

CONSTRUCTION AGREEMENT

This Construction Contract (hereinafter referred to as the "**Agreement**") is executed as of _____, by and between the City of New Meadows, with a mailing address of PO Box 324, New Meadows, ID 83654 (hereinafter referred to as the "**Customer**"), and Dalrymple Construction Services, with a mailing address of PO Box 540, New Meadows, ID 83654 (hereinafter referred to as the "**Contractor**"), collectively referred to as the "**Parties**", both of whom agree to be bound by the terms and conditions outlined in this Agreement.

1. Construction Services

The Customer seeks to engage the Contractor's services to undertake the following construction work (hereinafter referred to as the "**Services**"): _Retrofitting and renovation of a 4,200 square foot building, including addition of concrete and flooring, re-sheathing and cladding of roof and walls, installation of interior. _____

The Services are intended to be carried out at the following address: 400 Peterson Memorial Avenue New Meadows, ID 83654

The Contractor shall be responsible for providing all necessary labor, materials, and supplies required to perform the Services in accordance with the specifications and details attached to this Agreement. Upon the completion of the Services, the Contractor shall ensure the removal of all materials, supplies, and debris.

2. Scope of Work

To furnish and perform the work as described in the updated attached documents for the construction of the childcare facility to be located at 400 Peterson Memorial Avenue, New Meadows, ID 83654.

2. Changes in the Services

The Customer may request reasonable changes to the Services outlined in Section 1. Any modifications or additions to the Services must be documented in writing and mutually agreed upon and signed by both the Contractor and the Customer. The Customer acknowledges that

such changes may result in additional charges and could extend the Construction Schedule, as outlined in Section 3.

3. Construction Schedule

A Project Schedule for the Services will be incorporated in this Contract with defined tasks and standard durations. Both parties acknowledge that the timing of funding and in-kind services may impact the original schedule and both parties have responsibilities and obligations to keep the Services moving forward. Contractor will update the schedule in writing at monthly intervals and will inform Customer in writing of any anticipated delays. The Parties acknowledge that the anticipated full completion date of the Services in June 2025.

4. Compensation

The Customer and the Contractor mutually agree to the following Payment and Payment Terms:

Maximum Total contract will be \$1,150,000. Contractor understands that the majority of Customer's funding for the Services occurs through a grant received pursuant to the Workforce Development Council Childcare Grant Agreement entered into between Customer and the Idaho Workforce Development Council, and all Services and payments must be in compliance with said Workforce Development Council Childcare Grant Agreement. Contractor further understands that both Customer and Contractor will seek to find donations and discounts to offset as much of this cost as possible.

In order to receive payments, Contractor will provide monthly written requests for payment providing a breakdown of all costs, including materials and labor, related to the Services.

5. Representations

5.1. Contractor Representations:

The Contractor represents that they hold a valid and active general contractor license with License # 020364. The Contractor shall perform the Services in strict compliance with all applicable laws, regulations, codes, restrictive covenants, and requirements of homeowners' associations.

5.2. Customer Representations:

The Customer represents that they are the legal owner of the Property or possess the necessary authority to authorize construction activities on the Property. The requested Services conform to all relevant laws, regulations, codes, restrictive covenants, and homeowners' association requirements. Additionally, the Customer affirms their financial capability to remunerate the Contractor for the Services.

6. Obligations

6.1. Contractor Obligations:

a. Cooperation. Contractor will cooperate with Customer, Customer's representatives, design professionals and other contractors in the progress of the Services. Contractor will take all reasonably necessary precautions to protect the Work of Customer and other contractors from damage that may be caused by Contractor's Work.

b. Payment of Employees, Subcontractors and Suppliers. Contractor agrees to pay its employees, subcontractors and suppliers in a timely manner for all labor, services and materials supplied in connection with the Services. Contractor will indemnify and hold Customer harmless from any claims made by Contractor's employees, subcontractors and suppliers, providing Contractor has been paid for the Services that are the subject of the Claim.

c. Progress Reports. Upon request by Customer, Contractor will supply written reports on the progress of the Services and status of materials or equipment for use on the Services.

d. Shop Drawings, Project Data, Samples. Contractor will promptly submit Shop Drawings, Product Data, Samples or other documents and materials required by the Contract Documents within sufficient time so as not to delay the work and to obtain Customer's approval for such items.

