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Owner - Contractor Agreement Addendum

Re: Early Payment for Disadvantaged Small Business Enterprises

This Addendum to the Owner – Contractor Agreement regarding Early Payment for Disadvantaged Small Business Enterprises is made on the Effective Date of Click or tap to enter a date. by and between the Parties: Click or tap here to enter text. (“Owner”) and Click or tap here to enter text. (“Contractor”).

**Whereas**, Owner and Contractor entered into the Owner Contractor Agreement dated Click or tap to enter a date. (“OCA”) to perform work as defined in the OCA at the following Project: Click or tap here to enter text. located at: Click or tap here to enter text. (“Project”);

**Whereas**, the Parties desire participation and development of disadvantaged small business enterprises (“DSBE”) on the Project which the Parties agree adds value to the Project and the construction industry;

**Whereas**, the Parties recognize significant barriers in the construction industry that deter participation and development of DSBE including cash flow challenges when a DSBE Subcontractor incurs cost performing its duties and does not receive payment for a long time;

**Whereas**, this Addendum intends to provide early payments to the DSBE Subcontractor and remove delays in payments from Owner, Contractor, and, when DSBE Subcontractor is a second or more tiered subcontractor and is not in direct privity with Contractor, the intermediary contractors and contractor in privity with the DSBE Subcontractor (“Privity Contractor”).

**Now, Therefore**, in consideration of the respective agreements and terms set forth hereinafter, including reliance on and benefits of this Addendum, Owner and Contractor, intending to be legally bound, agree as follows:

1. **Contract Documents**. This Addendum is included in “Contract Documents.”
2. **Definition of DSBE**. A DSBE is a firm qualified to perform a scope of work on the Project and who meets all the following criteria:
   1. Social and Economic Disadvantage. The DSBE must be owned at least fifty one percent (51%) by an individual whose personal net worth is less than two million dollars ($2,000,000) and who is a member of a socially and economically disadvantaged group, namely woman, Black American, Hispanic American, Native American, Asian-Pacific American, and Subcontinent Asian American; or is a veteran and has business receipts less than twenty-five million dollars ($25,000,000) averaged over three years. Further, that individual must control the firm’s overall management, operations, and policies.
   2. Independence. The DSBE must be independent and not share employees, equipment, space, or other material resources with another firm.

This definition is intended to be consistent with definitions of the certified small business by the State.

1. **Certification of DSBE**. Contractor will review and certify any subcontractor on the Project who complies as a DSBE.

If checked, then the subcontractor must receive certification as a DSBE with a government agency with jurisdiction over this Agreement or the Project site.

1. **Early Payments to DSBE Subcontractors**. The Payment provisions (¶6(e)) of the OCA hereby are amended to provide for early payment to DSBE Subcontractors under this Addendum. Other than providing this process for early payment to DSBE Subcontractors, the terms and duties in the Contract Documents relating to all concerned parties (including Owner, Contractor, DSBE Subcontractor, and Privity Contractor) are unamended.
   1. DSBE Subcontractor Pay Requests. Participating DSBE Subcontractor will submit a request for early payment together with appropriate receipts and data, certifying that all information is true and accurate, to Contractor and Privity Contractor, if any. No request may exceed the money in DSBE’s bid for that scope of work: the materials provided or work performed. Any mistake in the request must be brought immediately to the Contractor and Owner, and either offset in the next payment or subject to reimbursement within five (5) business days at the option of the party owed the monies.
      1. *Materials.* The DSBE Subcontractor may request payment up to fifty percent (50%) of the value of the goods and supplies to be used on the Project. The Subcontractor’s request may be made at any time after the Goods are ordered. Subcontractor must provide all documentation related to the request showing that the Goods are for use on the Project, and, when available, when and where delivered, and proof of payment.

*Stockpile or Materials on Hand.* If checked, the Contracts Documents provide for early payment of materials when delivered. This paragraph is intended to be read consistently with the stockpile or material on hand provision in the Contract Documents by providing a partial payment at the time of order to the SDBE Subcontractor and the balance paid pursuant to the material at hands provision (such as when the Materials are delivered, stored, and assigned to the Project) and Contract Documents. Pursuant to this Addendum, DSBE Subcontractor will submit documentation required by the stockpile or material on hands provision, and Owner will pay fifty percent (50%) of the monies owed as stated below. The balance is paid pursuant to the terms of the material on hand provision or the Contract Documents.

