

# CITY OF COMMERCE

## GENERAL CONDITIONS TO THE AGREEMENT FOR REHABILITATION

### EXHIBIT 2

#### 1. Definitions.

Wherever used in the Agreement or these General Conditions, the following meanings shall be given to capitalized terms.

1.1 The term "Agreement" means and shall include the following:

1.1.1 The Agreement for Rehabilitation;

1.1.2 Exhibits (if any);

1.1.3 these General Conditions;

1.1.4 any Addendum to the General Conditions;

1.1.5 any Amendments to any of the above; and

1.1.6 Change Orders.

1.2 The term "Amendment" means the changes, revisions, or clarifications of the Agreement which have been signed by Owner and Contractor, and approved by the City of Commerce (CITY).

1.3 The term "Bid Proposal" means the bid proposal dated \_\_\_\_\_ submitted by the Contractor and accepted by the Owner.

1.4 The term "Change Order" means a revision of the Work signed by Owner and Contractor, and approved by CITY, after the start of the Work.

1.5 The term "Contractor" means the person, firm or corporation entering into the Agreement with Owner to perform the Work.

1.6 The term "Day" means calendar day.

1.7 The term "CITY" shall mean the City of Commerce, a public body, corporate and politic.

1.8 The term "Owner" means the legal owner or owners of the Site where the Work is to be performed.

1.9 The term "Site" means the location of the improvements where the Work is to be performed.

1.10 The term "Work" means the construction and services required by the Agreement, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor's obligations.

1.11 The term "Working Day" means calendar days excluding weekends and federal and/or state holidays.

## **2. Contractor.**

2.1 Eligibility. Contractor represents that: (a) Contractor's California state contractor's license number listed on Contractor's Bid Proposal and the Agreement is current; (b) Contractor has a current City of Commerce business license; (c) Contractor carries insurance in accordance with the requirements of the Agreement and (d) Contractor possesses the skill, experience and expertise necessary to complete the Work in accordance with the Agreement. Contractor further represents that it is not listed on the Disbarred and Suspended Contractor's List of the United States Department of Housing and Urban Development, the City of Commerce, COMMISSION or any other public Agency, and Contractor agrees not to hire any subcontractor or supplier that is so listed.

2.2 Best Skill. Contractor shall supervise and direct the Work using its best efforts, skill and attention to ensure the workmanship and materials are of good quality and that the Work is completed in accordance with the Agreement. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures; safety on the job; and coordinating all portions of the Work to be performed by Contractor's laborers, employees and subcontractors, if any.

2.3 Agents. Contractor shall be responsible to Owner for the acts and omissions of its employees, subcontractors and their agents and employees, and of all other persons performing any of the Work under a contract with or the control of Contractor.

2.4 Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless, protect, and defend Owner, the City of Commerce, and all other persons or organizations engaged or cooperating in the performance of the Work, and each of their officers, directors, shareholders, partners, representatives, employees and agents (all of which persons and organizations are referred to herein collectively or individually as "Indemnities") from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs, expenses, liens, judgments or obligations whatsoever, including, without limitation, attorneys', consultants' and experts' costs and fees, resulting from or in any way connected, in whole or in part, with the performance of or failure to perform any obligations under the Agreement, or the acts, errors or omissions of Contractor, any subcontractor, or the officers, partners, employees, consultants or agents of any of them or by anyone for whose acts they may be liable. This indemnity obligation shall apply regardless of whether or not the event-giving rise to the indemnity obligation is caused in part by the negligence of an Indemnities, but shall not apply when the loss is caused solely by the negligence or willful misconduct of an Indemnities. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution, which would otherwise exist as to any party or person pursuant to the Agreement.

## **3. Subcontractors and Employees.**

3.1 Coordination. Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to require compliance by each subcontractor with applicable provisions of the Agreement.

3.2 No Contractual Relationship. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor and Owner.

#### **4. Changes in the Work.**

4.1 Signed by Parties. No Change Orders are permitted and/or effective unless signed by Owner and approved by the CITY.

4.2 Change Order. Except for the purpose of affording protection against any emergency endangering life or property, Contractor shall make no change in the Work, nor provide any extra or additional labor, service, or material beyond that actually required for the execution of the Work, unless pursuant to a written order from Owner, which order has been approved by the CITY. No claim for an adjustment of the contract price shall be valid unless so ordered.

