

CONSTRUCTION AGREEMENT

THIS AGREEMENT, dated for identification as of _____, 2020, is between the **CITY OF ROCKLIN**, a municipal corporation, (hereinafter called "City"), and PBM Construction, Inc., a Corporation registered to conduct business in the State of California (hereinafter called "Contractor").

The parties hereto mutually agree to the terms and condition set forth herein.

I. CONTRACT DOCUMENTS

- A. The Contract Documents referred to herein are incorporated herein by reference as if set forth in full in this Agreement.
- B. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents. The table of contents, titles and headings contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretations of the provisions to which they refer.
- C. The Contract Documents shall include the Notice to Contractors, Addenda, Bid Form, Agreement, Plans, General Provisions, Special Provisions, General Requirements (Division 1), Technical Specifications (Divisions 2 through 16), Permits from other agencies as may be required by law, City of Rocklin Construction Specifications, Improvement Standards and Standard Drawings, Caltrans Standard Plans and Specifications as applicable, Standard Forms, Supplemental Drawings, all required bonds, Exhibits, the Contract Schedule, Storm Water Pollution Prevention Plan (whether prepared by the City or the Contractor) and any and all supplemental agreements amending or extending the Work contemplated and which may be required to complete the Work in an acceptable manner. Supplemental agreements are written agreements covering alterations, amendments or extensions to the Contract Documents and include Change Orders, Construction Change Directives, Field Directives, Field Orders and Supplemental Drawings.
- D. The General Provisions shall mean and refer to the current General Provisions of the City of Rocklin, which are incorporated herein by this reference as if set forth herein.

II. DEFINITIONS

Unless otherwise specifically provided herein, all works and phrases defined in the General Provisions shall have the same meaning and intent in this Agreement.

III. AGREEMENT CONTROLS

In the event of a conflict between the terms and conditions as set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Agreement shall prevail.

IV. SCOPE OF CONTRACT

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and material and transportation necessary to perform and complete in a good and workman like manner to the satisfaction of City, all the work required for the Contract for the Project entitled: City Hall Refurbishment

V. CONTRACT AMOUNT AND PAYMENTS

City agrees to pay and Contractor agrees to accept, in full payment for the above work, Eight Hundred and Forty-Four Thousand, Three Hundred and Ninety-Three **DOLLARS (\$844,393.00)** as the stipulated sum price which Contractor bid in its Bid Form, subject to additions and deductions by Change Order(s) as provided in the General Conditions.

III. PROGRESS AND FINAL PAYMENTS

Progress and final payments shall be in accordance with the General Provisions.

IV. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under the provisions of this contract, City shall charge any sum of money against Contractor, City shall deduct and retain the amount of such charge from the amount of the next succeeding progress estimate, or from any other moneys due or that may become due to the Contractor from City. If, on completion or termination of the Contract, sums due contractor are insufficient to pay City's charges against him, City shall have the right to recover the balance from Contractor or his sureties.

VII. TIME OF COMPLETION

- A. The entire Work shall be brought to completion in the manner and within the time period provided for in the Contract Documents, commencing on the date of issuance of the Notice to Proceed.
- B. Failure to complete the Work by the completion date and in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages as hereinafter provided in this Agreement. Time is of the essence in these Contract Documents.

IX. INSURANCE

Contractor shall maintain in full force and effect at all times during the term of the Agreement, at its sole expense, policies of insurance in accordance with the General Provisions.

X. NO WAIVER OF REMEDIES

- A. Neither the inspection by City or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by City, nor any extensions of time, nor any position taken by City or its agents shall operate as a waiver of any provision of this Agreement or of any power herein reserved to City or any right to damages herein provided, nor shall any waiver of any breach of the Agreement be held to be a waiver of any other or subsequent breach.
- B. All remedies provided in this Agreement shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and City shall have any and all equitable and legal remedies which it would in any case have.

XI. DETERMINATION OF DAMAGES

- A. The actual fact of the occurrences of damages and the actual amount of the damages which City would suffer if the Work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations, and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.
- B. Damages which City would suffer in the event of delay include loss of the use of the Project, and, in addition, expenses of prolonged employment of an architectural and engineering staff; costs of administration, inspection, and supervision; and the loss suffered by the public within the City of Rocklin by reasons of the delay in the completion of the Project to serve the public at the earliest possible time.
- C. Accordingly, the parties hereto agree, and by execution of this Agreement, Contractor acknowledges that it understands, has ascertained and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be that amount of damages sustained by the failure of Contractor to complete the entire work within the times specified.

