right to reject any and all material which Ames deems to be defective or not in conformance with Contract and project specifications.
8. **WARRANTIES.** Supplier warrants that any material provided by supplier and workmanship of the material will be of the highest grade and consistent with the established and generally accepted industry standards for such material and in full conformity with the contract requirements. Warranty period shall be for one year after initial operations and acceptance by Ames and the Owner. Supplier shall be obligated under this warranty to repair or, at its option to replace any part of the material that is defective within one year from the date its initial operation, provided Ames gives Supplier prompt written notice of such defects. Such repair and or replacement of defective material shall be at Supplier's expense and Supplier shall not be entitled to any additional compensation for such warranty work.
9. **WAIVER.** Ames' waiver of any breach of any of the provisions of this agreement by Supplier shall not constitute a waiver of any other breach of the same of any other provision. Ames' rights and remedies under any provision of this agreement shall be in addition to and not in substitution or limitation of any other right and remedies available to Ames under applicable law.
10. **EQUAL OPPORTUNITY.** Supplier, during the performance of this agreement shall take affirmative action to insure that all employees and applicants are treated without discrimination with regard to race, color, creed, age, sex or national origin; shall comply with all Federal, State and local Laws, ordinances, orders and regulations; shall be and remain qualified by all applicable EEO agencies and shall certify that it does not maintain or provide for its employees any segregated facilities at any of its establishments as required by law, ordinance, order or regulations. Supplier agrees to comply with any specific requirements of the General Contract Documents regarding equal opportunity and affirmative action.

- 11. **LABOR RELATIONS.** Supplier shall not employ personnel, means, materials, or equipment that may cause strikes, work stoppages, slowdowns, or any labor disturbances or disputes by workers employed by Supplier, Ames, or other project contractors or subcontractors.
- 12. **SAFETY AND HEALTH.** Supplier shall take all precautions in the performance of its work to protect the safety and health of employees and the public and shall comply with all safety and health measures initiated by Ames or required by the Contract documents and shall comply with all applicable laws, codes, ordinances rules, regulations, and lawful orders of any public authority for the safety of persons or property. Supplier shall be solely responsible for the protection and safety of its employees, for the final selection of all safety methods and means, for required safety reports and records, for daily inspection of its work area and its employees' safety equipment, and for the continual instruction of its employees on health safety, including weekly safety meetings. When so ordered, Supplier shall stop any part of the work that Ames deems unsafe until corrective measures satisfactory to Ames have been taken. Failure on the part of Ames to stop unsafe practices shall in no way relieve Supplier of its responsibilities. Supplier shall indemnify, defend and hold Ames, the Owner and their agents and employees harmless from and against all claims, damages, losses, fines and expenses (including, without limitations, legal fees, costs and disbursements) arising out of Supplier's failure to comply with the provisions of this paragraph.
- 13. **ENVIRONMENTAL.** Supplier shall take all precautions in the performance of its work to protect the environment at all times and shall comply with all environmental requirements initiated by Ames, to include but not limited to: requirements of Contract documents, all applicable laws, codes, ordinances rules, regulations and lawful orders of any public or regulatory authority for the safety of persons or property. Supplier agrees to allow work site inspections by Ames at any time, to notify Ames in the event of release of any materials to the environment, and further agrees to take appropriate action to protect the environment in the work area as deemed necessary by Ames's representatives.
- 14. **PURCHASE CONTRACT TERMS AND CONDITIONS ATTACHED.** Supplier and Ames agree to be bound by the attached Purchase Contract Terms and Conditions.

IN WITNESS WHEREOF, the Supplier and Ames have executed this agreement effective as of the date first above written.

Gila County Sheriff's Office

 Supplier
 By: John R. Armer
 Signature
John R. Armer
 Printed Name

Sheriff
 Title

 Date **9/22/10**

Ames Construction, Inc.

