

STANDARD CONSTRUCTION AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This **CONSTRUCTION AGREEMENT** ("Agreement" or "Contract") is entered into by and between the **CITY OF NORTH RICHLAND HILLS**, a Texas municipal corporation situated in Tarrant County, Texas, with its principal location at 4301 City Point Drive, North Richland Hills, Texas 76180, acting through its duly authorized representative, (hereinafter called "CITY" or "OWNER"), and **DRISCOLL AUTOMATIC, INC. LLC.** an Oklahoma corporation, with its principal location at 3220 S Peoria Ave #101, Tulsa, OK 74105, acting by and through its duly authorized representative, (hereinafter called "CONTRACTOR"), individually referred to herein as a "party" and collectively as the "parties."

In consideration of the mutual covenants contained in this Agreement, OWNER and CONTRACTOR hereby agree as follows:

ARTICLE 1. WORK.

CONTRACTOR covenants and agrees to perform the Work as described below for the RFB 25-020 City Hall Three Phase UPS Battery and Module Replacement ("Project") in every detail, in a good and first-class workmanlike manner as specified and indicated in the Contract Documents as described herein in Article 11, of which are incorporated in this Agreement in their entirety as if they were herein set out at length written word for word. The CONTRACTOR shall furnish all labor, materials, tools and equipment required to perform and complete the Work in strict accordance with these Contract Documents. The Work is described as follows:

"CIP PROJECT" FC2504 CITY HALL THREE PHASE UPS BATTERY AND MODULE REPLACEMENT

ARTICLE 2. CONTRACT PRICE.

OWNER agrees to pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, the price or prices shown in the bidder's proposal, which total the following amount:

TWO HUNDRED EIGHTY-THREE THOUSAND THREE HUNDRED NINETY-TWO dollars and 00/100 (283,392.00).

ARTICLE 3. CONTRACT TIME / TERMINATION / LIQUIDATED DAMAGES.

Unless otherwise stated in this Agreement, **time shall be considered of the essence.**

- a. When **time is of the essence**, the CONTRACTOR shall be liable for failure to deliver or delay in delivery occasioned by and including without limitation strikes, lock-outs, inability of obtaining material or shopping space, breakdowns, delays of carriers or suppliers, and preexisting governmental acts and regulations of the Federal and State governments or any subdivision thereof, unless such governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of the CONTRACTOR prior to submission of his/her bid and City Council's acceptance thereof.
- b. When **time is not of the essence**, this Agreement shall be inoperative during such period of time that aforesaid delivery or acceptance may be rendered impossible by reason of fire, strike, Acts of God, or government regulation. Provided, however, to the extent that the CONTRACTOR has any commercially reasonable alternative method of performing this contract by purchase on the market or otherwise, he/she shall not be freed of his/her obligation hereunder by this clause, even though the goods intended for this contract were destroyed or their delivery delayed because of any event described above.
- c. **As time is of the essence on this Contract**, CONTRACTOR agrees to commence Work under this Contract within ten (10) days from the date specified in the "Notice to Proceed" and to totally complete the Work within **180** consecutive calendar days after the date specified in the "Notice to Proceed," subject to such extensions of time as agreed to in writing by OWNER and as are indicated in the Special Provisions ("**Project Completion Date**").
- d. **Default and Termination.**
- (1) If Contractor fails to complete the Work by the Project Completion Date, OWNER shall declare CONTRACTOR in default of the Contract and CONTRACTOR shall have sixty (60) days to cure such default, or an alternative reasonable time as agreed to by the parties ("**Cure Period**").
 - (2) If CONTRACTOR fails to complete the Work by the end of the Cure Period, OWNER shall have the right, but not the obligation, to terminate this Agreement without any penalty or additional expense to OWNER and submit this Contract to the Surety for completion of the Work. In the event of such termination, OWNER shall pay CONTRACTOR for all authorized Work completed by CONTRACTOR, or any subcontractor, up to and including the effective date of termination.
 - (3) OWNER shall have the absolute right to terminate this Agreement without any penalty or additional expense in the event the OWNER'S City Council fails to appropriate sufficient funding in any fiscal year to pay OWNER'S obligations under this Agreement. OWNER shall pay CONTRACTOR for all Work up to the date of termination for which funds have already been appropriated for purposes of satisfying OWNER'S obligations under this Agreement.

