

# Construction Agreement

THIS CONSTRUCTION AGREEMENT ("Agreement") is made and entered into this 6th day of June 2022, by and between Diversified Construction of Oklahoma, Inc, ("*Contractor*"), and the City of Clinton, an Oklahoma Municipality ("*Owner*") (Owner and Contractor hereinafter "Party(ies)," as applicable).

## WITNESSETH:

**WHEREAS**, Owner suffered significant tornado damage on October 12, 2021, to several buildings it owns at the Clinton Regional Airport;

**WHEREAS**, Owner filed insurance claims with Travelers' Insurance in a timely manner for the repair of the damaged buildings and has now received proceeds from those claims to commence with needed repairs;

**WHEREAS**, after due consideration, Owner has determined the building number #4 a high priority for timely repairs;

**WHEREAS**, Owner determined that an emergency existed, waived formal bids and solicited and received firm written quotes from qualified contractors based upon the insurance adjustors and a structural engineer's evaluation of the damage to be repaired.

**NOW THEREFORE**, for and in consideration of the premises and recitals, which are hereby deemed a substantive part of this Agreement, and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### 1. Construction of Project.

Contractor has made several site visits of the damaged buildings, met with the Travelers' insurance adjustor to discuss his assessment of what repairs were needed, reviewed the structural engineer's report before preparing Contractor's proposal of planned improvements/repairs dated January 3, 2022, which were accepted by owner are hereby incorporated by reference and made a part hereof as if fully set forth herein. In the event of a conflict between exhibit "A" and the pages comprising the substantive terms of this Agreement, the latter shall at all times govern and prevail. It is also understood that during the course of the work that additional tornado damage could be found and submitted to Travelers' insurance as a supplemental claim.

### 2. Commencement of Construction.

Contractor agrees to commence construction no later than \_\_\_\_\_, 2022. and complete work in a timely manner. Should the Contractor not commence work by the deadline established above, this Contract shall be considered null and void. Once Contractor commences construction, Contractor shall diligently pursue the project to

completion unless Owner defaults in making an incremental progress payment, in which case Contractor may discontinue work, apply the down payment to the balance due from Owner, refund the balance, if any, to Owner, and have such remedies as are otherwise provided in this Agreement.

### **3. Cost of Project.**

Owner agrees to compensate Contractor: for Hangar No. Four – Sixty thousand, two hundred sixty-six dollars and seventeen cents (\$60,266.17) to complete all of the work described in Section 1 above. As the Cost of Work, as defined as: all costs necessarily incurred by the Contractor in constructing the Project. The Cost of the Work includes, but is not limited to, the following:

§ 3.1. Wages, salary, compensation or pecuniary consideration (including all taxes and withholdings) of construction workers employed by the Contractor to construct the Project.

§ 3.2. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the Project.

§ 3.3. Payments made by the Contractor to subcontractors used in construction of the Project.

§ 3.4. Costs of all materials, equipment and hand tools not customarily owned by the Contractor, which are provided by the Contractor at the site.

§ 3.5. Reasonable rental costs for necessary temporary facilities, utilities, equipment and hand tools utilized in construction of the Project.

§ 3.6. Costs of insurance, including Contractor's Risk/Property Damage, Workers' Compensation and Commercial Liability.

§ 3.7. Costs of removal of debris from the site.

### **4. Pre-Closing Inspection of Project; Post-Closing Punchlist.**

Before final payment, the Parties shall inspect the Project to determine substantial compliance with the Bid Packet and Scope of Work. The Parties shall reduce any non-conformities, repair or completion items to writing in an inspection report signed and dated by both Parties ("Punchlist"). Failure to execute or enumerate any item on said Punchlist shall conclusively establish Owner's acceptance of the Real Property and all conditions thereof. Unless otherwise agreed to in said Punchlist, Contractor shall be compensated with respect to all items enumerated on said Punchlist in accordance with the terms and conditions contained in this Agreement.

### **5. Substantial Completion.**

For purposes of this Agreement, "completion" shall be defined as the point in time when: the Project has been constructed in substantial compliance with the Bid Packet and Scope of Work in the sole opinion of Owner ("Completion"). Within 10 days after Contractor has notified Owner of completion of said Project, Owner and Contractor shall conduct an inspection of the Project as described in paragraph 4 above. The Project shall be constructed in substantial compliance with: (i) the Bid Packet and Scope of Work; and (ii) applicable state and local building codes.

## **6. Change Orders.**

This contract is approved with the understanding that any change orders will be subject to the *OK Competitive Bidding Act*, Title 61, Oklahoma Statutes, Section 121(A). Consequently, any change(s) to the Project shall be based upon the costs set forth in paragraph 3 and agreed to by mutual written agreement of the Parties. Owner shall be given reasonable latitude with respect to any such change orders requested.

## **7. Construction Delays.**

Time is of the essence and Contractor agrees that it shall diligently pursue Substantial Completion, once work on the Project begins. In the event Contractor fails or refuses to complete performance of Contractor's obligations under this Agreement, Owner shall have the right, after demand upon Contractor and Contractor's failure or refusal to comply therewith within ten (10) business days, (1) terminate this contract and seek a contractor to replace Contractor, or (2) to seek specific performance or any other remedy available at law or in equity.

## **8. Attorneys' Fees and Expenses.**

The prevailing Party in any legal proceeding based upon this Agreement shall be entitled to recover reasonable attorneys' fees, expenses and court costs.

## **9. Binding Effect; Assignment; Survivability; Amendment and Modification.**

This Agreement shall: (i) inure to the benefit of and be binding upon the Parties hereto, their respective heirs, successors and permitted assigns, but shall not be assigned by any Party hereto without the written consent of the other Party first obtained; (ii) be governed, construed and interpreted in accordance with the laws of the State of Oklahoma; (iii) be modified only by a written instrument signed by both Contractor and Owner; (iv) create no duties, rights or obligations with respect to any person or entity not a party hereto. All duties, obligations, covenants and conditions contained herein shall survive the Closing of the transaction contemplated hereby. This Agreement constitutes the entire agreement and understanding by and between the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings and communications by and between the Parties hereto, whether oral or written. This Agreement may be changed, modified, altered or otherwise amended, only by written instrument executed by all Parties hereto.

## **10.Paragraph Headings.**

The paragraph headings used herein are for reference only and shall not affect the meaning or construction of any provision(s) of this Agreement.

## **11.Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an enforceable original instrument. For purposes hereof, facsimile signatures shall be binding.

**12.Waiver.**

Failure by any Party to enforce or exercise rights under this Agreement, or to require performance by the other Party hereunder, shall not affect the right of any Party to exercise or enforce any such rights or require such performance at any time thereafter, nor shall the waiver by any Party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision, nor shall such act constitute a waiver of the provision itself.

**13.Severability.**

In the event any provision of this Agreement is determined, upon interpretation or construction by a Court of competent jurisdiction or by an arbitrator, to be invalid, unenforceable or otherwise prohibited, in whole or in part, such provision(s) shall be ineffective to the extent of such invalidity, unenforceability or prohibition. The remaining provisions of this Agreement shall be given effect to the maximum extent then permitted by law.

**14.Notices.**

Any notices required or permitted under this Agreement shall be considered sufficient if hand delivered, sent by facsimile transmission or mailed to the other respective Party.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

“Contractor”

\_\_\_\_\_

“Owner”

\_\_\_\_\_

BY: \_\_\_\_\_