

**CONSTRUCTION
CONTRACT**

Between

**CITY OF TOLEDO
One Government Center
640 Jackson Street
Toledo, Ohio 43604
and**

THIS CONTRACT IS MADE by and between the City of Toledo, an Ohio charter municipality ("Toledo") and _____ (name), a [state of jurisdiction] _____ [type of business entity] _____, with a principal mailing address of _____ ("Contractor"), each duly authorized.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and terms to be kept and performed, it is agreed by the parties as follows:

SECTION 1 GENERAL

The general purpose of this contract, as fully detailed in the below referenced documents, is to purchase/provide the following work or services: _____
FIRE BATHROOM REMODEL PROJECT 10008929

All such work or services contained in this Contract are supplemented by the following, which are attached hereto and made a part hereof or incorporated by reference as if fully written out or attached to this Contract:

Notice or Instructions to Bidders
Project Specifications including all Addenda if applicable
Contractor's Bid/ Quote/ Proposal
City Bid Documents
2020 Part "A" Standards
General and Supplemental Conditions
Technical Specifications and Drawings
Ordinance # 88-21, 578-22, 304-23

Other: _____

The "Contract Documents," as that term is used in this Contract, shall mean, collectively, this Contract and all exhibits, attachments, supplements, and all other documents referred to in this Contract.

SECTION 2 TIME OF PERFORMANCE; LIQUIDATED DAMAGES

A. The City will issue a Notice to Proceed within ten (10) days of Contract award. The Work shall commence within ten (10) days, and be Substantially Completed within 90 days from the Notice to Proceed and fully completed within 30 days from the date of Substantial Completion.

B. The parties acknowledge that time is of the essence to this contract and that Toledo will suffer financial loss at a later time if the Work is not completed within the times specified in subsection A, plus any extensions allowed by Toledo. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Toledo if the Work is not completed on time. Accordingly, instead of requiring any such proof, the parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Toledo \$ 450/day for Project representative cost, construction engineering costs, plus additional costs incurred by Toledo for operating the facilities for each day that expires after the time specified in subsection A for Final completion or any proper extension granted by Toledo until the Work is Finally complete.

SECTION 3 PAYMENTS; RETAINAGE

A. Contractor shall invoice Toledo for its Work in accordance with paragraph 14.01 of the General Conditions and its approved schedule of values for the Work submitted under paragraph 2.05(A)(3) of the General Conditions. Toledo shall pay the undisputed portion of the invoice within thirty (30) days from the date the invoice is submitted by the Project engineer to Toledo. A copy of all invoice(s) shall be emailed to accountspayable@toledo.oh.gov or mailed to **City of Toledo, Division of Accounts, 640 Jackson Street, Suite 2020, Toledo, Ohio 43604**.

B. Prior to substantial completion, progress payments will be made equal to the percentages indicated below:

1. Contractor will be paid ninety-two percent (92%) of the Work completed with the balance being retainage. If the Work has been fifty percent (50%) completed as determined by Toledo, and if the character and progress of the Work have been satisfactory, Toledo may determine that as long as the character and progress of the Work remain satisfactory there will be no additional retainage held in which case the remaining progress payments prior to substantial completion will be in the amount of one hundred percent (100%) of the Work completed.

2. Contractor will be paid ninety-two percent (92%) of the materials and equipment not incorporated in the Work but delivered, suitably stored and accompanied by documentation satisfactory to Toledo with the balance being retainage.

C. Upon substantial completion, Contractor shall be paid an amount sufficient to increase total payments to ninety-five percent (95%) of the contract price with the balance being retainage.

D. Upon final completion and acceptance of the Work as provided in paragraphs 4.07(A) and (B) of the General Conditions, Toledo shall pay to Contractor the remainder of the contract price.

E. Contractor shall pay its subcontractors and suppliers promptly (within ten [10] calendar days) after receipt of payment from Toledo and shall require a similar obligation in its subcontractor and sub-supplier contracts. Repeated failures to pay subcontractors and suppliers timely will be considered a breach of this Contract.

SECTION 4 CHANGES ORDERS

- A. If Toledo seeks to make any change in the scope of work, including but not limited to changes in the specifications, quantities or details, it shall request the same from Contractor via written change order. Any increases or decreases in the Contractor's costs, or the time required for the performance of any part of the work under this Contract, shall be clearly articulated and the Contract will be deemed modified as of the change order, which shall be signed by both parties.
- B. If Contractor needs to seek a change order from the City the same shall be submitted in writing for review. Any approved increase or decrease in costs or change in the time for performance will be indicated and the Contract will be deemed modified as of the change order, which shall be signed by both parties.

SECTION 5 SUSPENSION; TERMINATION

A. Toledo may order in writing the Contractor to suspend, delay, or interrupt all or any part of the Work for such period of time as Toledo may determine to be appropriate for its convenience.

B. Toledo may terminate the Contract for cause upon the occurrence of any one or more of the following events:

1. Contractor fails to perform the Work in accordance with the Contract Documents including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment;
2. Contractor refuses or fails to prosecute the Work, or any separable part of the work, in adherence with the progress schedule or with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said Work within such time;
3. Contractor disregards the laws or regulations of any public agency having jurisdiction;
4. Contractor disregards the authority of Toledo or its engineer;
5. Contractor substantially violates any provision of the Contract Documents.

C. If any of the events identified in subsection (B) occur, Toledo may, by written notice, terminate the services of the Contractor and its right to proceed with all or any such part of the Work as specified by Toledo. In such event Toledo may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and use in completing the Work such materials, appliances, and plant as may be on the site of the Work and necessary therefore. Whether or not the Contractor's right to proceed with the Work is

terminated, the Contractor and its sureties shall be liable for any damage to Toledo resulting from the Contractor's refusal or failure to complete the Work within the specified time.