- (4) Upon termination, OWNER shall have no further obligation under the Contract, unless otherwise determined in accordance with this Contract or the Contract Documents.

If there is any conflict between any provision of this Article 3, and any other provision in this Agreement, or in any attachment hereto or any other Contract Document, this Article 3 shall control.

ARTICLE 4. PARTIAL PAYMENT AND RETAINAGE.

OWNER shall make payments to the CONTRACTOR in the following manner:

On or about the first day of each month, the OWNER, or the OWNER's Authorized Representative, will make accurate estimates of the value, based on contract prices, of the Work completed, materials incorporated in the Work, and of materials suitably stored at the site during the preceding calendar month. The CONTRACTOR shall furnish to the OWNER, or the OWNER's representative, a detailed line-item invoice for Work completed within the previous month and/or such other detailed information as the OWNER may request to aid OWNER as a guide in the preparation of the monthly estimate.

Within the following thirty (30) days, OWNER shall make partial payments to the CONTRACTOR for Work performed during the preceding calendar month as estimated by the OWNER or OWNER's representative. Five percent (5%) of each estimate shall be retained by the OWNER until final completion and acceptance of all Work covered by the Contract for contracts less than four hundred thousand dollars (\$ 400,000). Five percent (5%) of each estimate shall be retained by the OWNER until final completion and acceptance of all Work covered by the Contract for contracts greater than four hundred thousand dollars (\$ 400,000). Upon completion and acceptance of all Work in compliance with the Contract, the OWNER shall, within thirty (30) days, pay the CONTRACTOR the balance due under the terms and conditions of the Contract, less any disputed amounts or liquidated damages

It is understood that the monthly estimates shall be approximate only, and all monthly estimates and partial payments shall be subject to correction in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the OWNER of the amount of Work done or of its quality or sufficiency nor as an acceptance of the Work or the release of the CONTRACTOR of any of its responsibility under the Contract

ARTICLE 5. DISCRIMINATION.

The CONTRACTOR agrees, in connection with the performance of Work under this Contract as follows:

- a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin or ancestry. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- b. The CONTRACTOR agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Agreement.
- c. In the event of the CONTRACTOR's non-compliance with the above non-discrimination clause, this Agreement may be canceled or terminated by the OWNER. The CONTRACTOR may be declared by the OWNER to be ineligible for future contracts with the OWNER, until satisfactory proof of intent to comply shall be made by the CONTRACTOR.

ARTICLE 6. ENTIRE CONTRACT AND AGREEMENT.

This Contract and Agreement, including the Contract Documents set forth in Article 11 herein, contains the entire understanding and agreement of the parties upon the subject matter hereof. There is no other agreement, oral or otherwise, which is not set forth in writing as part of this Agreement or the Contract Documents.

ARTICLE 7. AMENDMENTS / CHANGE ORDERS.

This Contract may not be amended except as by a written instrument signed by authorized representatives of both parties as a Contract Amendment or Change Order.

ARTICLE 8. VARIABLES IN COST.

The parties hereto acknowledge and understand that the variables in the CONTRACTOR's cost of performance may fluctuate; consequently, the parties hereto agree that any fluctuations in the CONTRACTOR's costs will in no way alter the CONTRACTOR's obligations under this Contract nor excuse non-performance or delay on the CONTRACTOR'S part.

ARTICLE 10. VENUE.

This Contract shall be governed by the laws of the State of Texas. Venue for any court proceedings shall be in Tarrant County, Texas.

ARTICLE 11. CONTRACT DOCUMENTS.

