



Construction Agreement

This **AGREEMENT** is made this 21 day of October, 2024 by and between ABC Inc, located at 100 Decker Court, Irving, Texas 75062 and XYZ Contracting, located at 1315 10th St, Sacramento, CA 95814 (hereinafter called the "Contractor").

WHEREAS, the Contractor has been appointed by ABC Inc to perform Construction Services for the Sacramento Hospital, located at 4001 J St, Sacramento, CA 95819.

WHEREAS, ABC Inc desires to retain the services of Contractor to assist ABC, Inc in meeting all requirements of ABC, Inc's Agreement with the Client, dated August 15, 2024 (hereinafter called "Owner Agreement").

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration and intending to be legally bound, the parties agree as follows:

1. Retainer of Contractor. ABC Inc hereby retains the Contractor to perform the services required for the completion of the Owner Agreement, as defined in EXHIBIT A, SCOPE OF SERVICES, which is attached hereto and incorporated herein. The Contractor is retained as an independent contractor and not as an employee of ABC, Inc.

2. General Responsibilities of Contractor: ABC Inc shall be the general administrator of the construction services for the Project, and shall facilitate the coordination and exchange of information among the various contractors retained by ABC Inc for the Project. Further, ABC Inc shall provide in a reasonably timely fashion, upon written request of the Contractor, such information identified by Contractor as needed for the timely completion of Contractor services.

3. General Responsibilities of Contractor. The Contractor shall ascertain the requirements for the Contractor's part of the Project and shall confirm such requirements to ABC Inc. The Contractor shall provide progress copies of drawings, reports, specifications and other necessary information to ABC Inc and other Contractors. The Contractor shall become familiar with the Project services of ABC Inc and other Contractors so that the character, sequence and timing of the Contractor's services will be coordinated with those of ABC Inc and all other Contractors. The Contractor shall assist ABC Inc, in conformity with EXHIBIT A, SCOPE OF SERVICES attached hereto, and if requested, attend necessary conferences, prepare necessary analysis, drawings, specifications and other documents, be available for general consultation, and make recommendations for the Contractor's portion of the Project. The Contractor shall also recommend to ABC Inc the obtaining of such investigations, surveys, tests, analyses and reports as may be necessary for the proper execution of the Contractor's services. When necessary, the Contractor shall consult with public agencies and organizations concerning utility services and requirements. Except as

authorized by ABC Inc, all communications between the Contractor and the Client shall be conducted through ABC Inc.

4. Compensation and Costs. The Contractor's compensation for basic services, any required additional services and reimbursement for costs, are described more fully in EXHIBIT B, COMPENSATION AND COSTS, which is attached hereto and incorporated herein. Contractor hereby agrees that conditions precedent to ABC Inc's obligation to pay Contractor under this Contractor Agreement, or for any services supplementary, extra or additional hereto, shall be (a) strict compliance with the notice provisions of ABC Inc's Agreement if the Contractor is seeking any increase in compensation due to any cause or circumstance, by giving to ABC Inc the same form and time of prior notice that ABC Inc is required to give to the Client; given to ABC Inc sufficiently in advance so that ABC Inc can comply with the notice provisions in ABC Inc's Agreement; if no such procedure is set forth in ABC Inc's Agreement, then the Contractor shall immediately give written notice to ABC Inc's Project Manager or his designee setting forth in detail the circumstances giving rise to such request and the amount requested, (b) the acceptance of Contractor's services by ABC Inc, the Client or other appropriate person or agency designated by ABC Inc or the Client, (c) ABC Inc's receipt from Contractor of its invoice detailing services performed and compensation due for each Phase of the Project, and (d) the actual receipt of payment from the Client by ABC Inc for the services performed by the Contractor. Unless approval is granted by the Client, as set forth above, in no event will the compensation of the Contractor exceed the total fee set forth in EXHIBIT B.

5. Incorporation by Reference. This Contractor Agreement is made subject to and is governed by ABC Inc's Agreement, a copy of which has been provided to Contractor and which is incorporated herein by reference and made a part hereof. Contractor acknowledges that it has received and read ABC Inc's Agreement and agrees to be bound by it in the performance of its services under this Contractor Agreement. Contractor understands and agrees that ABC Inc shall have all obligations, rights and remedies to and against Contractor which the Client has to and against ABC Inc under ABC Inc's Agreement. Contractor further understands and agrees that to the extent Contractor has undertaken to perform duties and assume obligations designated to be performed by ABC Inc in ABC Inc's Agreement, Contractor will be fully responsible for the performance of those duties and obligations in accordance with ABC Inc's Agreement including, but not limited to, adherence to time schedules and payment of any penalties, liquidated damages or other "late charges" which may be imposed for late submission of plans, drawings, specifications, materials and any other deliverable; or, by reason of Contractor's failure to produce proper and coordinated plans, specifications or drawings; or to fail to render any services relating to the Project in accordance with accepted professional standards and procedures. Additionally, Contractor also understands and agrees that among those duties and obligations that must be performed in accordance with ABC Inc's Agreement include, but are not limited to, adherence to all Client, State, Federal, and any other governmental unit required contract terms and conditions pertaining to, inter alia, records retention, labor standards, equal

opportunity, anti-apartheid, disabled persons and prohibitions against political contributions.