* + 1. *Labor*. The DSBE Subcontractor may request payment for the actual wages paid to its employees (including monies, benefits and fringe benefits, paid time off, allowances, and per diem) for work actually performed by the DSBE Subcontractor’s employees on the Project. Contractor may require the DSBE Subcontractor to provide any records supporting this request including certified payroll.
  1. Early Payment**.** In response to a request for early payment in ¶4(a), Contractor will review the pay request, including consulting the Privity Contractor, and, within Choose an item., if approved, forward to Owner. Owner then will pay to Contractor the approved amount, and Contractor will hold the monies in trust and pay to the DSBE Subcontractor as provided below. Contractor may issue joint checks to the DSBE Subcontractor and other interested parties as Contractor, in consultation with the Privity Contractor, deems appropriate. Contractor will provide a copy or record of the payment to the Privity Contractor, if applicable.
     1. *Goods.* Owner will pay to Contractor within Choose an item. of receipt of the pay request, and Contractor will pay to the DSBE Subcontractor within Choose an item. of receipt of funds by Owner.
     2. *Labor*. Owner will pay to Contractor within Choose an item. of receipt of the pay request, and Contractor will pay to the DSBE Subcontractor Choose an item. days of receipt of funds by Owner.
  2. Obligations of DSBE Subcontractor.
     1. *Monies in Trust*. All monies received by the DSBE Subcontractor pursuant to this Addendum will be in trust to pay the DSBE Subcontractor’s vendors, subcontractors and employees.
     2. *Monies as an Advance*. All monies received by the DSBE Subcontractor pursuant to this Addendum are an advance on Payment(s) in the OCA and do not relieve, affect, or alter any duties owed by the DSBE Subcontractor (such as warranty, completing or fixing Work, or paying back monies overpaid or owed).
     3. *Confirming Records***.** DSBE Subcontractor will provide to Contractor within twenty (20) business days of receipt of the Early Payment all required documents, including certified payroll records, lien waivers from all vendors and subcontractors for the amounts received, and, upon request by Contractor, receipts or other documents appropriate within the reasonable opinion of Contractor that the monies were used to pay the requested vendors, subcontractors, and employees, respectively.
  3. Termination or Suspension of Early Payment. Contractor may reject or hold without processing pay requests by DSBE Subcontractor if, in the opinion of Owner, Contractor, or Privity Contractor, the DSBE Subcontractor fails to comply fully with its obligations (above or in the Contractor-Subcontractor Agreement), including a Dispute, error in payment request, question of noncompliant work, or failure to pay or provide information of payment to a vendor, employee, or third-party administrator of employee benefits, and until such time as Contractor reasonably deems such failure to be cured. Contractor further may terminate this early payment program on prospective requests with any individual or all DSBE Subcontractors on the Project for any reason or no reason whatsoever.

1. **Payment of Balance**. The balance of monies paid to a DSBE Subcontractor (contract price less monies received including monies received pursuant to this Addendum) will be paid pursuant to terms and conditions of the agreement between Contractor and DSBE Subcontractor and consistent with the OCA.

**In Witness Whereof**, the Parties have caused this Agreement to be executed on the Effective Date.

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| --- | --- |
| **On behalf of Owner**:    Name: Click or tap here to enter text.  Title: Click or tap here to enter text.  Date: Click or tap to enter a date. | **On behalf of Contractor**:    Name: Click or tap here to enter text.  Title: Click or tap here to enter text.  Date: Click or tap to enter a date. |

**The Undersigned Subcontractor** represents that it qualifies as a DSBE, desires to participate in this program between the Owner and Contractor for Early Payment to DSBE Subcontractors (“Program”), and agrees to comply with the terms of this Program. The Undersigned Subcontractor acknowledges and agrees that the benefits it receives from the Program are without consideration, it is an unintended third-party beneficiary of the Addendum between the Owner and Contractor, and any reliance or efforts undertaken by it pursuant to the Program do not constitute consideration. The benefits are provided wholly by the goodwill of Owner and Contractor, and may be suspended or terminated at any time by Owner or Contractor for any reason, with or without cause or penalty.

**Click here to enter name of Subcontractor Firm**

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date: Click or tap to enter a date.

If DSBE Subcontractor is a second or more tiered subcontractor and is not in direct privity with Contractor, then:

**The Undersigned Privity Contractor**, in consideration of the benefits of this Addendum, hereby accepts and agrees to the terms and duties in this Addendum, agrees that Contractor will make the early payments directly to the DSBE Subcontractor on its behalf, and otherwise will cooperate executing the intentions of this Addendum.

**Click here to enter name of Privity Contractor**

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date: Click or tap to enter a date.