Documents Listed. The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR for the performance of and payment for the Work, consist of the following, with the order of precedence being the order in which the documents are listed below:

- (1) This Agreement
- (2) RFB 25-020 City Hall Three Phase UPS Battery and Module Replacement
- (3) Performance and Payment Bonds
- (4) City of North Richland Hills Certificate of Insurance
- (5) Notice to Proceed

ARTICLE 12. LIABILITY AND INDEMNIFICATION.

In accordance with Contract Documents, CONTRACTOR shall be liable for and shall indemnify and hold OWNER harmless, for claims for any and all damages, costs, and expenses of any persons or property for damages or losses that arise out of any negligent act, error or omission, or act of intentional misconduct of CONTRACTOR, or any employee, representative, subcontractor, or agent of CONTRACTOR in the execution or performance of the Work under this AGREEMENT.

CONTRACTOR agrees to carry insurance as required by the Contract Documents in an amount acceptable to OWNER and will furnish the OWNER certificates of such insurance coverage prior to beginning any Work or providing any service under this Agreement. OWNER will be listed as additional insured on such policy(ies) as allowed by law.

The Contract Documents may contain indemnity, liability, or other insurance requirements in addition to this Article 12. If there is any conflict between this Article 12 and the Contract Document(s), the Contract Document(s) shall control.

ARTICLE 13. PAYMENT AND PERFORMANCE BONDS.

This Contract is considered a public works contract within the meaning of Chapter 2253 of the Texas Government Code. The total compensation that will be due under the Contract upon completion of the Work shall not exceed \$283,392.00. CONTRACTOR shall provide a payment and performance bonds in the amount of 100% of the contract price to the City that meets the requirements of Chapter 2253 and that is acceptable to the City, **prior to any Work being done pursuant to this Agreement**. CONTRACTOR is **NOT** authorized to proceed with performing any Work on this Contract until evidence of such bond(s) is provided to the City.

ARTICLE 14. DISPUTE RESOLUTION.

Except in the event of termination due to non-appropriation of funds pursuant to Article 3, e (3), if either OWNER or CONTRACTOR has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute, or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall commence the resolution process and make a good

faith effort, either through email, mail, phone conference, in person meetings, or other reasonable means to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties shall submit the matter to non-binding mediation in Tarrant County, Texas, upon written consent of authorized representatives of both parties in accordance with the Industry Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. The mediator shall be agreed to by the parties. Each party shall be liable for its own expenses, including attorney's fees; however, the parties shall share equally in the costs of the mediation. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute. Notwithstanding the fact that the parties may be attempting to resolve a dispute in accordance with this informal dispute resolution process, the parties agree to continue without delay all of their respective duties and obligations under this Agreement not affected by the dispute. Either party may, before or during the exercise of the informal dispute resolution process set forth herein, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests.

IN TESTIMONY WHEREOF, the parties hereby each warrant and represent that the individual signing below has been granted authority by proper order, resolution, ordinance or other authorization of the party, to execute this Agreement on its behalf. Each party is entitled to rely on the warranties and representations of the other party that the individual executing this Agreement has been given proper authority to do so, hereby binding the parties for the faithful and full performance of the terms and provisions of this Agreement.

ACCEPTED AND AGREED:

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement **this**
the _____ day of _____ 20_____.

CITY OF NORTH RICHLAND HILLS

By: _____
Paulette A. Hartman, City Manager

Date: _____

ATTEST:

Alicia Richardson, City Secretary

APPROVED TO FORM AND LEGALITY:

Bradley Anderle, City Attorney

CITY SEAL

DRISCOLL AUTOMATIC, INC. LLC.

By: Bryan Driscoll
Bryan Driscoll

Date: 5-6-2025

ATTEST:

Katelyn Wright
Notary Public in and for the State of Oklahoma

Type or Print Notary's Name Katelyn Wright

My Commission Expires:

03/09/2026

CORPORATE SEAL