4.3 Contents. Each Change Order shall include a detailed description of the change in the Work, the agreed-to change in price and/or time for completion thereof, and a statement that all Work shall be performed in accordance with the Agreement as modified by the Change Order.

4.4 Work after Termination of Agreement. Owner and Contractor shall not enter into any other contract or otherwise undertake any work on the Site not included in the Work or a Change Order executed pursuant hereto until a Notice of Completion has been recorded. Additional Work not included in the Work or a Change Order may be negotiated separately between Owner and Contractor or any other contractor, only after recordation of a Notice of Completion.

#### **5. Inspection of the Work.**

5.1 Inspection. Owner and Contractor shall permit the CITY to examine and inspect the Work during normal business hours and at any stage of construction.

5.2 THE CITY's Review. The exercise by the CITY of its right to review the progress of the Work is solely for the purpose of monitoring its conformity with the Agreement and the Program requirements pursuant to which THE CITY's financial assistance has been provided. Specifically, the CITY may (a) determine whether the work by Contractor is in compliance with the Agreement; (b) stop the work, if reasonably necessary, and (c) reject all work and materials, which do not conform to the requirements of this Agreement. The CITY does not have, and hereby expressly disclaims, the duty for any review of the Work for the purpose of determining compliance with building codes, safety features or standards or for the purpose of determining or approving engineering or structural design, sufficiency or integrity. The CITY's approval or authorization of a direction or request to change the plans, specifications or drawings submitted by Owner and/or Contractor is not and shall not be a review or approval of the quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. The CITY does not have and expressly disclaims any right of supervision or control over Owner, Contractor, any subcontractor, trades, or any other persons and professionals responsible for the formulation or execution of the Work. The CITY's approval of the Agreement or any subsequent amendment of the Agreement is not an endorsement or guarantee by the CITY of Contractor or the Work.

5.3 Right of Access. During normal construction hours, representatives of the CITY shall have the reasonable right of access to the Site without charges or fees for the purpose of inspecting the Work. The CITY hereby agrees to indemnify and holds Owner and Contractor harmless from and against any loss, cost, damage or liability, including, without limitation, reasonable attorneys' fees, which result from the exercise by the CITY, or any party acting under the CITY's authority, of the rights granted by this Section.

## **6. Payment.**

6.1 Not Acceptance. No progress payment, nor any partial or entire use or occupancy of the Site by Owner, shall constitute an acceptance of the whole or any part of the Work.

6.2 Joint Payments. Owner and/or the CITY shall have the right, in their sole discretion, to make payments jointly to the order of Contractor and any subcontractor unless Contractor (a) is not in default and (b) requests Owner not to do so as a result of Contractor's good faith dispute with such subcontractor.

6.3 Withholding Payment. Owner or the CITY may withhold payment if in the opinion of Owner or the CITY the Work has not been performed in accordance with the Agreement. In such case, Owner shall notify Contractor of such deficiency. Owner or the CITY may also withhold payment to such extent as they deem necessary to protect Owner from loss because of:

6.3.1 defective Work not remedied;

6.3.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

6.3.3 failure of Contractor to make payments properly to subcontractors or for labor, materials or equipment;

6.3.4 reasonable doubt that the Work can be completed for the unpaid balance of the contract price;

6.3.5 reasonable evidence that the Work will not be completed within the time agreed upon, and that the unpaid balance would not be adequate to cover actual and liquidated damages, if any, for the anticipated delay;

6.3.6 insufficient documentation, erroneous estimates of the value of the Work performed or other false or incomplete statements by Contractor; or

6.3.7 persistent failure of Contractor to perform any term or condition of the Agreement.

6.4 Withholding by Law. The provisions of this Section shall not lessen or diminish, but shall be in addition to, the right or duty of Owner to withhold any payments under applicable provisions of law respecting the withholding of sums due to contractors.

6.5 Release of Payment. When the above grounds are removed, payment shall be made for amounts withheld because of them.

6.6 Limitation to Withholding. Owner shall not withhold payment from Contractor for any amounts owing and not subject to dispute or offset.

6.7 Retentions. The CITY reserves the right to retain ten-percent (10%) of lump sum or partial payments. Retention payments due Contractor will be paid within 35 to 45 Days after the later of (a) the CITY and Owner complete necessary inspections, (b) a Notice of Completion has been recorded, (c) Owner has received satisfactory releases of liens or claims for liens by Contractor, subcontractors, laborers, and material suppliers for completed Work or installed materials, and (d) all disputes have been resolved.

