



CONSTRUCTION AGREEMENT

1. Date & Term:

- a. This Construction Agreement ("The Agreement") is entered into as of (DATE).
- b. This Agreement shall be effective and commence on DATE (the "Effective Date") and shall terminate on or before DATE. Time for performance of non-monetary obligations shall be reasonably extended to the extent delay is caused by force majeure, i.e. a cause such as strikes, weather, utilities outages, acts of God, or other causes which are beyond the control of the party obligated to perform. Contractor must provide a schedule for the Work to building management prior to commencement of the Work.

2. Parties

This Agreement is made by and between:

Owner: (NAME) and Contractor: (NAME)

3. The Work

- a. Type of Work: (TYPE)
- b. Scope of Work: See attached Exhibit "A" which is incorporated herein by reference.
- c. Place of Performance: (ADDRESS OF BUILDING) (the "Premises")
- d. Price: \$??????? plus tax to be paid according to Exhibit "D"

4. Contractor's Duties

The Contractor accepts the relationship of trust and confidence established between it and Owner or Agent to use its best efforts, skill, judgment, and abilities to perform the Work contemplated by this Agreement. The Contractor represents, covenants, and agrees that all of the Work to be furnished by the Contractor under or pursuant to this Agreement will be the standard and quality which prevail among contractors of superior skill and ability engaged in the performance of similar service throughout Austin, Travis County, Texas, under the same or similar circumstances. The Contractor represents, covenants, and agrees to perform the Work in the best way and in the most expeditious manner consistent with the interests of Owner, as embodied in this Agreement and as further outlined in Exhibit "B".

5. Governmental Authority

Contractor agrees to obtain, at its own expense, all necessary permits and licenses for the performance of the Work under this Agreement, and to maintain such licenses and permits in force throughout the term

of this Agreement or any renewal, extension, or modification thereof. Contractor agrees to perform the Work in accordance with all applicable local, state, and federal national ordinances, codes, statutes, and regulations. Contractor will save and hold Owner and Agent harmless from all costs, liabilities, and expenses (including fines and attorney's fees) arising out of Contractor's failure to conform to such governmental requirements.

6. Offsite Activities

Contractor represents, covenants, and agrees that all activities conducted off the Premises and which are related to performance of the Work under this Agreement including, but not limited to, preparation of substances and materials and disposal of refuse, by-products, substances, and materials, will be conducted in accordance with all applicable local, state, and national codes, ordinances, statutes and regulations.

7. Defects

The Contractor represents, covenants, and agrees that it will, at its own cost, repair or correct defects in its Work as soon as the Contractor becomes aware of such defect or is notified of such defect. Should the Contractor refuse or fail to repair or correct such defects within five (5) business days after receiving notice requesting such remedial work, then Owner will be entitled to correct to Owner's satisfaction such defective Work at the expense of the Contractor. Contractor will reimburse Owner for any and all costs of correcting such defective performance including reasonable attorney's fees. Owner shall additionally have the right to offset any such curative work against amounts owed Contractor. This commitment is in addition to, and not in substitution for, any other remedy for defective Work available to Owner at law or in equity. Neither inspection nor payment will be deemed to be a waiver nor will it relieve Contractor from its obligations to remedy any defect in the performance of the Work. Contractor shall remedy any faults or defects that appear within one (1) year after final payment.

8. Assignment

The Contractor may not subcontract or delegate any of its duties under this Agreement, nor assign or transfer any of its right, title, interest in this Agreement or any renewals, extensions, modifications and addenda thereto without the prior written consent of Owner or Agent. In the event of any such assignment, the Contractor binds himself, his partners, successors, assigns, and legal representatives to Owner and Owner's agents in respect to all covenants, agreements, and obligations contained in this Agreement.

The Contractor agrees and consents to any assignment that may now or hereafter occur of Owner's right, title and interest in this Agreement, and all renewals, extensions, modifications, and addenda thereto to the holder of any mortgage or deed of trust ("Owner's Mortgage") which may now or hereafter encumber the Premises and all renewals, modifications, consolidations, replacements, and extensions thereof. In confirmation of such consent, Contractor will, at Owner or Agent's request, execute promptly any appropriate certificate or instrument that Owner may request, provided such certificate is true and correct.

9. Subordination

The Contractor agrees that any liens which may now or hereafter be asserted under this Agreement are subordinate to any Owner's Mortgage which may now or hereafter encumber the property and all renewals, modifications, consolidations, replacements, and extensions thereof. In confirmation of such subordination, Contractor will, at Owner's request, execute promptly any appropriate certification or instrument, provided such certification is true and correct.