XII. LIQUIDATED DAMAGES

- A. The amount of the liquidated damages to be paid by Contractor to City for failure to complete the entire work in the specified number of Working or Calendar Days (as

extended, if applicable) will be **One Thousand – Five Hundred Dollars (\$1,500.00)** for each **Calendar day**, continuing to the time at which the Work is completed.

- B. Such amount is the actual cash value agreed upon as the loss to City resulting from Contractor's delay.

VIII. TERMINATION AFTER ALLOTTED WORKING OR CALENDAR DAYS

- A. In addition to any rights it may have, City may terminate this Contract or the Contractor's right to proceed at any time after the allotted number of Working or Calendar Days as adjusted by any extensions of time for excusable delays that may have been granted.
- B. Upon such termination Contractor any compensation shall be in accordance with Section 5.23 of the General Provisions, and it shall be liable to City for liquidated damages for all periods of time beyond such termination date until the Work is completed.

XIV. CONTRACTOR BANKRUPT

- A. If Contractor should commence any proceeding under the Bankruptcy Act, or if contractor be adjudged a bankrupt, or if Contractor should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Contractor's insolvency, then the City Council may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice to Contractor and his surety according to the provisions of Article 5 of the General Provisions.
- B. City shall have the right to complete, or cause completion of the work, all as specified in the General Provisions of the General Provisions.

XV. PERFORMANCE AND PAYMENT BONDS

- A. The Contractor shall, before beginning said work, file two bonds with the City, each made payable to the City. These bonds shall be issued by a Surety Company authorized to do business in the State of California, and shall be maintained during the entire life of the Contract at the expense of the Contractor.
 - 1. One bond shall be in the amount of one hundred percent (100%) of the Contract and shall guarantee the Faithful Performance of the Contract.
 - 2. The second bond shall be the Payment Bond required by Part 4, Title 15, Chapter 7, Division Three of the Civil Code of the State of California and shall be in the amount of one hundred percent (100%) of the Contract.
- B. Any alteration or alterations made in any provision of this Contract shall not operate to release any surety from liability on any bond required hereunder and the consent to make such alterations is hereby given, and any surety on said bonds hereby waives the provisions of Section 2819 of the Civil Code.
- C. Bonds shall only be accepted from an "*Admitted surety insurer*", which means an insurer to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state. **Contractor must submit all of the following with the bonds:**
 - The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing the person who executed the bond to do so.

XVI. SUBSTITUTION OF SECURITIES OF MONEY WITHHELD

- A. At any time prior to final payment, Contractor may request substitution of securities for any money withheld by the City to ensure performance of the Contract.
- B. At the expense of the Contractor, securities equivalent to the money withheld may be deposited with the City or with an approved financial institution as escrow agent according to a separate Security Agreement.

- C. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code or bank or savings and loan certificates of deposit. A fee set by the City Council shall be charged for such substitution.

XVII. LABOR CODE COMPLIANCE

- A. City affirmatively identifies this project as a "public work" as that term is defined by Labor Code section 1720, and the project is, therefore, subject to prevailing wages under Labor Code section 1771.
- B. Contractor and its subcontractors shall fully comply with all the provisions of the California Labor Code governing the performance of public works contracts including, but not limited to, payment of prevailing wages, limitations on time worked, compliance with apprentice requirements, maintenance of payroll records, posting of wages at job site and prohibitions against discrimination.

XVIII. UNFAIR COMPETITION

- A. The following provision is included in this agreement pursuant to California Public Contract Code §7103.5.

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assigning to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties."

XIX. ASSIGNMENT

Neither this Agreement nor any rights herein of Contractor shall be assigned without the written consent of City first obtained.

XIX. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into solely between the City and Contractor. There are no third party beneficiaries, intended, unintended, or otherwise to this Agreement.