 Ames
 By: Jeff Williamson
 Signature
JEFF WILLIAMSON
 Printed Name

 Regional Vice President of Engineering
 Title

 Date **8/27/10**

Federal Tax ID # 86-60000444 (required for first payment)
 State Tax ID # _____

Approved as to form

Bryan B. Chambers, Chief Deputy
County Attorney

Mike Pastor, Chairman Date
Gila County Board of Supervisors

AMES CONSTRUCTION, INC.
STANDARD SHORT FORM SUBCONTRACT TERMS AND CONDITIONS

GENERAL TERMS

1. AMES means AMES CONSTRUCTION, INC.
2. SUPPLIER means the party providing goods and/or services hereunder.
3. PROJECT means the construction project for which AMES is arranging with SUPPLIER to purchase goods and/or services hereunder.
4. OWNER means the Owner of the PROJECT, and its agents, employees and representatives.
5. The laws of the State where the PROJECT is located shall govern this agreement.
6. AMES will contract only on the terms offered here, which constitute the entire agreement of the parties and Supplier's acceptance is expressly limited to them. Any terms in Supplier's acceptance which is additional to, different from, or in conflict with these terms is deemed material alteration, is objectionable and rejected. AMES acceptance is expressly conditional on Supplier's adherence to these terms. Supplier's forms and documents will be for record and accounting purposes only. Any modification or waiver must be expressed, in writing and separately signed by AMES.
7. Neither party shall be liable for default or delay in performing it caused by fire, strike, riot, war, act of God, carrier delay, governmental order or regulation implemented after the date of this Contract, complete or partial shutdown of plant due to lack of sufficient materials or power beyond the control of the Party, or any other event beyond a Party's reasonable control.
8. AMES' exercise of a right or remedy shall be without prejudice to any other or otherwise available pursuant to law.
9. AMES may reproduce for its own use all drawings and data supplied, notwithstanding any legends or notation shown thereon to the contrary.
10. AMES reserves the right to cancel this order at any time and its liability shall not exceed SUPPLIER's unrecoverable costs incurred prior to cancellation.

TAXES

11. It is understood that the purchase price set forth includes any and all taxes and other governmental charges.
12. Supplier agrees to comply with all rules and accepts full and exclusive liability for the payment of all contributions and taxes for Unemployment Insurance, Old Age Retirement Benefits, annuities pension nor or hereafter imposed by any federal or state government, measured by wages, salaries or other remuneration paid to Supplier's or a subcontractor's employees. If AMES is held liable to pay any such contributions. Supplier agrees to fully reimburse AMES upon demand for the amount thereof (including penalties and interest) and AMES shall have the right to deduct any amount so paid from any sums due Supplier.

PERFORMANCE

13. Supplier is an independent contractor and not an agent or employee of AMES. Work is to be entirely under Supplier's supervision and control. Supplier shall recognize any "peculiar" risk and take precautions to eliminate or minimize it.

14. Supplier shall not assign or sublet any rights and/or obligations without AMES' prior written consent.
15. All services and/or goods shall be provided in accordance with AMES' and OWNER'S specifications, drawings and descriptions and subject to AMES' and OWNER'S acceptance. All services shall be performed in a good and workmanlike manner; all goods must be merchantable quality, fit for the purpose intended and free of defects or liens.
16. Supplier shall correct, repair, or replace at its expense, defective goods and/or workmanship to AMES' satisfaction for one year after acceptance unless an equipment guarantee or AMES specification calls for a different period of time.
17. AMES may take over the service and engage another's services at Supplier's expense to correct non-conforming work or to complete unfinished work in the following circumstances:
 - a. Supplier fails to begin remedial work within three (3) days of written demand from AMES or fails to diligently and promptly complete the work within a reasonable time; or
 - b. Supplier ceases, or fails to diligently perform any of its contractual obligations after three (3) days written demand from AMES.

AMES' failure to require strict performance shall not be deemed a waiver of any contract term.

LAWS AND POLICIES

18. Supplier shall comply, where and as applicable, with Executive Order 11246 and 11738, as amended, and the following Sections and Parts of Title 41 of the Code and Federal Regulations: Section 1.4 (Equal Opportunity), 60-1.7 (Reports and Other Required Information), 60-1.8 (Non-segregated Facilities), 60-1.40 (Affirmative Action Programs), 60-1.42 (Notices to be Posted); Parts 60 (Affirmative Actions Programs), 60-250 (Affirmative Actions Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era), 60-741 (Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers); Section 1-1.710 (Subcontracting with Small Business Concerns), 1-1.805 (Subcontracting with Labor Surplus Area Concerns), 1-1.13 (Subcontracting with Minority Business Enterprises) and 1-1.2302 (Environmental Protection). Supplier shall also comply, where and as applicable, with the following Sections of Title 48 of the Code of Federal Regulations: 52.223-2 (Clean Air and Water) and 52.223-3 (Hazardous Material Identification and Material Safety Data). All of the foregoing and hereby incorporated by reference to the extent applicable.
19. Supplier acknowledges that it has been advised and is subject to, and agrees to advise its employees, subcontractors, agents, business invitees, and the employees of any subcontractor, and their agents and business invitees of the following safety regulation or policy concerning illegal drugs: (a) it is the policy of AMES that the use, possession sale, transfer, purchase or presence in one's system of illegal drugs on AMES' property is prohibited; (b) Entry onto AMES' property constitutes consent to an inspection of the

