

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (hereafter the “Agreement”) is made and entered into this 25th day of April, 2023, by and between **JCR CONSTRUCTION & SERVICES, LLC, an active Florida limited liability company**, authorized to transact business in the State of Florida (hereinafter referred to as the "CONTRACTOR"), and the **TOWN OF DUNDEE**, a municipal corporation organized and existing under the laws of the State of Florida (hereinafter referred to as the "TOWN").

FACTUAL RECITALS

WHEREAS, on March 8, 2023, the TOWN issued RFP 23-01 soliciting competitive bids for the renovation and necessary remodel of the Town of Dundee Fire Department; and

WHEREAS, a copy of the RFP 23-01 is attached hereto as **Composite Exhibit “A”** and incorporated herein by reference; and

WHEREAS, CONTRACTOR submitted a response to RFP 23-01 in the total amount of \$177,600.00 (the “Response”); and

WHEREAS, a copy of the Response is attached hereto as **Composite Exhibit “B”** and made a part hereof by reference; and

WHEREAS, on April 11, 2023, the Town of Dundee Town Commission (the “Commission”) found the Response to be the most advantageous to the TOWN, and CONTRACTOR was selected to perform the necessary work associated with RFP 23-01; and

WHEREAS, TOWN has found that the CONTRACTOR possesses the qualifications necessary to satisfactorily perform the work and/or services contemplated in this Agreement; and

WHEREAS, TOWN desires to engage the CONTRACTOR to perform certain construction services which include, but are not limited to, the building construction services necessary to perform the renovations and expansion set forth by RFP 23-01 (see **Exhibit “A”**); and

WHEREAS, CONTRACTOR acknowledges and represents that any person(s) executing this Agreement on its behalf has read, examined and understands the scope of the construction services to be performed, conditions and requirements set forth by this Agreement and its exhibits which are incorporated herein by reference; and

WHEREAS, CONTRACTOR acknowledges that this Agreement has been fairly negotiated by each party’s respective legal counsel and at arm’s length; and, as such, CONTRACTOR has expressed its desire and willingness to perform the construction services in accordance with the terms and requirements set forth by this Agreement; and

WHEREAS, as a result of the representation(s), qualification(s), and expressed desire of the CONTRACTOR to perform the construction services, the TOWN desires to enter into this Agreement with the CONTRACTOR; and

WHEREAS, CONTRACTOR agrees to perform the construction services in strict accordance with the terms, conditions, and provisions set forth in this Agreement and its exhibits which are incorporated herein by reference; and

WHEREAS, it is in the best interests and will promote the health, safety and welfare of the citizens and residents of the TOWN for the TOWN and CONTRACTOR to enter into this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the TOWN agrees to retain the CONTRACTOR and CONTRACTOR agrees to perform the agreed upon construction services, as described herein, and upon the following terms and conditions:

I. INCORPORATION OF RECITALS

The foregoing recitals are incorporated herein by the parties as true and correct statements which form the factual and material basis for entry into this Agreement between the TOWN and CONTRACTOR. RFP 23-01 (see **Exhibit “A”**) and the CONTRACTOR’s Response (see **Exhibit “B”**) are attached hereto as **Composite Exhibits “A” and “B”** and are hereby incorporated by reference and will constitute part of this Agreement and be considered contract documents.

II. DEFINITIONS

Words used in this Agreement shall possess their everyday and ordinary meaning, provided however, that where a term is defined by this Agreement or one (1) of the following listed terms is used in this Agreement, such term(s) shall possess the corresponding meaning. The following listed terms shall mean, as follows:

- (a) “*Day(s)*” means calendar day unless specifically stated otherwise.
- (b) “*Calendar Days*” means any and all days in a 365-day calendar year.
- (c) “*Business Days*” means each calendar day which is not a Saturday, Sunday or a recognized holiday by the Town of Dundee, Florida.
- (d) “*Effective Date*” means March 8, 2022, which is the date that this Agreement was approved by the Town Commission and the date work commenced.
- (e) “*Services*” means the provision or performance of the construction services by the CONTRACTOR, as specifically set forth in Article III of this Agreement and in **Exhibits “A” and “B”** attached hereto and incorporated herein by reference.

