

**SECOND AMENDATORY (ON-CALL)
CIVIL CONSTRUCTION SERVICES CONTRACT**

THIS SECOND AMENDATORY (ON-CALL) CIVIL CONSTRUCTION SERVICES CONTRACT AND AGREEMENT, made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (hereinafter referred to as the “**City**”) and party of the first part, and **FLATIRON CONSTRUCTORS, INC.**, a Delaware corporation authorized to do business in Colorado whose address is 385 Interlocken Crescent, Suite 900, Broomfield, CO 80021, hereinafter referred to as the "**Contractor**," party of the second part,

RECITALS

WITNESSETH, commencing on **April 21, 2020**, and for at least three (3) days the City advertised a solicitation for qualifications from qualified general contractors to perform services for furnishing all labor, tools, supplies, equipment, materials, and everything necessary and required for the following:

On-Call Civil Construction Services

WHEREAS, said Contractor is now willing, able and has the present capacity to perform all of said work in accordance with this Construction Contract, said advertisement and the referenced selection documents;

WHEREAS, the parties entered into an (On-Call) Civil Construction Services Contract and Agreement dated September 16, 2020 and an Amendatory Agreement dated March 15, 2023 (the “**Agreement**”) to perform, and complete all of the services and produce all the deliverables set forth on Exhibit A, *Utilization Plan*, to the City’s satisfaction; and

WHEREAS, the parties wish to amend the Agreement to update paragraph 7- Wage Rate Requirements, update paragraph 8- Payment of City Minimum Wage, increase the Maximum Contract Amount, add paragraph 20- Workforce, revise SC-21- Payment to Contractors, replace GC-1301- Disputes with SC-29, and add SC-30 Examination of Records and Audits.

NOW THEREFORE, in consideration of the compensation to be paid the Contractor, the mutual agreements hereinafter contained, and subject to the terms hereinafter stated, it is mutually agreed as follows:

1. Section 7 of the Agreement entitled “**WAGE RATE REQUIREMENTS**”, is hereby deleted in its entirety and replaced with:

“7. **PREVAILING WAGE REQUIREMENTS**: Contractor shall comply with, and agrees to be bound by, all requirements, conditions and City determinations regarding the Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, D.R.M.C. including, but not limited to, the requirement that every covered worker working on a City owned or leased building or on City-owned land shall be paid no less than the prevailing wages and fringe benefits

in effect on the date the bid or request for proposal was advertised. In the event a request for bids, or a request for proposal, was not advertised, Contractor shall pay every covered worker no less than the prevailing wages and fringe benefits in effect on the date funds for the contract were encumbered.

Date bid or request for qualifications/proposals was advertised: April 21, 2020.

Prevailing wage and fringe rates will adjust on the yearly anniversary of the actual date of bid or proposal issuance, if applicable, or the date of the written encumbrance if no bid/proposal issuance date is applicable. Unless expressly provided for in this Agreement, Contractor will receive no additional compensation for increases in prevailing wages or fringe benefits.

Contractor shall provide the Auditor with a list of all subcontractors providing any services under the contract.

Contractor shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the contract.

Contractor shall prominently post at the work site the current prevailing wage and fringe benefit rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

If Contractor fails to pay workers as required by the Prevailing Wage Ordinance, Contractor will not be paid until documentation of payment satisfactory to the Auditor has been provided. The City may, by written notice, suspend or terminate work if Contractor fails to pay required wages and fringe benefits.

2. Section 8 of the Agreement entitled “**PAYMENT OF CITY MINIMUM WAGE**”, is hereby deleted in its entirety and replaced with:

“**8. COMPLIANCE WITH DENVER WAGE LAWS:** To the extent applicable to the Contractor’s provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

3. Section 17 of the Agreement entitled “**MAXIMUM CONTRACT AMOUNT**”, is hereby amended to read as follows:

“17. MAXIMUM CONTRACT AMOUNT

Each Project will be assigned and authorized separately by Work Order. The maximum amount to be paid by the City to the Contractor for satisfactory completion of all Work Orders authorized by the City and performed by the Contractor under this Contract shall in no event exceed the sum of **FORTY-FIVE MILLION DOLLARS AND NO CENTS (\$45,000,000.00)**, unless this Contract is modified to increase said amount by a duly authorized, written contract amendment mutually agreeable to and executed by the parties hereto.”