D. Toledo may terminate this Contract for its convenience upon ten (10) days prior written notice. In such event, Toledo shall pay the Contractor for completed and acceptable Work performed prior to the effective date of termination, including expenses sustained prior to the effective date of termination in connection with the uncompleted Work.

E. After receipt of a notice of termination, and except as otherwise directed by Toledo, the Contractor shall:

1. Stop Work under this Contract on the date and to the extent specified in the notice of termination;
2. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under this Contract that is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination;
4. Assign to Toledo, in the manner, at the times, and to the extent directed by Toledo, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. Toledo shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of Toledo to the extent Toledo may require. Toledo's approval or ratification shall be final for all the purposes of this section;
6. Transfer title to Toledo, and deliver in the manner, at the times, and to the extent, if any, directed by Toledo: (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if this Contract had been completed, would have been required to be furnished to Toledo;
7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that Toledo directs or authorizes, any property of the types referred to in paragraph (E)(6) of this section, but the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by Toledo. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Toledo to the Contractor under this Contract or shall otherwise be credited to the price

or cost of the Work covered by this Contract or paid in such other manner as Toledo may direct;

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

9. Take such action as may be necessary, or as Toledo may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which Toledo has or may acquire an interest.

SECTION 6 REMEDIES

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Toledo and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Lucas County, Ohio. This Contract shall be deemed to be executed in the City of Toledo, Lucas County, State of Ohio and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Ohio, as applicable to contracts entered into and to be performed entirely within Ohio. Any litigation arising between Toledo and Contractor arising under or regarding this Contract shall occur, if in the state courts, in the Lucas County court having jurisdiction thereof, or if in the federal courts, in the United States District Court for the Northern District of Ohio, Western Division.

SECTION 7 AUDIT; ACCESS TO RECORDS

The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied. The Contractor shall also maintain the financial information and data used in the preparation or support of any negotiated contract or change order and a copy of the cost summary submitted to Toledo. Toledo or any of its authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Contractor will provide proper facilities for such access and inspection.

SECTION 8 INDEMNIFICATION

A. Contractor, for itself and its related entities, agents, employees, subcontractors and the agents and employees of said subcontractors, agrees to and shall indemnify, hold harmless and defend Toledo, its successors, assigns, officers, employees, agents and appointed and elected officials, for any claim, cost, loss, damage or obligation whatsoever in nature (including reasonable attorneys fees and expenses) arising out of or through in any way from Contractor's breach of any of the conditions of this contract; excluding, however, claims arising from Toledo's negligence, omission or willful misconduct and for which immunity is not provided by the Ohio Revised Code for such negligence, omission, or willful misconduct. This exception shall not extend to acts, omissions, or intentional torts occurring as a result of or in response to an emergency. The indemnification obligation shall not be limited in any way by the insurance requirements but shall be in addition to those requirements.

B. In any and all claims against Toledo, its officers, officials, agents or employees by any employee of the Contractor, any subcontractor, agent, any one directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the Contractor hereby expressly waives the immunity provided to Contractor by Article II, Section 35 of the Ohio Constitution and Ohio Revised Code Sections 4123.74 and 4123.741, so that this indemnification obligation may be enforced by Toledo against Contractor in those instances.

C. If the Contractor subcontracts any part of the Work required under this Contract, subject to Toledo written approval of each such subcontract(s), it shall require its subcontractor to indemnify Toledo in accordance with this section. Contractor shall provide Toledo in writing information about each subcontractor, as Toledo shall request from time to time.

SECTION 9 ASSIGNMENT; COMPLIANCE WITH LAW

Neither party may assign or transfer rights and obligations under this Contract without the written consent of the other party. Each party agrees that it will perform its obligations in accordance with all applicable federal, state or local laws, rules, and regulations now or hereinafter in effect.

SECTION 10 EQUAL EMPLOYMENT OPPORTUNITY

Contractor agrees that it will not discriminate against any customer, employee or applicant for employment because of race, ancestry, religion, color, sex, age, national origin, or disability.

SECTION 11 STATE OF OHIO TAXES

Contractor shall contact the Toledo Purchasing & Supplies Division for a "Blanket Certificate of Exemption" for purchases made on behalf of the City of Toledo.

SECTION 12 ENTIRE AGREEMENT

This Contract, including any subsequent amendments, contains all representations and the entire understanding of the agreement between the parties. No changes to this Contract shall be valid unless made by a written amendment executed and approved by the parties. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

SECTION 13 CONFLICTS

In the event of a conflict between the terms and conditions in the foregoing sections of this Contract and the terms and conditions in any of the Contractor's Bid/Quote/Proposal or other Contractor documents attached to or incorporated by reference into this Contract, the foregoing terms and conditions shall control unless Toledo specifically waives such terms and conditions in writing.

SECTION 14 AUTHORITY TO ACT

The signatory or signatories hereto on behalf of the Contractor warrant(s) and represent(s) that they have the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby on behalf of the Contractor and have been duly authorized to execute this Agreement.

IN WITNESS WHEREOF, Toledo and the Contractor have caused this Contract to be executed as of the date of the Mayor's signature listed below.

CONTRACTOR:

(Corporation Name)

(Phone Number)

(Print Name)

(Title)

(Signature)

(Date)

(Email Address)

CITY OF TOLEDO:

(Mayor's Signature)

(Mayor's Authorized Designee)

(Date)

(Date)

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

(Law Department)

(Director)

(Department)