III. SCOPE OF WORK

The CONTRACTOR shall perform the Services (as defined by Section II(e) of this Agreement) in strict accordance with the terms set forth in this Agreement and as described in the Construction Plans and other documents which are included within RFP 23-01 and the Response which are attached hereto as **Exhibits “A” and “B”** and incorporated herein by reference.

The CONTRACTOR shall secure and maintain any and all permits and licenses required to complete Services.

IV. COMPENSATION

The TOWN shall pay to the CONTRACTOR the sum of One Hundred Seventy-Seven Thousand Six Hundred Dollars and zero cents (\$177,600.00) (the “Contract Sum”) for the CONTRACTOR’s performance of the Services (see **Exhibits “A” and “B”**).

The TOWN shall pay to the CONTRACTOR the Contract Sum to the CONTRACTOR no later than thirty (30) Business Days from the date on which the Services are completed pursuant to the terms of this Agreement.

Notwithstanding anything in this Agreement to the contrary, TOWN’s obligation to furnish payment to CONTRACTOR is expressly subject to appropriation of sufficient public funds by the Town Commission of the Town of Dundee. In the event the Town Commission of the Town of Dundee fails to appropriate sufficient funds to satisfy the TOWN’s payment obligations to CONTRACTOR of any kind or type, TOWN or CONTRACTOR may immediately terminate this Agreement and be released from any future responsibility or liability thereunder.

V. TERM OF AGREEMENT AND BINDING EFFECT

Beginning on the Effective Date, this Agreement shall continue in full force and effect until terminated in accordance with Article VIII of this Agreement (the “Term”).

Except as may be otherwise set forth herein, the terms and provisions of this Agreement shall bind and inure to the benefit of the parties and applicable successors, representatives, heirs, permitted assigns, employees, officers, directors, superintendents, administrators, shareholders and agents. As such, the parties agree that this Agreement shall be binding upon and inure to any and all successors-in-interest to the parties hereto.

The parties further acknowledge and agree that, in the event this Agreement omits and/or does not detail all laws, rules, regulations, permits, conditions, terms and restrictions that must be satisfied to complete the Services (as defined by Section II(e) of this Agreement), such omission shall not relieve the parties hereto or any successor-in-interest of the obligation to comply with applicable law. For purposes of this Section, the term “applicable law” shall mean means the Town of Dundee Charter, Town of Dundee Code of Ordinances, Town of Dundee Land Development Code, and any and all applicable statutes, laws, rules,

regulations, charter provisions, ordinances and resolutions of the United States of America, State of Florida, Polk County, Town of Dundee, and any and all other public authority which may be applicable.

VI. NOTICES

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by Certified Mail, Return Receipt Requested, with postage and registration fees prepaid or by overnight courier:

A. If to the TOWN: Tandra Davis
Town Manager
Town of Dundee
202 E. Main Street
Dundee, FL 33838

With copies to: *(shall not constitute notice)*
Frederick J. Murphy, Jr., Esquire
Town Attorney
Boswell & Dunlap LLP
Post Office Drawer 30
Bartow, Florida 33831-0030

B. CONTRACTOR: JCR CONSTRUCTION & SERVICES LLC
4822 Joyce Drive
Lakeland, FL 33805

VII. MODIFICATION OF AGREEMENT

Any modification to this Agreement shall be mutually agreed upon by and between the TOWN and CONTRACTOR in written amendments to this Agreement signed by both parties.

VIII. PERFORMANCE AND TERMINATION

The relationship of the CONTRACTOR to the TOWN for the performance of the Services shall be that of an independent contractor; and the relationship of the CONTRACTOR to the TOWN shall be governed by the terms of this Agreement.

The intent of this Agreement is to provide a general basis for performing the Services. Any service, project, job and/or task(s) shall be performed in strict compliance with the terms, conditions and covenants prescribed by this Agreement; and, prior to the completion of the Services by the CONTRACTOR and/or termination of this Agreement, the TOWN and CONTRACTOR shall mutually agree in writing as to the scope of performance and/or work, deliverables, time for completion, and any other term(s) and/or condition(s), which are not set forth in this Agreement, as related to the Services, a specific service, project,

job and/or other task(s).