**7. Stop Order.** If Contractor fails to correct Work which is not in accordance with the requirements of the Agreement, or persistently fails to carry out the Work in accordance with the Agreement, Owner or the CITY, by written order, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner and the CITY to stop the Work shall not give rise to a duty on the part of Owner or the CITY to exercise this right for the benefit of Contractor or any other person or entity.

**8. Termination of Agreement.**

8.1 **Diligent Prosecution.** If Contractor refuses or fails to prosecute the Work with such diligence as will ensure its completion within the specified time or otherwise in accordance with the provisions of the Agreement, or if the workmanship is of substandard quality, then Owner, by written notice to Contractor, may declare Contractor in default. If Contractor fails to remedy such default within fifteen (15) days of the date of such notice, Owner shall have the right to terminate the Agreement and select one or more substitute contractors acceptable to the CITY to finish the Work in accordance with Section 8.3.

8.2 **Work Stoppage.** If Contractor ceases to perform actual Work for a period of twenty (20) Days or more without an excusable delay pursuant to Section 9, then Owner, by written notice to Contractor, may terminate the Agreement and Contractor's right to proceed with the Work.

8.3 **Damages.** Upon termination, pursuant to 8.1 or 8.2, Owner may engage a substitute qualified licensed contractor to take over the Work and prosecute the same to ensure completion, and Contractor and its sureties (if any) shall be liable to Owner for any cost above the Contract Price, as described in Section A in the Rehabilitation Agreement, incurred by Owner to complete the Work. Contractor shall pay such amount (if any) to Owner within ten (10) days written demand therefore. Furthermore, payment for a completed portion of the Work performed by the terminated Contractor shall be withheld until the Work is one-hundred percent (100%) completed and shall not be paid until all other costs and claims pertaining to the Work have been paid. If any amount is left over from the Contract Price after all other costs and claims have been paid, that amount shall become payment in full to the terminated Contractor for all its portion of the Work performed, and shall be paid to it within thirty (30) days after satisfactory completion of the Work and payment of all claims. In no event shall said terminated Contractor receive any amount more than is equitable for Work performed as determined by the CITY or any arbitrator, mediator or court of law exercising jurisdiction over the matter, or any amount which will cause Owner additional cost, above the total Contract Price, as determined by the CITY or any arbitrator, mediator or court of law exercising jurisdiction over the matter.

8.4 **Possession of Equipment.** If Contractor's right to proceed is so terminated, Owner may take possession of and utilize in completing the Work such materials as may be on the Site and necessary for the completion of the Work.

**9. Excusable Delays.**

Contractor shall not be charged with liquidated damages for any delays in the completion of the Work, and the date of completion shall be extended for delays, due to:

9.1 Any acts of Government, including controls or restrictions upon or requisitioning of materials, equipment, tools or labor by reason of war, National Defense, or any other national emergency;

9.2 Any acts of Owner;

9.3 Causes not reasonably foreseeable by parties to the Agreement at the time of execution of the Agreement which are beyond the control and without the fault or negligence of Contractor, including but not restricted to, acts of God or of the public enemy; acts of another contractor in the performance of some other agreement with Owner; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions; or

9.4 Any delay of an authorized subcontractor occasioned by any of the causes specified in Sections 9.1, 9.2, and 9.3 above, provided that Contractor promptly (in any event within ten (10) Days) notifies Owner and the CITY in writing of the cause of the delay.

9.5 If the facts show delay to be properly excusable under the terms of the Agreement, Owner and the CITY shall extend the time for substantial completion of the Work by a period commensurate with the period of excusable delay.

#### **10. Liquidated Damages for Delay.**

Because actual damages for any delay in completion of the Work which Contractor is required to perform under the Agreement are impracticable and extremely difficult to fix, Owner and Contractor agree that Contractor shall be liable for and shall pay to Owner the sum of one hundred dollars (\$100.00) as fixed, agreed and liquidated damages for each Working Day of delay from the date stipulated for completion in Section A of the Agreement for Rehabilitation, or as modified in accordance with Section 4, "Changes in the Work," of these General Conditions until such Work is satisfactorily completed and accepted. Owner is solely responsible for levying and collecting such payment for damages.