10. Waiver and Removal of Liens

Contractor agrees to promptly sign and secure all necessary waivers and releases of lien rights with respect to amounts paid to Contractor, and other documents required to enable Owner to keep the Premises free from all Mechanic's and Materialmen's liens. Contractor agrees to deliver such waivers, releases, and documents executed by any or all subcontractors, laborers, and/or materialmen who have furnished labor and/or materials included in any of the Work with respect to which payments have been or are to be made. The reference in the preceding sentence to "subcontractors" shall not be construed as constituting the consent of Owner or Agent to subcontract, assign or delegate the duties of Contractor hereunder without the prior express written consent of Owner.

Notwithstanding any other provision hereof, if any act or omission (or alleged act or omission including, without limitation, the failure of Contractor or any subcontractor to make payment for any labor or materials when due) of Contractor or of any subcontractor, or any other person for whom Contractor is liable, results in or gives rise to any lien or other charge or order for payment of money being filed or claimed against The Premises, or against Owner or any fixtures or personally being included in the performance of the Work (whether or not any such lien, charge, order or financing statement is valid or enforceable as such), Contractor will, at no cost, charge, or expense to Agent or Owner, immediately cause the same to be canceled and discharged of record or bonded in accordance with all applicable statutory provisions.

Contractor represents and warrants that it is not in bankruptcy at the time of signing, and that this agreement is cancelable immediately should Contractor be subject to voluntary or involuntary bankruptcy.

11. Insurance

Before commencing the Work, Contractor shall provide Owner with Original Certificates evidencing the existence of insurance policies issued by carriers and in amounts and on forms acceptable to Owner. Insurance shall be written as outlined, and for limits not less than shown in Exhibit "C" attached hereto.

12. Indemnity

a. Indemnification. To the fullest extent permitted by applicable law, the Contractor, its agents, and consultants (collectively, "Indemnitors") hereby agree to indemnify, protect, defend, and hold harmless Owner, its affiliated companies, Agent and Agent's representatives and their respective officers, directors, shareholders, partners, employees, and agents (collectively, "Indemnitees") from and against all claims, damages, and losses, liens, causes of action, suits, judgments, and expenses, including attorneys' fees, of any nature, kind, or description (collectively, "Liabilities") of any person or entity whomsoever arising out of, caused by, or resulting from the performance of the Work hereunder or any part thereof provided that such Liabilities are not solely caused by the grossly negligent act of Owner or any Indemnitee (specifically excluding Contractor, all Indemnitors, all subcontractors and their agents, employees, invitees, licensees and guests), and in any event even if it is caused by the negligence or omission of any Indemnitee.

b. Joint and Several Liability. In the event more than one of the Indemnitors are connected with an accident or occurrence covered by this indemnification, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such indemnification shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this paragraph shall not be construed to eliminate or reduce any other indemnification or right which Owner or any of the Indemnitees has by law.

13. Time of Essence

Time is of the essence of this Agreement.

14. Contractor Independent

It is understood that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (i) make Contractor the agent, servant, or employee of Owner or Agent, or (ii) create any partnership, joint venture, or other association between Owner and Contractor.

The Contractor will provide all labor, materials, tools, supplies, and equipment and will pay all payroll, unemployment, social security, and local and state sales taxes. Contractor agrees and covenants to be exclusively liable for all payroll taxes and/or contributions under Federal, City, County, and State law measured by wages paid to Contractor's employees and to employees of any subcontractor employed by it, and to hold and save Owner harmless and free from payment of any such taxes and/or contributions.

15. Notices

Any notice provided or permitted to be given under the Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipts, requested; by delivering the same in person to such party, or by prepaid telegram or telex. Notice given in accordance herewith will be effective upon receipt at the address of the addressee. For purpose of notice, the address of parties shall be as set forth on page one (1) hereof.

16. Entire Agreement

This Agreement sets forth all agreements between Owner and Contractor relative to the Work, and all prior negotiations or agreements are merged herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding unless reduced to writing signed by the parties to be bound.

17. Headings

Headings herein are for Owner and Contractor's convenience only and neither limit nor amplify the provisions of the Agreement.

18. Texas Law

The Agreement shall be construed and enforced in accordance with the laws of the State of Texas, and any action or suit arising under or concerning this Agreement shall be brought in the State or Federal courts of Travis County, Texas.

19. Severability

If any provision of the Agreement shall, for any reason, be held violative of any applicable law, and therefore unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

20. Grammatical Changes

The necessary grammatical changes which shall be required to make the agreement apply in the plural sense if there is more than one (1) party which shall be either a trustee, legal representative, corporation, association, partnership, or an individual, male or female, shall in all instances be assumed as though in each case expressly stated herein as the identity of the person or persons may require.

21. Termination

Owner may terminate this Agreement with two (2) days written notice to Contractor should Contractor breach any of the terms of this Agreement, in Owner's sole discretion.