Upon completion of the Services and/or termination of this Agreement, CONTRACTOR shall perform such Services as mutually agreed to in writing by the parties and reasonably necessary for the orderly closing of this Agreement. CONTRACTOR shall be compensated for all Services performed prior to the effective date of termination, plus Services required for the orderly closing of this Agreement, including: (1) Services performed up to the termination date; and (2) all efforts necessary to document the Services completed or in progress.

Upon the termination of this Agreement as hereinabove provided, neither party shall have any further obligation(s) hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises, or covenants contained herein which are expressly made to extend beyond the Term, including without limitation, any indemnity(ies) and professional insurance coverage(s).

IX. CONTRACTOR INDEMNIFICATION AND INSURANCE

This contractual indemnity is authorized by Section 725.06 of the Florida Statutes, and this contractual indemnity and insurance requirement(s) shall survive the termination of this Agreement.

Item 1. CONTRACTOR'S INDEMNIFICATION

CONTRACTOR shall indemnify, and hold harmless the TOWN, its elected officials, officers, agents, and employees from liability for damages to persons or property caused by any act, omission, or default of CONTRACTOR (specifically including, but not limited to, CONTRACTOR'S negligent or grossly negligent acts, omissions, or defaults) to the extent it relates to, pertains to, or arises from the Agreement or CONTRACTOR'S performance thereof. This contractual indemnity is authorized by Sections 725.06 and 725.08 (if applicable) of the Florida Statutes. CONTRACTOR also agrees to indemnify, defend, save and hold harmless the TOWN, its elected officials, officers, agents and employees, from all damages, liabilities, losses, claims, fines and fees, and from any and all suits and cause and causes of action of every name and description including but not limited to reasonable attorney's fees and professional charges and reasonable attorney's fees and professional charges in appellate or bankruptcy proceedings, that may be brought against the TOWN, its elected officials, officers, agents and employees, on account of any claims, fees, royalties, or costs for any invention or patent or for the infringement of any and all copyrights or patent rights claimed by any person, firm, or corporation.

Item 2. CONTRACTOR'S INSURANCE

CONTRACTOR shall, at its own expense, procure and maintain *Public Liability Insurance, Property Damage Insurance, Commercial General Liability Insurance and Workers' Compensation/Employers' Liability Insurance* throughout the Term of this Agreement, with an insurer or insurers acceptable to the TOWN. All insurance policies

shall be reviewed by the Town Attorney and must be acceptable to the Town. Any policy(ies) of insurance required herein shall apply to any covered loss on a primary basis; and, for purposes of public liability insurance and property damage insurance, the TOWN shall be named as an additional insured.

The CONTRACTOR shall, upon thirty (30) Days written request from the TOWN, deliver copies to the TOWN of any or all insurance policies that are required in this Agreement.

X. COMPLIANCE WITH LAWS

The CONTRACTOR warrants, represents, and agrees that it will comply with applicable law (as defined by Section V of this Agreement) which includes, but shall not be limited to, all federal, state, and local laws, rules, and regulations applicable to the fulfillment of the requirements of this Agreement.

XI. DATA TO BE FURNISHED TO CONTRACTOR

Upon reasonable request of the CONTRACTOR, the TOWN shall provide to the CONTRACTOR, at no cost, all information, data reports, records, and maps in its possession, or which become available to it, that are necessary for the performance of the Services under this Agreement.

XII. WORK PRODUCT

The work product of the CONTRACTOR, which is prepared solely for the purposes of this Agreement, including, but not limited to, drawings, maps, reports, estimates, field notes, investigations, design analysis, studies, and other data or documents which are obtained or prepared in the performance of this Agreement whether in hard copy or electronic form, shall become the property of TOWN when CONTRACTOR has been fully compensated as set forth herein. **The CONTRACTOR may keep copies of all work product prepared pursuant to this Agreement for its records and current and/or future use.**

Pursuant to Florida law, all correspondence(s) between the TOWN and CONTRACTOR are public records and subject to public records requests.