6. Indemnification & Insurance. Contractor shall indemnify ABC Inc, and their officers, directors, employees, subsidiaries, and affiliated companies. Additionally, to the fullest extent permitted by Law and notwithstanding anything to the contrary contained herein, the Contractor shall release, indemnify, and hold harmless ABC Inc, and their officers, directors, employees, subsidiaries, and affiliated companies from and against claims, demands, damages, losses and expenses, including litigation and reasonable attorney's fees, to the extent caused by caused by any negligent acts, errors or omissions of the Contractor, its officers and employees, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation or indemnity which would otherwise exist as to any party or person described in this Article. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Contractor Agreement found within EXHIBIT C – INSURANCE REQUIREMENTS.

7. Retention of Records. Unless a longer period is required by the Client, or is set forth in ABC Inc's Agreement, the Contractor agrees that ABC Inc or the Client shall, until the expiration of three (3) years after final payment under this Contractor Agreement, have access to and the right to examine and copy any books, documents, papers and records directly related to this Contractor Agreement which have not been previously delivered to ABC Inc. The period of access and examination of records shall continue during litigation and until settlement of any claims arising out of the performance of this Contractor Agreement.

8. Assignment. This Contractor Agreement is for the professional services of the Contractor and its interest in this Contractor Agreement may not be assigned or transferred by Contractor without the prior written consent of ABC Inc. Approval by ABC Inc of the assignment of any portion of the Contractor's duties under this agreement by Contractor to a Subcontractor shall not relieve the Contractor of any liability or responsibility for the proper performance of the work under this Agreement.

9. Inspections. All work performed by Contractor shall be subject to quality assurance inspections, audits and approval by ABC Inc. However, such quality assurance inspections, audits, or approval shall not relieve Contractor of responsibility for the proper performance of Contractor's work under this Agreement. Contractor shall provide sufficient, safe and appropriate facilities for such audits and inspections, and shall furnish all information concerning the work, and hereby grants ABC Inc's duly authorized representatives free access at all reasonable times to Contractor's facilities where the work under this agreement is to be performed.

10. Changes. At any time prior to the completion of work, ABC Inc shall have the right to direct changes in this Contracting Agreement, including but not limited to, changes in the Scope of Services. If the change causes an increase or decrease in the cost of, or the time required for Contractor's performance under this Contracting Agreement, then Contractor must submit to ABC Inc, within the time required by Paragraph 4 above, but in any event no more than ten (10) calendar days after receipt of the written notice of change, a written request for any adjustment. If justified, and in those instances where the Client's approval is required upon approval by the Client, ABC Inc shall issue an addendum to this agreement for equitable adjustments, in conformity with the provisions of Paragraph 4 above.

11. Termination for Convenience. ABC Inc shall have the right at any time to terminate this Contracting Agreement in whole, or in part, by written notice to the Contractor. Upon receipt of this notice the Contractor shall discontinue performing any work, will not incur any further expenses and shall promptly cancel all orders for work, materials, or supplies relating to the project. In the event of termination for convenience, ABC Inc shall pay Contractor for all work performed and accepted pursuant to the provisions of Paragraph 4 above. However, in no event shall ABC Inc be obligated to pay more than the Agreement compensation less any previously paid funds.

12. Default. Should the Contractor breach any portion of this Agreement, ABC Inc shall have the rights and remedies provided by law and those provided under this Agreement. Further, ABC Inc shall have the right at any time to terminate this Contractor Agreement, in whole or in part, if the Contractor fails to perform any of its obligations: or, if the Contractor fails to give to ABC Inc adequate assurance of performance within seven (7) calendar days after receipt of ABC Inc's written request for such assurances. In the event of a breach of this Contractor Agreement, including Contractor's failure to provide adequate assurance of performance, ABC Inc may:

- (i) declare the Contractor to be in default; or,
- (ii) cancel this Contractor Agreement, in whole or in part; or,
- (iii) withhold payment of any further funds which may be due the Contractor until the default is corrected, and/or
- (iv) pursue any and all other remedies afforded by law.

13. Ownership of Documents. All drawings, specifications, information or data prepared by or furnished to Contractor in connection with any or all work to be performed under this agreement shall be the property of ABC Inc. All documents, including those stored on electronic or magnetic media of any form, shall be immediately forwarded to ABC Inc upon request.

14. Confidentiality. No publicity releases (including news releases and advertising) pertaining to this Contracting Agreement or the Work hereunder shall be issued by the Contractor without the prior written approval of ABC Inc.

15. Non-waiver of rights. The rights and remedies granted to ABC Inc are cumulative and the failure to enforce any right or remedy by ABC Inc does not operate as a waiver by ABC Inc to exercise any rights or remedies granted by law or under this Contracting Agreement.