22. Failure to Perform

In the event Contractor terminates this Agreement prior to the expiration of its term without proper notice as provided herein, fails to render the services set forth in this Agreement, or defaults in his obligations under this Agreement, the Contractor will reimburse Owner for any and all costs incurred in obtaining performance from Contractor, or in obtaining substitute performance either by Owner himself or by another Contractor, including reasonable attorney's fees. Owner shall have the right to offset any such costs against amounts owed Contractor. Rights and Remedies of Owner under this section shall be non-exclusive and shall be in addition to all other remedies available to such party at law or in equity. The prevailing party in any action to enforce this contract will be entitled to recover its attorney's fees and costs of court from the non-prevailing party.

23. Environmental Liability & ADA Liability

Contractor hereby represents, warrants and covenants to Owner that all services and work performed and all materials provided by, through, or under Contractor in connection with this Agreement will be in full compliance with (i) all state and federal laws, rules, and regulations relating to environmental protection and pollution, and the generation, transportation, storage, and disposal of hazardous materials and hazardous substances; and (ii) all state and federal laws, rules, and regulations relating to accessibility by and accommodation of handicapped persons, including, without limitation, the Americans with Disabilities Act. The indemnity provisions of paragraph 12 hereof shall apply with respect to the breach, violation, or failure of Contractor to comply with the representations, warranties and covenants contained in the foregoing sentence.

24. Confidentiality

Contractor shall treat all information relating to the Work and all information supplied to Contractor by Owner as confidential and proprietary information of Owner and shall not permit its release to other parties or make any public announcement or publicity releases without Agent's written authorization. Contractor shall also require subcontractors and vendors to comply with this requirement.

25. Waiver and Acknowledgment

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES THAT (NAME) IS AND WILL HEREAFTER BE ACTING SOLELY AS AN AGENT FOR THE OWNER IN INCURRING OBLIGATIONS TO THE UNDERSIGNED FOR SERVICES AND/OR GOODS ACQUIRED FOR CERTAIN REAL ESTATE PROJECTS ON BEHALF OF THE OWNER(S) THEREOF. IN CONSIDERATION FOR THE VALUE TO THE CONTRACTOR TO BE REALIZED THROUGH SUCH TRANSACTIONS, AND TO INDUCE KMI TO DO BUSINESS WITH THE UNDERSIGNED, THE UNDERSIGNED HEREBY WAIVES ALL CLAIMS AGAINST KMI BASED UPON ANY CONTENTION THAT KMI IS LIABLE FOR SUCH OBLIGATIONS WITHER DIRECTLY OR AS AN AGENT FOR AN UNDISCLOSED PRINCIPAL. THE UNDERSIGNED CONTRACTOR AGREES TO LOOK SOLELY TO THE OWNER OF THE PARTICULAR REAL ESTATE PROJECT TO WHOM THE SERVICES OR GOODS ARE FURNISHED, WHETHER

OR NOT SUCH OWNER HAS BEEN IDENTIFIED BY KMI AT THE TIME CREDIT IS EXTENDED. IN THE EVENT THAT THE UNDERSIGNED WISHES TO HAVE THE SPECIFIC NAME AND ADDRESS OF THE OWNER OF ANY PARTICULAR REAL ESTATE PROJECT, HOWEVER, THE UNDERSIGNED WILL ASK KMI IN WRITING FOR SUCH INFORMATION. ALL INVOICES SENT TO KMI FOR PAYMENT ARE TO BE SUBMITTED IN THE OWNER'S NAME ONLY. ANY INVOICES SUBMITTED IN KMI'S NAME WILL BE RETURNED TO THE VENDOR FOR CORRECTION.

**CONTRACTOR:
(NAME)**

OWNER:

Name & Title

Date

Date

EXHIBIT "A"

SCOPE OF WORK

Contractor agrees to furnish all labor and/or materials, tools and equipment necessary to perform and complete the Work as herein described. The Work shall be performed in a first-class and workmanlike manner with the highest standards of attention to detail. The Work shall be performed during normal business hours or at such times and in such manner so as not to create any disturbance to tenants, customers or the general public. Contractor agrees to provide, at all times, a sufficient number of qualified persons to perform the Work required under this Agreement. Contractor shall, at Owner or Agent's request, promptly remove from the Premises, any workers, who, for any reason, are not acceptable and replace the same with workers who are satisfactory to Owner.

CONTRACTOR:

(NAME)

Name & Title

Date

EXHIBIT "B"

CONTRACTOR GUIDELINES

Contractor and its agents shall abide by the following guidelines. In the event these guidelines are not followed, it shall be deemed as a breach of contract.