XIII. FORCE MAJEURE

Neither party hereto shall be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to strikes, lockouts, and/or acts of God. For purposes of this Agreement, any delay caused by the faulty performance or nonperformance by CONTRACTOR, CONTRACTOR'S independent contractor(s) shall not be events constituting force majeure.

XIV. ASSIGNMENT

The CONTRACTOR shall not sublet, assign, or transfer this Agreement or any interest

issued under this Agreement without the written consent of the TOWN.

XV. TERMS, CONDITIONS AND CONFLICTS

This Agreement and attachments incorporated by reference constitute all the terms and conditions agreed upon by the parties. Any controversy over the construction of this Agreement shall be decided neutrally and without regard to events of authorship.

In the event of a conflict between the terms, conditions and/or provisions set forth by this Agreement and any exhibit or document attached hereto, this Agreement shall control.

XVI. NO WAIVER

Nothing herein is intended to act as a waiver of the TOWN'S sovereign immunity and/or limits of liability as set forth in section 768.28, Florida Statutes regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. This provision shall survive the termination of this Agreement.

XVII. ATTORNEYS' FEES AND REMEDIES

In the event either the TOWN or the CONTRACTOR brings an action against the other to interpret and/or enforce this Agreement and/or any condition, covenant and/or provision herein, the prevailing party shall be entitled to recover its reasonable attorney's fees and court and professional costs, including, without limitation, any such fees or costs related to appellate or bankruptcy proceedings.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

XVIII. CALCULATION OF TIME

The calculation of the number of days that have passed during any time period prescribed shall be based on calendar days (unless specified otherwise in this Agreement). Unless otherwise specified in this Agreement, the calculation of the number of days that have passed during any time period prescribed in or by this Agreement shall commence on the day immediately following the event triggering such time period. If the tolling of such a time period is not contingent upon an action or event, the calculation of the number of days that have passed during such time period prescribed in or by this Agreement shall commence on the day immediately following the Effective Date. For purposes of this Agreement, unless otherwise specified herein, the tolling of any such time period(s) shall be in "calendar days" which means any and all days in a 365-day calendar year; and "business days" shall mean each calendar day which is not a Saturday, Sunday or a recognized holiday by the TOWN. In the event any time period or deadline identified in

this Agreement expires and/or falls on a Saturday, Sunday or recognized holiday by the TOWN, said expiration and/or deadline shall be automatically tolled until 5:00 pm on the next available business day which the TOWN is open for business to the public.

XIX. GOVERNING LAW

The validity, interpretation, construction, and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida, only.

XX. VENUE

Each of the parties hereto hereby irrevocably (i) agrees that any suit, action or other legal proceeding against any of them arising with respect to this Agreement shall be brought exclusively in the State Courts of Polk County, State of Florida, in the 10th Judicial Circuit; and (ii) waives any and all objections any of them might otherwise now or hereafter have to the laying of the venue of any such suit, action or proceeding in any of the courts referred to in this Article hereof or to service of any writ, summons or other legal process in accordance with applicable law.

XXI. NO THIRD -PARTY BENEFICIARIES

Nothing contained in this Agreement shall create a contractual relationship with, or any rights in favor of, any third party, including any sub-contractor.

XXII. MANDATORY PRE-SUIT MEDIATION

Disputes between the TOWN and CONTRACTOR arising under this Agreement shall first be mediated by a Florida Supreme Court-Certified Civil Mediator (hereafter the "Mediator") in accordance with Chapter 44, Florida Statutes. The parties agree that the mediation shall occur within thirty (30) Days of the date on which mediation is requested in writing by either party. The Mediator shall be agreed upon but, if the parties are unwilling or unable to agree upon and/or select the Mediator, the parties agree that a Mediator from Central Florida Mediation Group, LLC, shall be selected by striking names from the list of mediators at Central Florida Mediation Group, LLC. The parties agree to mediate in good faith, be bound by the Mediator's agreement (if any), pay Mediator fees promptly and share them on an equal basis, unless otherwise agreed upon by the parties. Litigation shall not be commenced until after mediation has been (i) declared an impasse by the Mediator, or (ii) terminated in writing by one or both of the parties. The confidentiality provisions of the Mediation Confidentiality and Privilege Act (Section 44.403, Florida Statutes) shall apply to any such pre-suit mediation.

