

# **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

This Agreement is by and between **City of Grand Rapids** (“Owner”) and **Building Restoration Corporation**. (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## **ARTICLE 1—WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Exterior masonry repairs, window and skylight repairs, sealant replacement, and miscellaneous maintenance improvements.

## **ARTICLE 2—THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **Grand Rapids Library Facade Repair Project**.

## **ARTICLE 3—ENGINEER**

3.01 The Owner has retained Encompass, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by the Engineer.

## **ARTICLE 4—CONTRACT TIMES**

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before November 15, 2023, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 30, 2023.

4.05 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: Contractor shall pay Owner \$[250] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete. Days occurring between November 30, 2023 and March 15, 2024 shall not accrue liquidated damages due to unfavorable conditions expected during that time of the year.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.06 *Special Damages*

- A. *NOT INCLUDED.*

#### **ARTICLE 5—CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
  - A. For all Work, a lump sum of \$364,974.00 (three hundred sixty four thousand nine hundred seventy four dollars and zero cents).

#### **ARTICLE 6—PAYMENT PROCEDURES**

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **5th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, in accordance with the Contract.
    - a. **95%** percent of the value of the Work completed (with the balance being retainage).
    - b. **95%** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of

Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of 3.0 percent per annum.

**ARTICLE 7—CONTRACT DOCUMENTS**

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
  - 1. This Agreement.
  - 2. General Conditions as listed in the Project Manual.
  - 3. Specifications (not attached but incorporated by reference) titled "PROJECT MANUAL FOR GRAND RAPIDS LIBRARY FAÇADE REPAIR PROJECT", dated February 8, 2023, prepared by Encompass, Inc.
  - 4. Drawings (not attached but incorporated by reference) consisting of 6 sheets with each sheet bearing the following general title "2023 FACADE REPAIR PROJECT", dated February 8, 2023, prepared by Encompass, Inc.
  - 6. Addenda (not attached but incorporated by reference): Addendum No. 1 dated March 6, 2023, prepared by Encompass, Inc.
  - 8. Exhibits to this Agreement (enumerated as follows):
    - a. Building Restoration Corporation Bid Form dated March 10, 2023.
  - 9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
    - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
  - 7. Based on the contract documents and observations, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - 8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - 9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - 10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - 11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

### **8.02 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on [ \_\_\_\_\_ ] (which is the Effective Date of the Contract).

Owner:

\_\_\_\_\_  
(typed or printed name of organization)

By: \_\_\_\_\_  
(individual's signature)

Date: \_\_\_\_\_  
(date signed)

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Attest: \_\_\_\_\_  
(individual's signature)

Title: \_\_\_\_\_  
(typed or printed)

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

Building Restoration Corporation  
(typed or printed name of organization)

By: Dale Zoerb  
(individual's signature)

Date: 5-17-23  
(date signed)

Name: Dale Zoerb  
(typed or printed)

Title: president  
(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: [Signature]  
(individual's signature)

Title: Senior Project Manager  
(typed or printed)

Address for giving notices:  
1920 Oakcrest Ave, Suite 1  
Roseville, MN 55113

Designated Representative:

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

License No.: \_\_\_\_\_  
(where applicable)

State: \_\_\_\_\_

**EXHIBIT A**

**SECTION 00 41 00  
BID FORM**

**THE PROJECT AND THE PARTIES**

**1.01 TO:**

- A. City of Grand Rapids (Owner)  
140 NE 2nd Street  
Grand Rapids, Minnesota 55744

**1.02 FOR:**

- A. Project: Grand Rapids Library Facade Repair Project
- B. Engineer's Project Number: 22-8040-001  
140 NE 2nd Street  
Grand Rapids, Minnesota 55744

**1.03 DATE:** 3/10/2023 (BIDDER TO ENTER DATE)

**1.04 SUBMITTED BY: (BIDDER TO ENTER NAME AND ADDRESS)**

- A. Bidder's Full Name Building Restoration Corporation
  - 1. Address 1920 Oakcrest Ave, Suite 1
  - 2. City, State, Zip Roseville, MN 55113

**1.05 OFFER**

- A. Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Bid Documents prepared by the Engineer for the above mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Price below:

- B. We provide the following prices for the Work Items as itemized below:

C.