e. Safety. Contractor will take appropriate and industry-standard safety precautions applicable to the Services and will also comply with all safety programs or requirements set forth by Customer. Contractor will comply with all safety laws, regulations and/or ordinances applicable to the Services that are set forth by any governmental agency with jurisdiction over the Services. Contractor will always maintain a safe workplace and will immediately report any injuries or safety problems to Customer, and immediately mitigate and cure any safety problems, in cooperation with Customer. If Contractor uses a hazardous substance of a type which an employer is required by law to notify employees that the substance is in use, Contractor will not use such substances without obtaining prior written permission from Customer and notifying Customer of the use of the substance in sufficient time and with sufficient detail to allow Customer to respond with instructions or take necessary measures to ensure public safety.

f. Notices, Laws, Permits, Fees. Contractor will comply with all applicable federal, state and local laws, rules, regulations, ordinances, or any other rules set forth by any governing

authority with jurisdiction over the Services, including but not limited to all laws related to taxes, social security acts, unemployment compensation acts, and worker's compensation acts. Contractor will also be responsible for giving all notices required by federal, state and local laws, rules, regulations, or ordinances and will secure and pay for all permits and licenses necessary for the completion of the Services.

g. Cleaning up. Contractor will maintain a clean work site and will keep the premises free from accumulated waste.

h. Warranty. Contractor warrants that the materials supplied, and the equipment furnished will be of good quality and new unless otherwise specified or permitted by the Contract. Contractor warrants that the Work will be free from defects not inherent in the quality of the Work and will conform to the Contract documents. This warranty is in addition to any other warranty provided by law or the Contract documents. For a period of one year after Substantial Completion of the Services, Contractor agrees to correct any Work that is not in conformance with the Contract documents.

i. Superintendent, Assignment of Contract and Subcontracting. Contractor will ensure there is a competent job superintendent, identified to the Customer, on site for the duration of the Services. Communications to the superintendent are binding on the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. Neither party will assign the Contract without the written consent of the other. Contractor will not be relieved of any of the responsibilities of this Contract by assigning or subcontracting the Work or any portion thereof.

j. Accounting Records. Contractor will keep records, including accounting records, relating to the Services in a form acceptable to Customer and will allow Customer access to all records upon reasonable notice to Contractor to review and audit such records.

k. Independent Contractor. The Parties agree that Contractor is an independent contractor, with no employment relationship with Customer.

l. Payroll Taxes. Neither federal, state or local income taxes, nor payroll taxes of any kind shall be withheld and paid by Customer on behalf of Contractor or Contractor's employees or subcontractors. Contractor shall not be treated as an employee of Customer with respect to the services performed pursuant to this agreement for federal or state tax purposes. Contractor understands that Contractor is responsible to pay, according to law, contractor's taxes, and to withhold, according to law, taxes to be paid by employees or subcontractors. Contractor further understands that Contractor may be held liable for self-employment (social security) tax to be paid by Contractor according to law. Contractor shall indemnify, defend, and hold harmless Customer against any claims or liabilities asserted against Customer or its representatives, related to any tax payments or failure to pay taxes by Contractor.

m. Licenses and Law. Contractor represents that Contractor possesses the skills and experience necessary and all licenses required to perform the services. Contractor shall comply with all applicable laws in the performance of the Services.

n. Non-Discrimination. Contractor shall not refuse to hire any person, including any subcontractor, because of such person's race, creed, sex, color, national origin, ancestry, religion, physical or mental disability, marital or familial status, sexual orientation, or gender identity/expression, unless based on a bona fide occupational qualification.

6.2. Customer Obligations:

The Customer shall provide the Contractor, its employees, agents, and subcontractors with reasonable access to the Property for the purpose of completing the Services. The Customer agrees to maintain the Property free from any known or potential hazards and shall ensure that all pets are kept out of the work area during the construction process.

7. Insurance

a. Contractor will obtain, pay for and maintain the coverage and amounts of coverage not less than those below by a carrier with a Best AA rating or its equivalent and licensed to do business in the State of Idaho and will provide Customer with certificates issued by insurance companies satisfactory to Customer to evidence such coverages. Customer should be a named insured on the liability and completed operations policies.

b. Contractor will procure and maintain the following types of insurance at limits no less than stated below:

1. Contractor shall maintain in full force and effect, worker's compensation coverage for Contractor and any agents, employees and staff that Contractor employs, and shall require from all subcontractors, proof of worker's compensation coverage to be provided to both Contractor and Customer. Contractor shall provide proof of such coverage to Customer, or proof that such worker's compensation insurance is not required under the circumstances. Contractor shall indemnify, defend, and hold harmless Customer and its representatives against any claims or liabilities asserted

against Customer or its representatives, related to any worker's compensation coverage by Contractor, Contractor's employees, and Contractor's subcontractors.