1. **PARKING:** Parking shall be in areas designated by Owner. Vehicles parked in a fire lane, delivery zone, visitor or handicap space may be towed at the vehicle owner's expense.
2. **JOB SITE:** The Common Areas and job site shall be kept clean and neat at all times, and no material shall be left in a Common Area for more than 15 minutes.
3. **USE OF BUILDING FACILITIES:** Employees will have use of building restrooms. These areas are not to be used as a tool clean-up area; they are to be left in a clean and orderly condition. Janitor's closets may be used to get water and clean equipment, but must be cleaned each time used. If these areas are not kept clean, access to these areas will be terminated.
4. **ACCESS:** Should access to the building be needed after regular business hours, Contractor shall give the property manager at least 24 hours prior notice.
5. **HEALTH AND SAFETY PROGRAMS:** All the rules, regulations and policies established by Owner with respect to "hazard communication", "lockout/tagout", "health and safety" or any other matter shall be strictly complied with at all times. It is Contractor's responsibility to train employees in all procedures and requirements established by these programs.
6. **SUBCONTRACTORS:** Contractor shall provide a list of subcontractors to the building management prior to commencement of Work.
7. **TRASH:** No construction trash shall be deposited in the building dumpster under any circumstances. Contractor shall contact the building manager to arrange for a suitable location for the dumpster prior to having it delivered. Any damage to paving, curbing, retaining walls, etc. caused by the dumpster or hauler will be charged back against this Contract. To reduce fire hazards, excess trash shall be removed daily from the job site.
8. **ELEVATORS:** Use only the padded elevator. All construction materials must be delivered to the site in the elevator that has been padded or protected. This will be the only elevator to be used during the construction process. Independent service may be used during non-peak traffic times. Contact the management office for scheduling.

Floor protection must be provided by Contractor for the full area of the elevator floor.

9. **MATERIALS:** Any materials taken out of a space during demolition remain the property of the building.

EXHIBIT "C"

INSURANCE REQUIREMENTS

So long as any Service is to be performed, Contractor will maintain, at Contractor's sole cost and expense, such insurance which will protect him from claims which may arise out of or result from such operations by himself or by anyone for whose acts he may be liable, in the following categories and amounts:

Commercial General Liability - \$1,000,000 per occurrence with \$2,000,000 aggregate.

Including but not limited to:

- Products and Completed Operations
- Blanket Contractual
- Broad Form Property Damage Coverage
- Pollution (if exposure exists)
- Personal Injury

Workers' Compensation – (statutory limits)

Vehicle Insurance

\$1,000,000 Combined Single Limit

\$1,000,000 Uninsured & Underinsured Motor

Professional Liability – (When applicable)

Contract (Performance) Bond – (When applicable)

Umbrella Liability - \$5,000,000 Limit per occurrence

Such policies are to be issued by a company acceptable to Owner and authorized to do business in the State of Texas, with a minimum "Best's" insurance rating of "A VIII". **Policies or original certificates evidencing the insurance required to be carried hereunder shall be provided to Owner prior to the commencement of any Service pursuant to the provisions of this contract**, and evidence of renewals of said policies shall be submitted not less than ten (10) days prior to the expiration of the term of such coverage. **These certificates must contain a provision that Owner is named as additional insured** and that coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to Owner.

Contractor will also furnish to Owner, a completed and signed Form TWCC-83 (or its successor if such form is ever changed) evidencing Contractor's agreement that Contractor and Contractor's employees are not covered by the worker's compensation insurance of Owner or Agent and may not under any circumstances file claims against the worker's compensation insurance of Owner or Agent. Upon request, Contractor will also cause any subcontractors of Contractor to furnish such completed and signed form to Owner.

Should Owner require Contractor to bond its employees or work, Contractor shall promptly provide such bonding after written request from Owner.

EXHIBIT "D"

PAYMENTS

Based upon Applications for Payment (the "Application") submitted by the Contractor, Owner shall make payments on account of the Contract Amount as provided below.

Progress Payments:

- Provided that an Application is received by Owner accompanied by a Partial Release of Lien, Owner shall make payment to the Contractor not later than 30 days after receipt of the Application. Each Application shall be based on the most recent schedule of values submitted by the Contractor in accordance with any Contract Documents, and shall indicate the percentage of completion of the Work as of the end of the period covered by the Application.
- The amount of any payment shall be computed as follows:
The portion of the Contract Amount properly allocable to completed Work, less retainage of 10 percent (10%), and less any previous payments made by Owner.

Final Payment:

Final payment, constituting the entire unpaid balance of the Contract Amount, shall be made by Owner to Contractor when:

- Contractor has fully performed the Contract except for Contractor's responsibility to correct Work and to satisfy other requirements, if any, which extend beyond final payment;
- Final Application for Payment has been delivered to Owner. A separate Application shall be submitted for the retainage amount.
- Owner or its Agent has inspected the Work and has determined that the Work is complete and acceptable under the Contract
- Contractor has delivered to Owner complete Final Release of Liens covering all labor, materials and equipment for which a lien could be filed.
- Retainage of 10 percent (10%) shall be withheld until all punch list items have been completed.