Exhibit A

Contracts Subject to State of California- Department of General Services, Standard Agreement 19-PGP-13661, Department of Housing and Community Development ("Department") Planning Grant

Part or all of the work contemplated under the Agreement between the City of Rocklin and Contractor is subject to the terms and provisions of the State of California Standard Agreement ("Standard Agreement") 19-PGP-13661 Planning Grant ("Grant"), under the State of California Planning Grants Program ("Program"). The State has awarded the City (also referred to herein as "Grantee") financial assistance in the form of a Grant under the Program. The State has agreed to make the Grant to provide financial assistance for the preparation, adoption and implementation of a plan for Accelerating Housing Production and Streamlined Housing Production, subject to the City's agreement to comply with the terms and conditions of the Program and Grant. Certain provisions of the Standard Agreement between the State and the City pertaining to the Grant apply to City contractors and subcontractors. As such, the terms and provisions of the Standard Agreement applicable to City contractors and subcontractors are incorporated by reference, as though set forth fully herein. A complete copy of the Standard Agreement is available for review and inspection. Terms applicable to City contractors and subcontractors include, but are not limited to:

I. Accounting Records (*Standard Agreement- Ex. D "PGP Terms and Conditions"*)

- a. The Grantee, its staff, **contractors and subcontractors** shall establish and maintain an accounting system and reports that properly accumulate incurred project costs by line. The accounting system shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- b. The Grantee must establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the scope of work, project timeline and budget. Separate bank accounts are not required.
- c. The Grantee shall maintain documentation of its normal procurement policy and competitive bid process (including the use of sole source purchasing), and financial records of expenditures incurred during the course of the project in accordance with GAAP.
- d. The Grantee agrees that the state or designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Standard Agreement.

- e. **Subcontractors employed by the Grantee and paid with moneys under the terms of the Standard Agreement shall be responsible for maintaining accounting records as specified above.**

II. Audit (*Standard Agreement- Ex. D “PGP Terms and Conditions”*)

- a. At any time during the term of the Standard Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the award. At the Department's request, the Grantee shall provide, at its own expense, a financial audit prepared by a certified public accountant. The State of California has the right to review project documents and conduct audits during and over the project life.
- b. The Grantee agrees that the Department or the Department's designee shall have the right to review, obtain, and copy all records and supporting documentation pertaining to performance of this Agreement.
- c. The Grantee agrees to provide the Department or the Department's designee, with any relevant information requested.
- d. The Grantee agrees to permit the Department or the Department's designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees who might reasonably have information related to such records and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with statutes, Program guidelines, and the Standard Agreement.

III. Records (*Standard Agreement- Ex. D “PGP Terms and Conditions”*)

Grantee agrees to maintain such records for possible audit after final payment below, unless a longer period of records retention is stipulated.

- a. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, all records must be retained by the Grantee, **contractors and sub-contractors** until completion of the action and resolution of all issues which arise from it.
- b. **In any contract Grantee enters into in an amount exceeding \$10,000, the Department has the right to audit the contractor's records and interview their employees.**

- c. The Grantee shall retain all books and records relevant to the Standard Agreement for a minimum of (3) three years after the end of the term of the Standard Agreement. Records relating to any and all audits or litigation relevant to the Standard Agreement shall be retained for five years after the conclusion or resolution of the matter.

IV. Third-Party Contracts (*Standard Agreement- Ex. D “PGP Terms and Conditions”*)

- a. In any contract Grantee enters into as a result of the Standard Agreement, all of the provisions stipulated in the Standard Agreement are applicable to the Grantee's sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contracts, and subcontractors must be submitted to the Department's program manager.
- b. The Department does not have a contractual relationship with the Grantee's sub- recipients, contractors, or subcontractors.

V. Compliance with State and Federal Laws, Rules, Guidelines and Regulations (*Standard Agreement- Ex. D “PGP Terms and Conditions”*)

- a. The Grantee agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the grant, the Grantee, its **contractors or subcontractors**, and any other grant activity. During the performance of the Standard Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, ancestry, national origin, sex, gender, gender identity, gender expression, genetic information, age, disability, handicap, familial status, religion, or belief, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, the Fair Housing Act (42 USC 3601-20) and all implementing regulations, and the Age Discrimination Act of 1975 and all implementing regulations.
- b. The Grantee shall, in the course of performing project work, fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42

U.S.C. 12101 et seq.)