2. Products and Completed Operations Coverage for the protection against bodily injury and property damage claims arising from this hazard at a limit of no less than \$1 Million/\$2 Million.

3. Commercial Liability Insurance with a combined single limit for bodily injury and property damage no less than \$1 Million each occurrence covering all insurable obligations or operations of Customer or its representatives.

4. Business Automobile Liability with a combined single limit for bodily injury and property damage no less than \$1 Million each occurrence to include coverage for all owned, non-owned and hired vehicles.

8. Subcontractors

The Contractor reserves the right to engage subcontractors as necessary to perform specific tasks related to the Services. However, the Contractor shall remain entirely accountable for ensuring the proper completion of this Agreement and shall fully compensate any subcontractors engaged in the process. Contractor will ensure that all subcontractors have adequate liability insurance with minimum limits of Five Million Dollars (\$5,000,000.00) and that Contractor and Customer are additional insureds on each subcontractor's liability insurance policy.

10. Events beyond Contractor's Control

The Customer acknowledges that if the Contractor is unable to complete the Services by the specified Completion Date due to reasons beyond the Contractor's control (e.g., availability of necessary supplies, materials, etc.) or unforeseeable events (e.g., labor issues, natural disasters, vandalism, etc.), such occurrences shall not constitute a breach of this Agreement.

In such cases, the Contractor's timeline for completing the Services will be extended reasonably, and a new schedule will be agreed upon by the Parties. Correspondingly, the timeline for payment by the Customer shall be extended accordingly.

11. Liability Waiver

The Customer shall not be held liable for any injuries sustained by the Contractor, its employees, agents, or other related parties while performing the Services, to the fullest extent permitted by applicable law.

12. Termination

a. For Cause. Either party may terminate this Contract if the other party fails or neglects to carry out the Services in accordance with the Contract documents or otherwise materially breaches the Contract. The terminating party shall provide the other party with seven (7) calendar days' notice of the breach and provide the other party an opportunity to cure any breach. Should the other party fail to cure the breach, the terminating party shall have the right to terminate the Contract. Contractor shall be entitled to payment for the percentage of work completed, and Customer shall be entitled to reimbursement for the percentage of work paid for, if not completed.

b. With Notice. The Customer and Contractor may terminate this Agreement in whole or in part at any time by giving thirty (30) days written notice thereof, except that Contractor shall not terminate this Agreement without completing the agreed-to work, without the acceptance of such termination by Customer. The Customer, upon termination, shall promptly pay Contractor for all services rendered to the effective date of suspension of services, plus mutually agreeable suspension charges, which may include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on the Customer's behalf, subject to grant fund availability.

13. Dispute Resolution Customer or Customer's agent agrees to notify Contractor of any claims against the Contractor within one year of discovery of any allegations, errors or

omissions. Should a dispute arise, Customer and Contractor agree to negotiate disputes between them in good faith for a period of thirty (30) calendar days from the date the dispute is raised in writing by either the Customer or Contractor. If the parties fail to resolve the dispute through negotiation, then the dispute shall be decided through non-binding mediation or other mutually agreed alternative dispute resolution technique. A representative of each party with authority to settle the Claim will be present at the mediation. Fees and expenses for mediation will be split equally between the parties. Customer and Contractor agree non-binding mediation or other mutually acceptable dispute resolution technique shall precede and be a condition precedent to litigation. Notwithstanding the foregoing, either party may apply to a court for equitable relief or to attach assets prior to or concurrent with engaging in alternative dispute resolution.

13. Legal Fees

In the event of a dispute resulting in legal action, the prevailing party shall be entitled to recover reasonable legal fees, including attorneys' fees and collection costs.

14. Governing Law and Jurisdiction

The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of Idaho. Any disputes arising from this Agreement shall be subject to the exclusive jurisdiction of the courts in Adams County.

15. Entire Agreement

The Parties acknowledge that this Agreement constitutes the entire understanding between them concerning the subject matter herein. Any modifications, amendments, or supplements to this Agreement shall be valid only if they are made in writing and signed by both Parties.

The Parties hereby affix their signatures to signify their acceptance of the terms and conditions as stated above:

Contractor

Name: _____

Signature: _____

Date: _____

Customer

Name: _____

Signature: _____

Date: _____

Please note that it is important to review and understand all the provisions and obligations set forth in this Agreement before signing. If there are any questions or concerns regarding the terms, it is advisable to seek legal advice or clarification. By signing above, the Parties acknowledge that they have read and comprehended the Agreement and agree to be bound by its terms and conditions.