COPY

CONSTRUCTION CONTRACT NO. 121714 (C1-5)

THIS AGREEMENT, made and entered into this 28th day of July, 2015, by and between Gila County, a political subdivision of the State of Arizona, hereinafter designated the **County**, and Koo Design Build of the City of Scottsdale, State of Arizona, hereinafter designated the **Contractor**.

THE CONTRACTOR shall furnish any and all labor, materials, construction equipment, and services, required for performing all work for construction of:

PAYSON COURTHOUSE STEPS AND LANDINGS, DESIGN BUILD PROJECT

CONTRACT DOCUMENTS: Includes all portions of the General Provisions, Addenda, Plans, Technical Specifications and any supplemental agreements, if applicable, provided by the County for this project, are by this reference made a part of this Contract to the same extent as if set forth herein in full.

INDEMNIFICATION: Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees, and any jurisdiction or agency issuing permits for any work included in the project, their officers, agents and employees, (hereinafter referred to as "Indemnitee") from and against any and all suits, claims, cost of litigation, actions, liabilities, damages, losses, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of this Contract (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

INSURANCE REQUIREMENTS: Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**
   Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.
   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000
   - Each Occurrence $1,000,000

   a. The policy shall be endorsed to include the following additional insured language: **"The County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".**

2. **Automobile Liability**
   Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

   Combined Single Limit (CSL) $1,000,000

   a. The policy shall be endorsed to include the following additional insured language:
   The County of Gila shall be named as additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$500,000

   a. Policy shall contain a **waiver of subrogation** against the County of Gila.

4. **Professional Liability (Errors and Omissions Liability)**

Each Claim	$1,000,000
Annual Aggregate	$2,000,000

   a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to **Gila County Purchasing Department, 1400 E. Ash St., Globe, AZ, 85501** or and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Gila County Purchasing Department, 1400 E. Ash St., Globe, AZ, 85501** or email to jsgroi@gilacountyaz.gov. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies **or** Contractor shall furnish to the County separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor. The contractor shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

LEGAL ARIZONA WORKERS ACT COMPLIANCE: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. §23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's, or any subcontractor's, warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. §23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract".

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor.

TIME OF COMPLETION: The Contractor further covenants and agrees, at his own proper cost and expense, to do all work and furnish all materials, labor, construction equipment, and services for performing all of the work as identified in the Contract Documents and this agreement, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time stated in the Contract Documents.

Work shall start within **no later than ten (10) Calendar Days of the Notice To Proceed,** and shall be Substantially Complete within **Ninety (90) Calendar Days** from the date of the Notice to Proceed. The Contractor further agrees to achieve Final Completion within no later than **Fifteen (15) Calendar Days** from the date of Substantial Completion.

It is expressly understood and agreed that in case of failure on the part of the Contractor, for any reason, except with the written consent of the Owner, to complete the work to the satisfaction of the Owner and with the aforesaid time limits, the owner may deduct from any money due, or which may become due the Contractor, as liquidated damages, in the amount of **$500.00 per Calendar Day**.

If no money shall be due the Contractor, the Owner shall have a cause of action to recover against the Contractor in a court of competent jurisdiction, liquidated damages as fixed by this Contract; said deduction to be made, or said sum to be recovered, not as a penalty, but as liquidated damages; provided, however, that upon receipt of written notice from the Contractor, of the existence of causes, as herein provided, over which said Contractor has no control and which must delay the completion of the said work or any delay occasioned by the Owner, the Owner may extend the period hereinafter specified for the completion of said work in accordance with the Contract Documents and in such case, the Contractor shall become liable for said liquidated damages for delays commencing from date said extension period shall expire.

IN RETURN for the performance of the contract by the contractor, the County agrees to pay the amount of not more than $ 119,748.00 including all applicable taxes through a payment schedule as described in the Contact Documents and as may be modified and executed by change orders.

OWNER:
GILA COUNTY BOARD OF SUPERVISORS

Michael A. Pastor

Michael A. Pastor,
Chairman, Board of Supervisors

ATTEST:

for Laurie Kline, Deputy

Marian Sheppard, Clerk of the Board

APPROVED AS TO FORM:

Bryan B. Chambers, Deputy County Attorney/Civil Bureau Chief
***for* Bradley D. Beauchamp, County Attorney**

CONTRACTOR:
KOO DESIGN BUILD

Signature

Hoon Koo, President 07/11/2015

Print Name

n/a

Witness (If Contractor is Individual)