- c. **The (above) nondiscrimination and compliance provisions apply to all agreements Grantee enters into with its sub-recipients, contractors, and subcontractor to perform work under the Program and/or Grant.**

VI. State-Owned Data (*Standard Agreement- Ex. D “PGP Terms and Conditions”*)

a. Definitions

- i. Work: The work to be directly or indirectly produced by the Grantee, its employees, or by and of the Grantee's **contractor's, subcontractor's** and/or sub-recipient's employees under the Standard Agreement.
- ii. Work Product: All deliverables created or produced from Work under this Agreement including, but not limited to, all Work and Deliverable conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of the Standard Agreement and during a period of six months after the termination thereof, which relates to the Work commissioned or performed under the Standard Agreement. Work Product includes all deliverables, inventions, innovations, improvements, or other works of authorship Grantee and/or Grantee's **contractor, subcontractor** and/or sub-recipient may conceive of or develop in the course of the Standard Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret or other legal protection.
- iii. Inventions: Any ideas, methodologies, designs, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Grantee or jointly with the Grantee's **contractor, subcontractor** and/or sub-recipient and/or Grantee's **contractor, subcontractor**, and/or sub-recipient's employees with one or more employees of the Department during the term of the Standard Agreement and in performance of any Work under the Standard Agreement, provided that either the conception or reduction to practice thereof occurs during the term of the Standard Agreement and in performance of Work issued under the Standard Agreement.

**b. Ownership of Work Product and Rights (*Standard Agreement- Ex. D*
“PGP Terms and Conditions”)**

- i. All work Product derived by the Work performed by the Grantee, its employees or by and of the Grantee's **contractor's, subcontractor's** and/or sub-recipient's employees under the Standard Agreement, shall be owned by the Department and shall be considered to be works made for hire by the Grantee and the Grantee's **contractor, subcontractor** and/or subrecipient for the Department. The Department shall own all copyrights in the work product.
- ii. Grantee, its employees and all of Grantee's **contractor's, subcontractor's** and sub- recipient's employees agree to perpetually assign, and upon creation of each Work Product automatically assigns, to the Department, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Grantee's **contractor, subcontractor** and/or subrecipient from the Department. From time to time upon the Department's request, the Grantee's **contractor, subcontractor** and/or subrecipients, and/or its employees, shall confirm such assignments by execution and delivery of such assignment, confirmations or assignment or other written instruments as the Department may request. The Department shall have the right to obtain and hold in its name all copyright registrations and other evidence of rights that may be available for Work Product under the Standard Agreement. Grantee hereby waives all rights relating to identification of authorship restriction or limitation on use or subsequent modification of the Work.
- iii. Grantee, its employees and all Grantee's **contractors, subcontractors** and sub- recipients hereby agrees to assign to the Department all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority thereunder and the same shall become and remain the Department's property regardless of whether such protection is sought. The Grantee, its employees and Grantee's **contractor, subcontractor** and /or subrecipient shall promptly make a complete written disclosure to the Department of each Invention not otherwise clearly disclosed to the Department in the pertinent Work Product, specifically noting features or concepts that the Grantee, its employees and/or Grantee's **contractor, subcontractor** and/or subrecipient believes to be new or different.

- iv. Upon completion of all work under the Standard Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications and estimates, produced as part of this Agreement will automatically be vested in Department and no further agreement will be necessary to transfer ownership to Department.

VII. Special Conditions

The State of California reserves the right to add any special conditions to the Standard Agreement it deems necessary to assure that the policy and goals of the Program are achieved.

////SIGNATURE PAGE FOLLOWS////

IN WITNESS WHEREOF, the parties hereto have signed the Agreement on the date set forth opposite their names.

CONTRACTOR:

(California Corporations: must be signed by company's CEO, President, or Vice President as well as the Secretary or CFO.)

Date

Tax I.D. Number

Signature

Signature

Print Name

Print Name

Title

Title

CITY OF ROCKLIN, A Municipal Corporation:

Steven Rudolph, City Manager

APPROVED AS TO FORM:

Sheri Chapman, City Attorney

ATTEST:

Hope Ithurnburn, City Clerk

CERTIFICATE OF ACKNOWLEDGMENT pursuant to Civil Code, Section 1189, must be provided for Contractor's signature.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

NOTARY TO ATTACH CURRENT ACKNOWLEDGMENT