16. Miscellaneous Provisions.

16.1 All conditions under ABC Inc's Agreement applying to ABC Inc shall apply equally to the Contractor under this Contractor Agreement. The Contractor agrees that all sub-Contracting agreements made pursuant to this Contractor Agreement shall be made expressly subject to all of the terms and conditions of this Contractor Agreement.

16.2 Nothing contained in this Contractor Agreement shall be deemed to create any contractual relationship with, or to give a cause of action of any nature, whether sounding in contract, tort, or equity, in favor of, any third party against the Client, ABC Inc or the Contractor. Nothing contained in this Contractor Agreement is intended to benefit any third party. ABC Inc does not intend the Contractor, their subcontractors and subcontractors to be intended or incidental third party beneficiaries of ABC Inc's Agreement.

16.3 This Contractor Agreement contains all the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise regarding the subject matter of this Contractor Agreement exist. Any change in, addition to or waiver of the terms and conditions of this Contractor Agreement shall be binding only if approved in writing by an authorized representative of the parties.

16.4 This Contractor Agreement is made subject to laws of the Commonwealth of Pennsylvania.

16.5 If any portion of this Contractor Agreement is found to be unenforceable by a Court of competent jurisdiction, all other portions shall remain in full force and effect.

16.6 In construing this Contractor Agreement, ABC Inc's Agreement and its order of precedence controls where there is any direct conflict between the terms of ABC Inc's Agreement and this Contractor Agreement. This Contractor Agreement is to be construed to be complementary to ABC Inc's Agreement; therefore, as to all other terms or conditions that are not in direct conflict with ABC Inc's Agreement, this Contractor Agreement shall control despite any conflicting terms or conditions contained in the Exhibits attached hereto.

IN WITNESS WHEREOF, this Consultant Agreement has been executed and delivered as of the date set forth in the caption hereof.

ABC Inc.

By:

Jacob Roth

Printed Name of ABC Inc Officer

Jacob Roth

Signature of ABC Inc Officer

10/01/2024

Date of Signature

Executive Vice President

Title of ABC Inc Officer

XYZ Contracting

By:

John Smith

Printed Name of Contractor Officer

John Smith

Signature of Contractor Officer

10/12/2024

Date of Signature

Senior Vice President

Title of Contractor Officer

EXHIBIT A – SCOPE OF SERVICES

Will be negotiated on a work order basis.

EXHIBIT B – COMPENSATION AND COSTS

Will be negotiated on a work order basis.

EXHIBIT C – INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his representatives, employees or subcontractors.

Minimum Scope and Limits of Insurance

Limits of Insurance:

The Contractor's insurance policies shall be written for not less than the following limits of liability.

General Liability

\$1,000,000 Each Occurrence
\$2,000,000 Aggregate
\$2,000,000 Product Completed Operations Aggregate
\$1,000,000 Personal Advertising Injury

Automobile Liability

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

Workers' Compensation/Employers Liability

\$1,000,000 Each Accident
\$1,000,000 Disease - Each Employee
\$1,000,000 Disease – Policy Limit

Excess/Umbrella Liability

\$5,000,000 Each Occurrence
\$5,000,000 Aggregate

Additional Insureds:

ABC Inc and their officers, directors, employees, subsidiaries, and affiliated companies shall be named as additional insureds on a primary and noncontributory basis on all the Contractor's insurance policies stated above with the exception of Workers' Compensation/Employers Liability and Excess/Umbrella liability. Additional Insured status shall apply to both ongoing operations and to completed operations for a period of not less than three (3) years following completion of the contractor's services. All policies shall provide a Waiver of subrogation in favor ABC Inc and their officers, directors, employees, subsidiaries, and affiliated companies.

Notice of Cancellation:

The Contractor's Insurance policies shall contain a provision that the coverage afforded under the insurance policies will not be canceled, non-renewed, permitted to expire, or otherwise terminated until at least thirty (30) days' prior written notice has been given to ABC Inc.

Other Provisions:

The Contractor's General Liability policy must be written on a per occurrence form basis and the aggregate limit must apply per project. The Contractor's Workers' Compensation policy must meet California Statutory requirements. Auto Liability must cover all owned autos and hired non-owned autos where applicable. Excess/Umbrella liability policy must be written on a following-form basis and include General Liability, Auto Liability, and Worker's compensation on underlying schedule. All policies must be issued by insurance carriers with an A- or better AM best rating.

Certificate of Insurance:

Before contractor commences performance of work outlined within this Agreement, the Contractor shall furnish to ABC, Inc Certificates of Insurance providing proof that the Contractor has procured the required insurance and that such insurance is in force. The Contractor shall furnish copies of all insurance policies to ABC, Inc upon request. Certificates of Insurance should be made out to ABC, Inc at 100 Decker Court, Irving, Texas 75062 (Certificate Holder). Copies of required Additional Insured, Primary Non-Contributory, Waiver of Subrogation, and Notice of Cancellation forms must be attached to Certificate of Insurance as evidence of coverage.