

# CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT is made this \_\_\_\_\_ **day of** \_\_\_\_\_, **2024** by and between \_\_\_\_\_ (hereinafter referred to as “Contractor”), and the City of Madeira Beach, Florida, a Florida municipal corporation (hereinafter the “City”).

## *WITNESSETH:*

WHEREAS, the City desires that Contractor perform the duties of general contractor for the construction of certain improvements, namely the **Archibald Park Restroom Project** (hereinafter the “Project”); and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the Project in writing.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Statement of Work.** Contractor agrees to manage and supervise the construction of the project located in the City of Madeira Beach, Pinellas County, Florida, as directed by the City and pursuant to the City of Madeira Beach Design Standards and according to the plans and specifications approved by the City. Contractor shall (a) furnish all tools, equipment, supplies, superintendence, transportation and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and skillful manner and in accordance with the provisions of this Agreement; and (d) execute, construct and complete all work included in and covered by this Agreement.

2. **Time of Commencement and Completion.** Construction under this Agreement will begin on or after \_\_\_\_\_, **2024** and shall be completed by \_\_\_\_\_, **2024** (“Completion Date”). The Completion Date may, at the City’s sole discretion, be extended if approved by the City in writing, but in no event may the Completion Date extend beyond \_\_\_\_\_, **2024**. If, due to misconduct or neglect, Contractor fails to complete the Project on or before the Completion Date, the city may deduct **liquidated damages in the amount of \$500 the first day and \$250.00 for each additional day** the Contractor works beyond this date. Such liquidated damages shall be deemed to be a genuine pre-estimate of the foreseeable damages incurred by the City and in no way can be construed as a penalty. It is understood by Contractor and the City that actual damages caused by Contractor’s failure to complete this Agreement on time are impracticable or extremely difficult to fix, and that the per diem deduction from the contract price will be retained by the City as payment by Contractor of liquidated damages, and not as a penalty.

3. Compensation. City shall pay and Contractor shall receive the contract price of \$ \_\_\_\_\_ as stipulated in the Notice of Award, attached to this contract as **Exhibit A** and incorporated herein by this reference, as FULL compensation for everything furnished and done by Contractor under this Agreement, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work, including increased prices for or shortages of materials for any reason, including natural disasters; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuation of the work; and for well and faithfully completing the work as provided in this Agreement.

4. Draw Requests. The contractor agrees to perform all work on the Project according to the schedules set forth in the approved Bid Proposal attached hereto as **Exhibit B (as amended)** and incorporated herein by this reference. The contractor shall submit weekly progress reports to the Public Works Director or her designee showing actual costs incurred and work completed. The contractor shall also submit to the City monthly draw requests for all authorized costs incurred up to that date for the Project, if the time for the work exceeds one month. Upon review and approval of the progress reports and draw request(s) by the Public Works Director or her designee, the City agrees to pay Contractor the amounts shown on all draw requests, minus a ten percent (10%) retainage for any payments other than the final payment, no later than the fifteenth (15<sup>th</sup>) business day following the date the draw request was submitted. Payments may be withheld if:

- A. Work is found defective and not remedied;
- B. Contractor fails to meet schedules shown on Exhibit B, as may be amended by the actual construction commencement date.
- C. Contractor does not make prompt and proper payments to subcontractors;
- D. Contractor does not make prompt and proper payments for labor, materials, or equipment furnished;
- E. Another contractor is damaged by an act for which Contractor is responsible;
- F. Claims or liens are filed on the job; or
- G. In the opinion of the City, Contractor's work is not progressing satisfactorily.

The City shall disburse the total retainage and the final draw request submitted by Contractor upon acceptance of the Project as described in Paragraph 14 below.

