

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 20__ ("Effective Date"), by and between the **City of Florida Procurement Hub, Florida**, a Florida municipal corporation, whose principal address is 1234 Strategic Sourcing Street, Florida Procurement Hub, FL 33333 ("**City**"), and [**Contractor Name**], a [State of Incorporation/Organization] [Type of Entity], authorized to do business in Florida, whose principal address is [Contractor Address] ("**Contractor**").

RECITALS

WHEREAS, the City desires to engage the Contractor to furnish all labor, materials, equipment, and services necessary for the construction of [**Project Name**] (the "Project"), as more particularly described in Exhibit A (Scope of Work and Technical Specifications); and

WHEREAS, the Contractor represents that it possesses the requisite skills, experience, and licenses and is qualified and willing to perform such construction services in accordance with all applicable laws, industry standards, and the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SCOPE OF WORK

1.1 The Contractor shall diligently perform all work and furnish all supervision, labor, materials, tools, equipment, and services necessary to complete the Project in strict accordance with Exhibit A – Scope of Work and Technical Specifications, which is incorporated herein by reference and made a part of this Agreement. This includes, but is not limited to, obtaining and paying for all necessary permits and licenses required for the performance of the Work, unless otherwise expressly stated in Exhibit A.

1.2 The Contractor shall perform the Work in accordance with:

- The plans, specifications, drawings, and other documents prepared or approved by the City for the Project (collectively, the "Contract Documents");

- All applicable federal, state, and local laws, statutes, ordinances, rules, regulations, and codes, including, without limitation, the Florida Building Code and any applicable environmental regulations;
- Any addenda, change orders, or written modifications to this Agreement duly executed by both parties.

2. CONTRACT TIME

2.1 Commencement Date: Work shall commence within ten (10) calendar days after the City issues a written Notice to Proceed to the Contractor. The date of the Notice to Proceed shall be the official Commencement Date of the Project

2.2 Substantial Completion: The Contractor shall achieve Substantial Completion of the Project, as defined herein, within _____ (____) calendar days from the Commencement Date (the "Substantial Completion Date"). Substantial Completion shall be deemed to have occurred when the Work is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use, as certified by the City or its designated representative. A punch list of minor items to be completed or corrected may be prepared at this stage.

2.3 Final Completion: Final Completion of the Project shall be achieved within _____ (____) calendar days after the certified date of Substantial Completion. Final Completion means all Work, including all punch list items, has been completed in accordance with the Contract Documents, all required documentation (including warranties, as-built drawings, final lien waivers, and releases) has been submitted to and approved by the City, and the Project is ready for final acceptance by the City.

2.4 Time is of the Essence: Time is of the essence in the performance of this Agreement.

- **Liquidated Damages:** The Contractor acknowledges that failure to achieve Substantial Completion by the Substantial Completion Date will cause the City to incur substantial damages that are difficult to ascertain precisely. Therefore, if the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, as may be adjusted by approved Change Orders, the Contractor shall pay the City the sum of \$_____ per calendar day for each day that Substantial Completion is delayed beyond the Substantial Completion Date. This amount is agreed upon as liquidated damages and not as a penalty.

- **Excusable Delays:** The Contract Time may be extended by Change Order for delays caused by acts of God, war, riots, strikes (not caused by the Contractor or its subcontractors), floods, epidemics, or other unforeseeable events beyond the reasonable control and without the fault or negligence of the Contractor or its subcontractors ("Excusable Delays"). The Contractor shall notify the City in writing of any event claimed as an Excusable Delay within five (5) calendar days of the occurrence of such event and provide detailed justification for any requested time extension.

3. CONTRACT PRICE

3.1 The City agrees to pay the Contractor, for the full and satisfactory performance and completion of the Work, a fixed total amount of \$_____ (the "Contract Price"), subject to additions and deductions as provided for in this Agreement.