4. Section 20 of the Agreement entitled **“WORKFORCE”**, is hereby added to the Agreement as follows:

“20. WORKFORCE

The City is committed to developing and implementing a Workforce Program to increase outreach, training, job opportunities and employment of people in economically disadvantaged areas and populations, while maintaining a competitive procurement environment on large construction projects. In addition, the City is committed to addressing shortages in qualified construction workers generally and in Targeted Categories by increasing the number of apprentices. In the event that a work order will be issued for ten million dollars or more, Contractor shall contact the Denver Construction Careers Program (DCCP) of the Denver Economic Development and Opportunity agency (DEDO) to determine applicable requirements before submitting their final proposal. Contractor shall comply with requirements established by the DCCP. The executed work order will include workforce requirements established by the DCCP. Additional information and contact information can be found at <https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Economic-Development-Opportunity/Employers-Jobseekers/Denver-Construction-Careers-Program>.”

5. Section GC-311 entitled **“NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT”**, is hereby deleted in its entirety and replaced with:

“GC-311 RESCINDED”

6. Section SC-21 entitled **“PAYMENT TO CONTRACTORS”**, is hereby deleted in its entirety and replaced with:

“SC-21 PAYMENT TO CONTRACTORS

Applications for payment shall be based on the Contract Unit Prices or the approved Schedule of Values described in GC 903.1

In accordance with General Contract Condition 902, PAYMENT PROCEDURE, the party(ies) responsible for review of all Pay Applications shall be the Project Manager assigned to each Work Order.

In accordance with General Contract Condition 906, APPLICATIONS FOR PAYMENT, each Application submitted shall include the following:

Starting with the second payment application, the payment applications shall be accompanied by a completed Contractors' Certification of Payment Form (CCP), listing all first tier subcontractors and suppliers and all certified subcontractors or suppliers that are listed for participation towards any assigned SMWDBE program goal. The final payment application must be accompanied by an executed Final/Partial Release and Certification of Payment Form and Certificate of Contract Release Form from the Contractor."

7. Section GC-1301, entitled "**TITLE 13- DISPUTES**" of the Agreement is hereby deleted in its entirety. SC-29 "**DISPUTES**", is added to Exhibit F as follows:

"SC-29 DISPUTES

1. It is the express intention of the parties that all disputes of any nature whatsoever regarding this Construction Contract including, but not limited to, any claims for compensation or damages arising out of breach or default under this Construction Contract, shall be resolved by administrative hearing pursuant to the provisions of Section 56-106, DRMC for Public Works Department Contracts, pursuant to the provisions of DRMC §5-17 for Department of Aviation contracts, or an alternative process that is established for a specific issue by the DRMC or associated rules and regulations.

2. When the DRMC, or rules and regulations promulgated pursuant to the DRMC, provide an alternative review or resolution process for specific disputes that may arise out of this Construction Contract the more specific process set forth in the DRMC and associated rules and regulations controls.

3. The Contractor expressly agrees that these disputes resolution processes are the sole and only dispute resolution mechanisms that will be recognized and employed by the parties for any claims put forward by the Contractor, notwithstanding any other claimed theory of entitlement on the part of the Contractor or its Subcontractors or Suppliers."

8. Section SC-30 of the Agreement entitled "**EXAMINATION OF RECORDS AND AUDITS**", is hereby added to Exhibit F as follows:

"SC-30 EXAMINAION OF RECORDS AND AUDITS

Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the

Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.”

9. As herein amended, the Agreement is affirmed and ratified in each and every particular.

10. This Second Amendatory (On-Call) Civil Construction Services Contract and Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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Contract Control Number: DOTI-202472521-02 [202055406-02]
Contractor Name: FLATIRON CONSTRUCTORS, INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

DOTI-202472521-02 [202055406-02]
FLATIRON CONSTRUCTORS, INC.

DocuSigned by:
Grant Johns
DE0C339A96D14DC...
By: _____

Grant Johns
Name: _____
(please print)

Vice President & District Manager
Title: _____
(please print)

ATTEST: [if required]

DocuSigned by:
Kevin McCormick
CBB144F0B7CB480...
By: _____

Kevin McCormick
Name: _____
(please print)

Central Division Finance Manager
Title: _____
(please print)