5. Liability for Damages. The City its officers, agents or employees, shall not in any manner be answerable or responsible for any loss or damage to the work or to any part of the work; for any loss or damage to any materials, building, equipment or other property that may be used or employed in the work, or placed on the worksite during the progress of the work; for any injury done or damages or compensation required to be paid under any present or future law, to any person, whether an employee of Contractor or otherwise; or for any damage to any property occurring during or resulting from the work. Contractor shall indemnify the City, its officers, agents and employees, against all such injuries, damages and compensation arising or resulting from causes other than the City's neglect, or that of its officers, agents or employees.

6. Inspection of Work and Materials.

A. The City Manager or his/her designee may appoint and employ such persons as may be necessary to act as inspectors or agents for the purpose of supervising in the interests of the City materials furnished and work done as the work progresses.

B. The City shall at all times have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the work are being carried on and conducted.

C. Contractor shall provide all facilities and assistance required or requested to carry out the work of supervision and inspection by the City, including soil and material tests.

D. Inspection of the work by the above-mentioned authorities or their representatives shall in no manner be presumed to relieve in any degree the responsibility or obligations of Contractor.

E. No material of any kind shall be used in the work until it has been inspected and accepted by the City. All rejected materials shall be immediately removed from the premises. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once regardless of previous inspection. Inspection of materials shall be promptly made, and, where practicable, at the source of supply.

F. Whenever the specifications, the instructions of the City or the laws, ordinances or regulations of any public authority require work to be specially tested or approved, Contractor shall give the City timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for the inspection.

7. City of Madeira Beach Insurance Requirements. Contractor shall furnish the City with the Certificates of Insurance proving coverage. Failure to furnish the required certificates will result in the termination of this Agreement. Before starting and until acceptance of the work by the City, the contractor shall procure and maintain insurance of the types and the limits specified. All Policies, with the exception of Workers Compensation, must include the City of Madeira Beach, its officers, agents, employees and volunteers as "Additional Insured" under the liability policies. All insurance policies must be written in a manner consistent with the requirements of the Standard Form Agreement. Certificates of insurance shall be issued prior to execution of the Notice to Proceed. The following are the minimum requirements for insurance coverage:

Commercial General Liability (CGL), in occurrence form, written by a firm that is authorized to conduct business in the State of Florida and recognized by the State of Florida Insurance Regulations. Insurance company must have at least an "A-" rating from A.M. Best or a similar rating service.

- (1) \$1,000,000 per occurrence
- (2) \$2,000,000 per aggregate (\$1,000,000 at minimum)

#### Workers Compensation and Employers Liability

- (1) Per State of Florida Statutory requirements
- (2) \$100,000 each accident; \$100,000 per employee for disease and \$500,000 for all diseases.

#### Commercial Automobile Liability

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

All Policies, except for Workers Compensation, must include the City of Madeira, its officers, agents, employees and volunteers as "Additional Insured" under the liability policies. Contractor shall hold the City harmless from any actions brought against Contractor due to negligence, omission or wrongdoing of Contractor or any of its employees, agents, representatives and subcontractors. All coverages/certificates are to be in effect for the term of this Agreement and must be provided to the City's Public Works Department prior to the date the service begins and at each renewal thereafter during the term of this Agreement. Certificates of Insurance shall be executed on a standard ACORD form.

8. Performance Bond. To secure performance of the Contractor's obligations under this Agreement, the Contractor shall provide the City with a Performance Bond in the amount of the full contract price, or \$ \_\_\_\_\_. The Contractor shall use the form of the Performance Bond supplied by the City. The City shall be authorized to draw upon the Performance Bond to correct any default by the Contractor under this Agreement, default shall be determined and substantiated by an Affidavit of Default signed by the City Manager. The Performance Bond shall be held by the City through the one-year warranty period specified in Paragraph 13 below.

9. Payment of Labor and Materials Bond. To secure performance of Contractor's obligations under this Agreement to its subcontractors and suppliers, Contractor shall provide the City with a Payment of Labor and Materials Bond in the amount of the full contract price, or \$ \_\_\_\_\_. After the execution of this agreement and prior to the notice to proceed, the Contractor shall provide the Payment of Labor and Materials Bond to the City in the form supplied by the City. The City shall be authorized to draw upon the Payment of Labor and Materials Bond to correct any default by Contractor under this Agreement, which default shall be determined and substantiated by an Affidavit of Default signed by the City Manager.