3.2 **Progress Payments:** Payment shall be made in progress payments in accordance with Exhibit B – Payment Schedule and Milestones, and in compliance with Section 218.735, Florida Statutes (the "Local Government Prompt Payment Act").

- Applications for payment shall be submitted by the Contractor in a form acceptable to the City detailing the value of Work performed and materials suitably stored on-site, less retainage.
- The City shall identify in this Agreement or by separate written notice provided no later than ten (10) days after the award of the Agreement or issuance of the Notice to Proceed, the agent or employee of the City, or the facility or office, to which the Contractor may submit its payment request or invoice.
- Undisputed amounts shall be paid within the timeframes specified in Section 218.735, Florida Statutes.

3.3 **Retainage:** The City shall retain five percent (5%) of the amount of each progress payment as retainage ("Retainage") until Final Completion and acceptance of the Project by the City, unless otherwise modified by Florida law. The City may, at its sole discretion and in accordance with Section 218.735(8)(d), Florida Statutes, reduce retainage upon the Project reaching fifty percent (50%) completion if the City finds the Contractor's performance to be satisfactory.

4. CHANGES IN THE WORK

4.1 The City may, at any time, without invalidating this Agreement, order changes to the Work ("Changes") by a written Change Order. All Change Orders must be signed by authorized representatives of both the City and the Contractor.

4.2 Any adjustment to the Contract Price or the Contract Time resulting from a Change shall be documented and approved in writing via a Change Order prior to the Contractor proceeding with the changed Work. If the Contractor believes that any direction or instruction from the City constitutes a Change not covered by a Change Order, the Contractor must notify the City in writing within five (5) calendar days.

4.3 The Contractor shall not perform any extra work or make any changes to the Work without a fully executed written Change Order from the City's designated Contract Administrator or other authorized representative. The City shall not be liable for payment for any extra work performed without such prior written authorization.

5. PERFORMANCE AND PAYMENT BONDS

5.1 Prior to commencing any Work, and as a condition precedent to the effectiveness of the Notice to Proceed, the Contractor shall furnish to the City the following bonds, in a form acceptable to the City:

- A Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price, securing the faithful performance of this Agreement; and
- A Payment Bond in an amount equal to one hundred percent (100%) of the Contract Price, securing the payment of all persons supplying labor and material in the prosecution of the Work provided for in this Agreement.
- These bonds shall comply with all requirements of Section 255.05, Florida Statutes, including the specific information required to be stated on the front page of such bonds. The Contractor shall provide the City with a recorded copy of such bonds before commencing Work or receiving any payment.

5.2 All bonds must be issued by a surety company authorized to do business in the State of Florida and having a rating of "A-" or better and a financial size category of VIII or higher as rated by A.M. Best Company, or otherwise acceptable to the City in its sole discretion.

6. INSURANCE REQUIREMENTS

The Contractor shall procure and maintain, at its sole expense, throughout the term of this Agreement and for such longer period as may be required by the terms hereof, the following minimum insurance coverages from insurers authorized to do business in the State of Florida and acceptable to the City:

- Commercial General Liability Insurance: With limits of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, and a \$2,000,000 general aggregate. Coverage shall include premises-operations, products/completed operations, contractual liability, broad form property damage, and independent contractors liability. The City shall be named as an Additional Insured on this policy.
- Automobile Liability Insurance: Covering all owned, non-owned, and hired vehicles used in connection with the Work, with limits of not less than \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage. The City shall be named as an Additional Insured on this policy.
- Workers' Compensation Insurance: As required by Chapter 440, Florida Statutes, covering all employees of the Contractor engaged in the Work.
- Employer's Liability Insurance: With limits of not less than \$500,000 each accident, \$500,000 disease-each employee, and \$500,000 disease-policy limit.
- Builder's Risk Insurance (if applicable to the Project): Covering the full replacement value of the Work being performed, including materials stored off-site or in transit. This policy shall name the City as a loss payee.