Subcontractor's Initials: _____

Contractor's Initials: _____

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person (including, but not limited to, the taking of a urine sample) and personal effects when entering or leaving AMES' property; (c) Any person who is found in violation of the policy or who refuses to permit an inspection may be removed and barred from AMES' property, at AMES' discretion; (d) If testing for the presence of alcohol and/or controlled substances is required by law or regulations with respect to AMES' property, employees of Supplier and/or subcontractors shall be subject to such testing as required and directed by AMES unless Supplier and/or its subcontractors provide AMES with quarterly reports adequate for AMES to determine compliance with such laws and regulations with respect to said employees and (e) Supplier will allow access to its property and records by AMES or any governmental representative with appropriate jurisdiction for the purpose of maintaining compliance with AMES' drug policy and relevant laws and regulations. For purposes of this paragraph, AMES' property includes the entirety of AMES project sites.

20. Supplier shall comply with all applicable laws, rules, regulations and ordinances including with the limited the generality of the foregoing, to environmental law, toxic or hazardous materials, occupational health and safety, and AMES' safety regulations. Supplier shall also obtain all permits, licenses, and approval necessary to perform this contract. If this contract calls for the transfer to AMES of any chemical substance or mixture, or any material which may generate or release a chemical substance or any hazardous agent. Supplier shall provide before or with said transfer to a Material Data Sheet (Federal OSHA Hazard Communication Standard, 29 CFR 1910, 1200) and label, which are current, accurate and complete, which include, but are not limited to statement of product hazards and precautions for safe use. Copies of the Material Safety Data Sheet shall include AMES' order number and shipping location, and shall be sent to the shipping location.
21. Supplier agrees to defend, release, indemnify and hold AMES, the OWNER and their respective employees, officers, directors and agents harmless from any and all claims, liability and causes of action of all kinds, including without limitation, claims of damage to or loss of property of AMES or others, injury, illness, or death arising out of or being in any way connected with the Supplier operations under this agreement, except for matters shown by final judgment to have been caused by the sole negligence or willful misconduct of AMES. This indemnification shall be effective to the maximum extent permitted by law.
22. Supplier shall carry Liability Insurance including without limitation, Blanket Liability insurance against Bodily Injury or Property Damage claims to cover the indemnity obligations assumed herein.
23. Supplier agrees to defend, indemnify and hold AMES harmless from and against any and all loss, damage, liability, or expense (including without limitation, attorney's fees) by reason of any actual or alleged infringement of any patent, copyright or other proprietary right of a third party arising

out of any work done by Supplier or any of its subcontractors.

FOR WORK TO BE PERFORMED ON AMES' PROPERTY (Includes property owned or otherwise controlled, i.e. Project Sites)

24. Supplier agrees to obtain and maintain insurance acceptable to AMES which is primary as to any other insurance or self-insurance and which names AMES, the OWNER and any additional parties required by the General Contract documents as an additional named insureds, whose coverage shall be primary and non-contributing, using ISO Form B 20 10 11/85 edition or equivalent endorsement for each of the following policies. Such insurance shall include:
 - a. Commercial General Liability Insurance Occurrence form, or the equivalent with Aggregate Limits of Insurance (Per Project) Endorsement ISO Form B 20 10 11/85 Edition, covering Supplier and Subcontractor contingent liability, Premises Operations, Completed Operations and Products Liability, Contractual Liability and liability arising from explosion, collapse, or underground property damage all with a minimum combined single limited of \$1,000,000 each occurrence, \$1,000,000 Aggregate for Bodily Insurance and Property damage, including personal injury.
 - b. Umbrella/Excess liability insurance with a minimum combined limit of \$2,000,000.
 - c. Comprehensive Automobile Liability Insurance or Business Auto Policy covering all owned, hired, or otherwise operated non-owned vehicles with a minimum combined single limit of \$1,000,000 each occurrence for Bodily Injury and Property Damage.
 - d. (i) Worker's Compensation Insurance as required by law, covering all States of operation; and (ii) Employer's Liability Insurance with a minimum limit of \$1,000,000 each occurrence. Before commencement of work, Supplier shall furnish Certificates of Insurance acceptable to AMES that provides that all coverage will not be cancelled or materially changed prior to thirty (30) days advance written notice to AMES. Subrogation against AMES shall be waived.

PAYMENTS, BONDS AND LIENS

25. Supplier will at AMES' request, furnish a Performance Bond and a Labor and Material Payment bond both issued in a form amount and by surety acceptable to AMES.
26. Supplier shall keep AMES' premises and material free of liens, encumbrances and/or charges. If requested, Supplier shall execute and deliver a waiver stating it has paid in full for all labor, materials, rental of equipment, transportation and all other charges for the period covered by such payment and shall furnish waivers of lien from all subcontractors and material men.

Subcontractor's Initials: _____

Contractor's Initials: _____