XXIII. INDEPENDENT CONTRACTOR

Notwithstanding any provision of this Agreement, the CONTRACTOR and TOWN agree that the CONTRACTOR is an independent contractor for all purposes and when performing any Services under this Agreement.

XXIV. ENTIRETY OF AGREEMENT

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

XXV. AUTHORIZATION

Both the TOWN and CONTRACTOR represent to the one another that all the necessary actions to execute this Agreement have occurred and that both parties possess the legal authority to enter into this Agreement and undertake all the obligations imposed herein.

XXVI. REPRESENTATIONS AND WARRANTIES

Each party signing this Agreement on behalf of TOWN and CONTRACTOR represents and warrants that he or she has read, understands and acknowledges any and all of the conditions and requirements as set forth herein.

XXVII. CONSTRUCTION

The TOWN and CONTRACTOR acknowledge that the Agreement has been fairly negotiated by each party's respective legal counsel and at arm's length; and, as such, the Agreement shall be interpreted in accordance with the terms contained herein.

XXVIII. GENDER NEUTRAL

For purposes of this Agreement, any and all gender specific references, classifications and/or language shall be interpreted to be gender neutral.

XXIX. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement; provided, however, that each of the counterparts shall have been executed by the parties hereto.

XXX. PUBLIC RECORDS

CONTRACTOR agrees to:

1. Keep and maintain public records required by the TOWN to perform the services contemplated herein.
2. Upon request from the TOWN's custodian of public records, provide the TOWN with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or as otherwise provided by law.
3. 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 this Agreement if the CONTRACTOR does not transfer the records to the TOWN.
4. Upon completion of this Agreement, transfer, at no cost, to the TOWN all public records in possession of the CONTRACTOR or keep and maintain public records required by the TOWN to perform the services contemplated herein. If the CONTRACTOR transfers all public records to the TOWN upon completion of this 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 this Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the TOWN, upon request from the TOWN's custodian of public records, in a format that is compatible with the information technology systems of the TOWN.

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 AGREEMENT, CONTACT THE TOWN'S CUSTODIAN OF PUBLIC RECORDS, TREVOR DOUTHAT, INTERIM TOWN CLERK, (863) 438-8330, EXT. 222, tdouthat@townofdundee.com , 202 EAST MAIN STREET, DUNDEE, FLORIDA 33838.

If the CONTRACTOR does not comply with a public records request, TOWN shall enforce this Agreement which may include immediate termination of this Agreement.

This Section shall survive the termination of this Agreement.

XXXI. FURTHER ASSURANCES

Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement. To the extent of any conflict with the terms and conditions set forth by this Agreement and other rules and/or regulations which may otherwise govern the Services, the terms and conditions of this Agreement shall prevail.

XXXII DUTY TO COOPERATE IN GOOD FAITH

The parties acknowledge and agree that it is in their best interests and the best interests of the public that this Agreement be performed in strict accordance with the terms, covenants and conditions contained herein; and the parties shall, in all instances, cooperate and act in good faith in complying with all of the terms, covenants and conditions contained herein.

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IN WITNESS WHEREOF, the TOWN and CONTRACTOR have caused this Agreement to be executed by their undersigned officials as duly authorized.

JCR CONSTRUCTION & SERVICES LLC:

By: _____
 [Name, Title]

Witness

Witness

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this _____ day of April, 2023, by _____ of JCR CONSTRUCTION & SERVICES LLC, who is personally known to me or who has produced _____ as identification.

Notary Public, State of Florida
Printed Name: _____
My commission expires: _____

TOWN OF DUNDEE:

TOWN OF DUNDEE

By: _____
Tandra Davis, Town Manager

ATTEST:

Trevor Douthat, Interim Town Clerk

APPROVED AS TO FORM:

Frederick J. Murphy, Jr., Town Attorney