The City, its officials, employees, and agents shall be named as Additional Insureds on the Commercial General Liability and Automobile Liability policies. All policies shall be endorsed to provide that coverage shall not be suspended, voided, canceled, or materially changed without at least thirty (30) days prior written notice to the City. The Contractor shall provide the City with Certificates of Insurance evidencing the required coverages, and copies of applicable endorsements, prior to the issuance of the Notice to Proceed and at any other time upon request. The Contractor's insurance shall be primary and non-contributory to any other insurance maintained by the City.

7. CONTRACTOR'S RESPONSIBILITIES

7.1 The Contractor shall:

- Be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under this Agreement, unless the Contract Documents give other specific instructions concerning these matters.
- Maintain the construction site and surrounding areas in a clean, safe, and secure condition, free from accumulation of waste materials or rubbish caused by its operations.
- Identify and coordinate all necessary permits, inspections, tests and approvals required for the Work and ensure compliance with all applicable codes and regulations. The cost of such permits, inspections, tests, and approvals shall be borne by the Contractor unless otherwise agreed in writing.
- Supervise and direct the Work using its best skill and attention, and be fully responsible for the acts and omissions of its employees, subcontractors, and their agents and employees, and other persons or entities performing portions of the Work under contract with the Contractor.
- Take all reasonable precautions to protect existing utilities, structures, adjacent properties, and the environment during the performance of the Work.
- Provide competent, full-time supervision of the Work by a qualified Project Manager and an on-site Superintendent acceptable to the City, who shall be authorized to act on behalf of the Contractor.

7.2 The Contractor shall appoint a qualified Project Manager, subject to the City's approval, who will serve as the primary point of contact with the City for all matters relating to this Agreement.

8. WARRANTIES

8.1 The Contractor warrants to the City that all materials and equipment furnished under this Agreement will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and performed in a good and workmanlike manner in conformance with the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

8.2 The Contractor further warrants that all Work shall be free from defects in workmanship and materials for a period of one (1) year from the date of Final Acceptance of the Project by the City (the "Warranty Period").

8.3 The Contractor shall promptly, at its sole cost and expense, correct any defective or non-conforming Work discovered during the Warranty Period, or such longer period as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents. This obligation shall survive acceptance of the Work and termination of the Agreement.

9. TERMINATION

9.1 **Termination for Cause by City:** The City may terminate this Agreement, in whole or in part, for cause if the Contractor:

- Persistently or repeatedly fails or refuses to supply enough properly skilled workers or proper materials;
- Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- Persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- Fails to commence or complete the Work in accordance with the Contract Time provisions;
- Fails to perform the Work in accordance with the Contract Documents or otherwise is in material breach of any provision of this Agreement;
- Becomes insolvent, files for bankruptcy, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency.

The City shall provide the Contractor with written notice of its intent to terminate and the grounds therefor, and if the Contractor fails to cure such default within seven (7) calendar days after receipt of such notice (or such longer period as the City may allow if the default is not curable within seven days but the Contractor is diligently pursuing a cure), the City may terminate the Agreement. In case of termination for cause, the Contractor shall not be entitled to receive further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the expense of finishing the Work, including compensation for additional administrative and legal services, such excess

shall be paid to the Contractor. If such expense exceeds such unpaid balance, the Contractor shall pay the difference to the City.

9.2 Termination for Convenience by City: The City may, at any time, terminate this Agreement, in whole or in part, for its convenience and without cause, by providing seven (7) calendar days' written notice to the Contractor. Upon receipt of such notice, the Contractor shall cease operations as directed by the City, take actions necessary for the protection and preservation of the Work, and terminate all existing subcontracts and purchase orders to the extent that they relate to the performance of the terminated Work. The Contractor shall be entitled to payment for Work satisfactorily performed and accepted up to the effective date of termination, plus reasonable, documented costs incurred as a direct result of such termination, but shall not be entitled to anticipated profits on unperformed Work.