**Owner and Contractor further agree that One Hundred Dollars (\$100.00) per Working Week is a fair and reasonable estimate of such damages under the circumstances existing as of the date hereof and that such sum is not construed in any sense as a penalty. The parties further agree that said liquidated damages for delay shall be owners' sole and exclusive remedy for such delay.**

\_\_\_\_\_  
**Contractor's Initials**

\_\_\_\_\_  
**Owner's Initials**

#### **11. General Guarantee and Warranty.**

11.1 Warranty. Contractor warrants to Owner that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Agreement, and that the Work will be free from defects. Work not properly approved and authorized may be considered defective. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in the Work. Prior to the release of the final payment, Contractor shall secure, assign to and deliver to Owner written warranties and guaranties, if any, from its subcontractors and suppliers bearing the date of substantial completion or such other date as may be agreed to by Owner and stating the applicable period of warranty. Contractor is responsible for the warranty of the Work as set forth in this Section, whether performed by it or by its subcontractors.

11.2 Title. Contractor warrants the title to the Work will pass to Owner no later than the time of payment. Contractor further warrants that upon final payment all Work shall be free and

clear of liens, claims, security interests or encumbrances in favor of Contractor, its employees, subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

11.3 Guarantee. The Work will be guaranteed for a period of one (1) year from date of final acceptance of all Work required by the Agreement. If during this twelve (12) month period Owner has any complaints concerning the Work, Owner shall contact Contractor directly to correct the items. **DO NOT CALL THE CITY COMMERCE.**

11.4 Prompt Remedy. Contractor shall promptly remedy any defects in the Work and shall pay for any damage to other Work resulting there from which may appear within a period of one (1) year from the date of final acceptance of the Work unless a longer period is specified. Owner will provide notice of observed defects with reasonable promptness.

11.5 No Acceptance. Neither the final payment nor any provision in the Agreement, nor partial or entire use or occupancy of the Site by Owner or resident shall constitute an acceptance of Work not performed in accordance with the Agreement, or relieve Contractor of liability with respect to any express warranties or responsibility for failure to comply with the terms of the Agreement.

## **12. Conciliation / Arbitration.**

12.1 Conciliation. If any dispute, controversy or claim arises out of or relates to the Agreement, and if conciliation would be helpful to resolution of such dispute, the parties agree first to try to settle the dispute by conciliation before resorting to arbitration. The parties agree that if such a dispute arises, they will notify the CITY of such dispute, and meet with the CITY in a good faith effort to settle the dispute by conciliation. Thereafter, any dispute, controversy or claim not resolved by conciliation shall be submitted to arbitration as provided in Section 12.2.

12.2 Arbitration. All claims or disputes between Owner and Contractor arising out of or related to the Work that either were not referred to conciliation or cannot be settled by conciliation shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. Notice of the demand for arbitration shall be filed in writing with the other party to the Agreement, and shall be made within thirty (30) Days after either the recommendation by the CITY that the dispute not be conciliated or termination of the parties' attempt to conciliate the dispute. The matter shall be referred to mediation for arbitration. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If the arbitrator's award is in a sum, which is less than that which was offered in settlement by Contractor, the arbitrator may award reasonable costs and attorney's fees in favor of Contractor. If the award of the arbitrator is in a sum greater than that which was offered in settlement by Owner, the arbitrator may award reasonable costs and attorney's fees in favor of Owner. In all other cases, the Owner and the Contractor shall share costs equally. In the event any party refuses to arbitrate or to cooperate with the arbitrator by failing to prepare for an arbitration hearing within a reasonable time not less than thirty (30) days as determined with the discretion of the arbitrator following filing of a notice of demand to arbitrate by the other party pursuant to this Section 12.2, then such party shall be deemed in default of the Agreement and the non-defaulting party may pursue all available remedies at law and/or equity.

## **13. Insurance.**

13.1 Comprehensive General Liability. Contractor shall at all times during the term of the Agreement maintain Comprehensive General Liability insurance written on an occurrence (not claims-made) basis covering all operations on behalf of Owner, including operations under subcontracts, and providing insurance for personal injury liability, bodily injury liability, sickness,

disease or death of any persons and property damage liability, including loss of use, for a Combined Single Limit of \$1,000,000 for general liability, and including coverage for:

- (a) Premises and operations;
- (b) Products and completed operations;
- (c) Contractual Liability insuring the obligations assumed by Contractor in the Agreement;
- (d) Broad form property damage (including completed operations);
- (e) Explosion, collapse and underground hazards;
- (f) Personal injury liability; and
- (g) Independent contractors.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable, shall apply separately to Contractor's work under the Agreement.