10. Notice to Proceed. Notice to Proceed shall be issued within ten (10) calendar days of the execution of this Agreement by all parties. If the City fails to issue such Notice to Proceed within that time limit, the Contractor may terminate the Agreement without further liability on the part of either party. Such notice of termination must be tendered in writing to the City. Additionally, the parties may mutually agree that the time for the Notice to Proceed may be extended.

11. Compliance with Laws. Contractor and every subcontractor or person doing or contracting to do any work contemplated by this contract shall keep himself or herself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of his or her contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not the laws, ordinances or regulations are mentioned in this contract, and shall indemnify the City, its officers, agents and employees, against any claim or liability arising from or based on the violation of any such laws, ordinances or regulations.

12. Certificates and Permits. Contractor shall secure at Contractor's own expense all necessary certificates, licenses and permits from municipal or other public authorities required in connection with the work contemplated by this Agreement or any part of this Agreement, and shall give all notices required by law, ordinance or regulation. Contractor shall pay all fees and charges incident to the due and lawful prosecution of the work contemplated by this Agreement, and any extra work performed by Contractor.

13. Termination. The City may, at its sole discretion, terminate this Agreement without liability in the event that Contractor fails to provide the Performance Bond or Payment of Labor and Materials Bond, Certificates of Insurance required by Paragraph 7, or otherwise fails to meet the conditions precedent to issuance of the Notice to Proceed set forth in Paragraph 10 above. The City may also, at its sole discretion, on one week's notice to Contractor, terminate this Agreement without liability before the completion date, and without prejudice to any other remedy the City may have, when Contractor defaults in the performance of any provision, or fails to carry out the construction of the Project in accordance with the provisions of this Agreement.

14. Substantial Completion / Acceptance. The date of substantial completion of the Project shall be a date mutually agreed upon by the City and Contractor. In the event that the City and Contractor do not reach an agreement as to the date of substantial completion, the Madeira Beach City Council shall determine such date. Upon the date of substantial completion, Contractor shall certify in writing that substantially all improvements described in the Statement of Work have been completed in conformance with the plans and specifications and submit to the City a completed substantial completion list utilizing a form approved by the City. Thereafter, and within thirty (30) business days after a request for final inspection by Builder, the City shall inspect the Project and notify Builder in writing and with specificity of their conformity or lack thereof to the plans and specifications. Builder shall make all corrections necessary to bring the Project into conformity with the plans and specifications. Once any and all corrections are completed, the City shall complete a Project Acceptance Form and promptly notify Builder in writing that the Project is in conformance with the approved plans and specifications, and the date of such notification shall be known as the Acceptance Date. The Acceptance Date shall coincide with the commencement of the one year warranty period described in Paragraph 15 below. Within thirty (30) days of the Acceptance Date, the City shall pay Builder the amount shown on the final draw request; provided, however, that the amount of funds left from the contract price specified in the Notice of Award are sufficient to cover this amount.

15. Warranty. Contractor shall warrant any and all improvements constituting the Project constructed for the City pursuant to this Construction Agreement for a period of twenty four (24) months from the Acceptance Date as set forth in Paragraph 14 herein. Specifically, but not by way of limitation, Contractor shall warrant that:

- A. Any and all improvements constituting the Project shall be free from any security interest or other lien or encumbrance; and
- B. Any and all structures so conveyed shall be free of any defects in materials or workmanship for a period of two (2) years, as stated above.