10. INDEMNIFICATION

To the fullest extent permitted by Florida law, including Section 725.06, Florida Statutes, the Contractor shall indemnify, defend, and hold harmless the City, its officials, officers, employees, agents, and volunteers (collectively, the "Indemnitees") from and against all claims, demands, suits, actions, damages, losses, liabilities, costs, and expenses, including but not limited to reasonable attorney's fees (including appellate fees) and court costs (collectively, "Claims"), arising out of or resulting from the performance or nonperformance of the Work by the Contractor, its subcontractors, or anyone directly or indirectly employed by them or for whose acts they may be liable, provided that such Claim is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by the negligent acts or omissions or other wrongful conduct of the Contractor, its subcontractors, or anyone directly or indirectly employed by them or for whose acts they may be liable. This indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity shall survive the expiration or termination of this Agreement.

11. COMPLIANCE WITH LAWS

The Contractor shall fully comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, and orders in the performance of this Agreement, including but not limited to:

- The Florida Building Code, as amended.

- Occupational Safety and Health Administration (OSHA) Regulations.
- Federal, state, and local environmental laws and regulations.
- Equal Employment Opportunity (EEO) and nondiscrimination laws.
- The Florida Public Records Act, Chapter 119, Florida Statutes.
- Section 287.133, Florida Statutes, regarding Public Entity Crimes.
- Section 287.135, Florida Statutes, regarding Scrutinized Companies.
- All applicable requirements of the Americans with Disabilities Act (ADA).

11.1 Public Records: The Contractor acknowledges the City's obligations under Article I, Section 24, of the Florida Constitution and Chapter 119, Florida Statutes, regarding public records ("Florida Public Records Law"). The Contractor agrees to comply with the Florida Public Records Law with respect to any documents, records, or other information, regardless of physical form, that are made or received by the Contractor in connection with the performance of this Agreement ("Public Records"). Specifically, the Contractor shall:

- Keep and maintain Public Records required by the City to perform the service.
- Upon request from the City's custodian of public records, provide the City with a copy of the requested Public Records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- Ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- Upon completion of the Agreement, transfer, at no cost, to the City all Public Records in possession of the Contractor or keep and maintain Public Records required by the City to perform the service. If the Contractor transfers all Public Records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO

PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS FOR THE CITY OF FLORIDA PROCUREMENT HUB AT: JANE DOE, (111) 111-1111, JDOE@FLORIDAPROUREMENTHUB.COM, 1234 STRATEGIC SOURCING STREET, FLORIDA PROCUREMENT HUB, FL 33333.

12. RECORDS AND AUDIT

12.1 The Contractor shall maintain complete and accurate books, records, documents, and other evidence pertaining to the costs and expenses of this Agreement ("Records") to the extent and in such detail as will properly reflect all costs of labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature for which reimbursement is claimed or payment is made under this Agreement. The Contractor shall retain all such Records for a minimum of three (3) years following final payment and resolution of all pending matters related to this Agreement, or for any longer period required by law.

12.2 The City or its authorized representative shall have the right to access, inspect, examine, and audit such Records at all reasonable times during the retention period.

13. DISPUTE RESOLUTION

13.1 **Negotiation:** The parties shall attempt to resolve any dispute, claim, or controversy arising out of or relating to this Agreement through good faith negotiations between authorized representatives.

13.2 **Mediation:** If negotiations are unsuccessful, the parties agree to endeavor to resolve the dispute by mediation administered by a mutually agreeable mediator in _____ County, Florida, before resorting to arbitration or litigation. The costs of mediation shall be shared equally by the parties.

13.3 **Litigation:** If mediation does not resolve the dispute, any unresolved dispute shall be resolved by litigation in a court of competent jurisdiction in _____ County, Florida.

EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

14. MISCELLANEOUS

14.1 Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict of laws principles. Venue for any legal action or proceeding arising out of or relating to this Agreement shall lie exclusively in the state or federal courts located in _____ County, Florida.

14.2 Independent Contractor: The Contractor is, and shall perform this Agreement as, an independent contractor and not as an employee, agent, partner, or joint venturer of the City. The Contractor shall be solely responsible for the compensation, benefits, and taxes of its employees and for the means and methods of performing the Work.

14.3 No Waiver: No failure or delay by the City in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. Any waiver by the City must be in writing and signed by an authorized representative and shall not constitute a waiver of any other term, condition, or future breach.

14.4 Entire Agreement: This Agreement, including all exhibits attached hereto and incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements, understandings, negotiations, and discussions of the parties.

14.5 Amendments: This Agreement may only be amended, modified, or supplemented by a written instrument duly executed by authorized representatives of both parties.

14.6 Severability: If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

14.7 Notices: All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (a) when delivered personally, (b) one business day after being sent by reputable overnight courier, service prepaid, or (c) three business days after being mailed by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to City:

City of Florida Procurement Hub
John Doe, Chief Procurement Officer
1234 Strategic Sourcing Street
Florida Procurement Hub, FL 33333
Email: JDoe@FloridaProcurementHub.com
Phone: (111) 111-1111

With a copy to (if applicable):

City Attorney's Office
1234 Strategic Sourcing Street
Florida Procurement Hub, FL 33333
Email: Legal@FloridaProcurementHub.com

If to Contractor:

[Contractor Name]
Attn: [Contractor Contact Name/Title]
[Contractor Street Address]
[Contractor City, State, Zip Code]
Email: _____
Phone: _____

Or to such other address or email address as either party may designate by notice given in accordance with this section

14.8 Assignment: The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or its right, title, or interest herein, or its power to execute such Agreement to any other person, company, or corporation, without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

14.9 Subcontracting: The Contractor shall not subcontract any portion of the Work without the prior written approval of the City. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors and of persons directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor. Approval of any subcontractor shall not relieve the Contractor of any of its obligations under this Agreement.

14.10 Conflict of Interest: The Contractor represents and warrants that it has no conflict of interest, direct or indirect, that would conflict in any manner with the performance of its obligations under this Agreement. The Contractor further agrees that it will not acquire any interest, direct or indirect, that would conflict in any manner with the performance of its obligations hereunder.

14.11 Drug-Free Workplace: The Contractor shall comply with all applicable provisions of Section 440.102, Florida Statutes, regarding drug-free workplace programs if applicable.

14.12 Sovereign Immunity: Nothing in this Agreement shall be deemed as a waiver of the City's sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes, or other applicable law. This Agreement shall not be construed to create any rights in third parties not a party to this Agreement

14.13 Headings: The headings in this Agreement are for convenience only and shall not affect its interpretation.

14.14 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. Electronic signatures shall be deemed original signatures for purposes of this Agreement.

15. ATTACHMENTS

The following Exhibits are attached hereto and incorporated herein by this reference:

- Exhibit A – Scope of Work and Technical Specifications
- Exhibit B – Payment Schedule and Milestones
- Exhibit C – Project Timeline
- Exhibit D – Insurance Certificates and Endorsements
- Exhibit E – Performance and Payment Bonds
- Exhibit F – List of Approved Subcontractors (if applicable)
- Exhibit G – Contractor's Key Personnel

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the Effective Date.

CITY OF FLORIDA PROCUREMENT HUB

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST (if required by City Charter/Ordinance):

By: _____

Print Name: City Clerk (or designee)

Title: City Clerk

Date: _____

(CITY SEAL if applicable)

[CONTRACTOR NAME]

By: _____
(Authorized Signature)

Print Name: _____

Title: _____

Date: _____

WITNESS (for Contractor, if required):

By: _____

Print Name: _____

(CORPORATE SEAL if applicable)