13.2 Worker's Compensation. Contractor and its subcontractors shall carry or require that there be carried Workers' Compensation for all its employees and those of its subcontractors in form and amount as required by California's Worker's Compensation Laws.

13.3 Evidence of Insurance. The evidence of insurance shall be Certificates of Insurance, with endorsements naming Owner, the City of Commerce, and the CITY as additional insured on said insurance policies. Such certificates shall provide that said policy or policies shall not be canceled or non-renewed until after a minimum of ten (10) Days prior written notice to the CITY.

13.4 Verification of Insurance. If the CITY wishes to verify the existence and effectiveness of the foregoing policies, Contractor agrees to furnish the CITY with the mailing address, or addresses, of such insurance company or companies as is appropriate and, further, consents to allow THE CITY and/or Owner the right to verify such policies.

#### **14. Permits.**

Contractor shall obtain and pay for all permits and licenses necessary for the execution of the Work.

#### **15. Codes.**

Contractor shall give all notices required by, and perform all the Work in conformance with, applicable laws, ordinances and codes of the local government, whether or not covered by the specifications and drawings for the Work. Contractor shall not be held responsible for pre-existing violations of any law including, but not restricted to, zoning or building codes or regulations. Before beginning the Work, Contractor shall examine the description of the Work for compliance with applicable laws, ordinances and codes for the new or replaced Work and shall immediately report any discrepancy to the CITY and Owner. Where the requirements of the Work fail to comply with such applicable laws, ordinances or codes for the new or replaced Work, Owner and the CITY shall adjust the Agreement by Change Order to conform to such laws, ordinances, or codes and make



appropriate adjustments to the contract price, unless waivers in writing covering the differences have been granted by the proper authorities.

**16. Safety of Persons and Property.**

16.1 Safety Precautions. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- (a) employees on the Work and other persons who may be affected thereby;
- (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's subcontractors; and
- (c) other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. Contractor shall cooperate with the Owner in this respect, and shall take all reasonable and necessary steps to minimize any such dirt, noise, dust, fumes, traffic or other problems or damage, to surrounding property or buildings attributable to any action by Contractor.

16.2 Notices. Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

16.3 Barriers and Signs. The Contractor shall erect and maintain as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

16.4 Hazardous Materials or Devices. When use or storage of explosives or other dangerous materials or hazardous substances or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

16.5 Remedy of Damage or Loss. Contractor shall promptly remedy damage and loss to the Site or the improvements thereon caused in whole or in part by the Contractor, a subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this Agreement except damage or loss attributable to acts or omissions of the Owner, and not attributable to the fault or negligence of the Contractor.

**17. Debris.**

Contractor shall keep the Site clean and orderly during the course of the Work and shall remove all debris at the completion of the Work. Materials and equipment that have been removed and replaced as part of the Work shall be removed from the Site promptly and before final payment unless Owner expressly instructs Contractor to the contrary.

**18. Assignment.**

Contractor shall not assign or transfer any of his rights, duties, benefits, obligations, liabilities or responsibilities under the Agreement without the prior written consent of Owner and the CITY. Any request for assignment shall be addressed to Owner and the CITY.

**19. Utility Services.**

19.1 Utilities Available. Any existing home utility service will be available to Contractor without charge, including: electric power; water; and telephone (if available and for local calls only). When Contractor must disconnect or otherwise interrupt such services, including plumbing fixtures, to effect repairs or replacement, the use or availability of such services shall not be deprived to Owner or occupant, unless Owner or occupant has been relocated, except during normal working hours (8:00 a.m. to 5:00 p.m. Monday through Friday, except holidays).

19.2 Disruptions. Where disruptions or disconnections will be other than during normal working hours, Contractor shall obtain approval of Owner and/or occupant, twenty-four (24) hours prior to such interruption.

**20. Occupancy.**

20.1 Site May Be Occupied. The Site may be occupied during the course of the Work unless an addendum stating otherwise is included with these General Conditions. Owner or its tenant will cooperate with Contractor in a reasonable manner to minimize interference with the Work, including abandonment of limited areas as may be essential to the conduct of the Work.