16. Corrections to Project. If, within two (2) years after the date of substantial completion, any of Contractor's work on the Project is found to be not in accordance with the standards set forth in the preceding Paragraph 15, Contractor shall, at Contractor's expense, correct it promptly after receipt of a written notice from the City to do so unless the City has previously accepted such condition. Such notice shall be either delivered personally or by overnight express courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and must be received by Contractor as soon as practicable after the City discovers the defect or the loss or damage caused by such defect, but in no event later than the date that the warranty given hereby expires.

17. Modifications. The City may modify this Agreement with respect to the arrangement, character, alignment, grade or size of the work or appurtenances whenever in its opinion it shall deem it necessary or advisable to do so. Contractor shall accept such modifications when ordered in writing by the City Manager or his/her designee. Any such modifications shall not subject Contractor to increased expense without equitable compensation, which compensation may be approved by the City pursuant to its Purchasing Policy. If any modification results in a decrease in the cost of work involved, an equitable deduction from the contract price shall be made. These deductions shall be determined by the City Manager or his designee. The determination of any such additional compensation or deduction shall be based on the bids submitted and accepted. No modifications in the work shown on the plans and described in the specifications shall be made, unless the nature and extent of the modifications has first been certified by the City in writing and sent to Contractor.

18. Attorneys' Fees; Survival; Costs of Collection. Should this Agreement become the subject of legal action to resolve a claim of default in performance by any party, including the collection of past due amounts, the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

19. Governing Law. The laws of the State of Florida shall govern the validity, performance, and enforcement of this Agreement.

20. Assignment. This Agreement may not be assigned without the prior written consent of the non-assigning party.

21. Amendment. This Agreement shall not be amended, except by subsequent written agreement of the parties.

22. Entire Agreement. This Agreement, **along with any addendums and attachments hereto**, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

23. Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

24. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

25. Severability. In the event that any of the covenants, agreements, terms, or provisions contained in this Agreement shall be found invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity of the remaining covenants, agreements, terms, or provisions contained herein shall be in no way affected, prejudiced, or disturbed thereby.

26. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

To the City: Robin Gomez, City Manager  
City of Madeira Beach  
300 Municipal Drive  
Madeira Beach, FL 33708  
(727) 391-9951

Copy to: Megan Wepfer, Public Works Director  
City of Madeira Beach  
300 Municipal Drive  
Madeira Beach, FL 33708  
(727) 543-8154

To the Contractor: *Name, address, telephone number.*

27. Status. The contractor is an independent contractor and none of its employees or agents shall be considered an employee or agent of the City for any purpose.

28. Insurance and Sovereign Immunity. Nothing herein shall be interpreted as a waiver of governmental immunity, to which the other parties would otherwise be entitled under Sec. 768.28, Florida Statutes, as amended.

29. Public Records. Contractor acknowledges that it is acting on behalf of a public agency and that this Agreement is subject to the provisions of Sec. 119.0701, Florida Statutes, and that Contractor must comply with the public records laws of the State of Florida.

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**City of Madeira Beach**  
**Attn: City Clerk**  
[cvanblargan@madeirabeachfl.gov](mailto:cvanblargan@madeirabeachfl.gov)  
**300 Municipal Drive**  
**Madeira Beach, FL 33708**  
**727-391-9951**

Contractor shall comply with public records laws, and Contractor shall:

- A. Keep and maintain public records required by the city to perform the service.
- B. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2019), as may be amended or revised, or as otherwise provided by law.
- C. 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 contract term and following completion of the contract if the Contractor does not transfer the records to the City.
- D. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, 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 the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

30. Authority. Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

31. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.



WHEREFORE, the parties hereto have executed duplicate originals of this Construction Agreement on the day and year first written above.

[CONTRACTOR]:

By 

\_\_\_\_\_  
Name Kori Khorsandian, CGC1508668

\_\_\_\_\_  
Title President, Khors Construction, Inc.  
\_\_\_\_\_

CITY OF MADEIRA BEACH, FLORIDA:

By \_\_\_\_\_  
Robin Gomez, City Manager Date

ATTEST:

\_\_\_\_\_  
City Clerk