- 1. REPLACE BUILDING SEALANT:  
Fifty Two Thousand dollars  
(\$ 52,000 ), in lawful money of the United States of America.
- 2. REPAIR FLASHING AT BAY WINDOWS:  
Seven Thousand and Fifty dollars  
(\$ 7,050 ), in lawful money of the United States of America.
- 3. REPAIR CAPSTONES:  
Fifty Four Thousand Six Hundred and Fifty dollars  
(\$ 54,650 ), in lawful money of the United States of America.
- 4. RESET OPERABLE WINDOW UNITS:  
Five Thousand Two Hundred and Seventy dollars  
(\$ 5,270 ), in lawful money of the United States of America.
- 5. CLEAN MASONRY AND APPLY REPELLENT:  
Twenty One Thousand Two Hundred and Fifty dollars  
(\$ 21,250 ), in lawful money of the United States of America.
- 6. REPLACE SEALANTS AND GASKETS AT SKYLIGHTS:  
Thirty Eight Thousand Four Hundred dollars  
(\$ 38,400 ), in lawful money of the United States of America.
- 7. SPOT BRICK REPLACEMENT:  
Two Thousand Eight Hundred and Fifty dollars  
(\$ 2,850 ), in lawful money of the United States of America.

8. SPOT TUCKPOINTING:  
Thirty Seven Thousand Eight Hundred dollars  
(\$ 37,800 ), in lawful money of the United States of America.
9. PAINT LINTELS:  
Eight Thousand Seven Hundred and Fifty dollars  
(\$ 8,750 ), in lawful money of the United States of America.
10. PAINT SERVICE GATES:  
Three Thousand Five Hundred and Eighty Eight dollars  
(\$ 3,588 ), in lawful money of the United States of America.
11. MISCELLANEOUS LABOR:  
Four Thousand Six Hundred dollars  
(\$ 4,600 ), in lawful money of the United States of America.
12. RIGGING:  
Thirty Three Thousand Seven Hundred and Twenty dollars  
(\$ 33,720 ), in lawful money of the United States of America.
13. MOBILIZATION/DEMOBILIZATION:  
Twenty Two Thousand Five Hundred and Ninety Six dollars  
(\$ 22,596 ), in lawful money of the United States of America.
14. The price for all base bid work shall be:  
**BASE BID TOTAL:**  
Two Hundred Ninety Two Thousand Five Hundred and Twenty Four dollars  
(\$ 292,524 ), in lawful money of the United States of America.

D. ALTERNATE BID ITEMS. The following is the add/deduct pricing for the following alternate bid items, to be accepted or rejected by the owner:

1. ALTERNATE #1: INSTALL THROUGH WALL FLASHING ABOVE SKYLIGHTS:  
Seventy Two Thousand Four Hundred and Fifty dollars **ACCEPTED**  
(\$ 72,450 - ADD ), in lawful money of the United States of America.

**TOTAL: \$364,974.00**

E. We have provided the cost of the required performance assurance bonds below as required by the Instructions to Bidders. The cost shall not be included in the base bid total.

1. The cost of the required performance assurance bonds is Three Thousand dollars  
(\$ 3,000 ), in lawful money of the United States of America.

F. All applicable federal taxes are included and State of Minnesota taxes are included in the Bid Sum.

### 1.06 ACCEPTANCE

- A. This offer shall be open to acceptance and is irrevocable for thirty days from the bid closing date.
- B. If this bid is accepted by Owner within the time period stated above, we will:
  1. Execute the Agreement within seven days of receipt of Notice of Award.
  2. Furnish the required bonds within seven days of receipt of Notice of Award.
  3. Commence work within seven days after written Notice to Proceed of this bid.



**1.07 CONTRACT TIME**

- A. If this Bid is accepted, we will:
- B. Complete the Work by SEPTMEBER 31, 2023.

**1.08 UNIT PRICES**

- A. The following are Unit Prices for specific scope items of the Work as listed. The following is the list of Unit Prices:
- B. ITEM DESCRIPTION - UNIT - UNIT PRICE
- C. Remove and replace joint sealant - Linear Feet - \$ 14.00
- D. Spot Brick Replacement - Each - \$ 42.00
- E. Tuckpointing - Square Feet - \$ 21.00

**1.09 BID FORM SUPPLEMENTS None**

- A. The following information is included with Bid submission:
  - 1. Subcontractors:

**1.10 BID FORM SIGNATURE(S)**

- A. The Corporate Seal of
- B. Building Restoration Corporation
- C. (Bidder - print the full name of your firm)
- D. was hereunto affixed in the presence of:
- E. Dale Zoerb
- F. (Authorized signing officer, Title)
- G. (Seal)
- H. Dale Zoerb - It's President
- I. (Authorized signing officer, Title)



**END OF SECTION**