

RESOLUTION NO. 23-218

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING THE PURCHASE OF A POLE BARN ENCLOSURE FROM LAG CONSTRUCTION COMPANY, LLC IN THE TOTAL AMOUNT OF \$86,686.50 AND AUTHORIZING A CONTINGENCY FOR UNFORESEEN CONDITIONS UP TO \$8,668.65.

BE IT RESOLVED that:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain agreement between the City and LAG Construction Company, LLC, relating to the construction of a Pole Barn Enclosure in the amount of Eighty-Six Thousand, Six Hundred Eighty-Six Dollars and Fifty Cents (\$86,686.50) in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

2. The City Manager is authorized to execute and deliver on behalf of the City change orders for unforeseen conditions related to this project in an cumulative amount not to exceed Eight Thousand, Six Hundred Sixty-Eight Dollars and Sixty-Five Cents (\$8,668.65) provided that the City Building Official certifies that the Change Order does not result in a fundamental change to the scope of the project or standard of materials used for such, the Finance Director confirms the contingency amount set forth herein is not exceeded, and the City Attorney has reviewed the form of the change order.

THIS RESOLUTION shall be effective immediately upon passage.


PASSED in regular session this 14th day of September, 2023.

CITY OF PANAMA CITY BEACH

By: _____


Mark Sheldon, Mayor

ATTEST:



Lynne Fasone, City Clerk

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NOTICE OF AWARD

TO: LAG CONSTRUCTION COMPANY LLC
1010 ARIKASAS AVENUE
LYNN HAVEN, FL. 32444

PROJECT DESCRIPTION:

POLE BARN ENCLOSURE

The City of Panama City Beach ("City") has considered the BID submitted by you for the above-described Project in response to its Advertisement for Bids dated July 28, 2023, and associated Information for Bidders.

You are hereby notified that your Bid in the amount of \$ 86,686.50 has been accepted by the City. Provided, however, nothing in this Notice or your delivery to the City of the Agreement executed by you (with the required Bonds and Certificates of Insurance) shall in any manner or way be deemed to create any contract between you and the City. No such contract shall be created unless and until the City signs the Agreement.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance Bond, Payment Bond, and Certificates of Insurance within ten (10) calendar days from the date of this Notice.

If you fail to execute said Agreement, together with the required Certificates of Insurance and Bonds, within ten (10) calendar days from the date of this Notice, City will be entitled to consider all your rights arising out of City's acceptance of your BID as abandoned and as a forfeiture of your Bid Deposit. The City will be entitled to all other rights and remedies as may be available to it at law.

You must return an acknowledged copy of this Notice of Award to the City, with the executed Agreement and required Certificates of Insurance and Bonds, within the above noted ten (10) calendar day period.

Dated this 15 day of SEPT., 2023.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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CITY OF PANAMA CITY BEACH

Owner

By  _____

Name: Drew Whitman

Title City Manager

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged

By _____

This the _____ day of _____, 20____.

Name _____

Title _____

[END OF SECTION 00080]

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AGREEMENT

THIS AGREEMENT is made this 14 day of September, 2023 by and between THE CITY OF PANAMA CITY BEACH, FLORIDA, (hereinafter called "OWNER") and LAG Construction Company, doing business as a Limited Liability Company (an individual), or (a partnership), or (a corporation), having a business address of 1010 Arkansas Avenue, Lynn Haven, FL. 32444 (hereinafter called "CONTRACTOR"), for the performance of the Work (as that terms is defined below) in connection with the construction of Pole Barn Enclosure ("Project"), to be located at 200 N. Gulf Blvd., Panama City Beach, Florida, in accordance with the Drawings and Specifications prepared by Horizons Plans & Permits, the Engineer of Record (hereinafter called "Engineer") and all other Contract Documents hereafter specified.

OWNER and CONTRACTOR, for the consideration herein set forth, agree as follows:

1. The CONTRACTOR shall furnish, at its sole expense, all supervision, labor, equipment, tools, material, and supplies to properly and efficiently perform all of the work required under the Contract Documents and shall be solely responsible for the payment of all taxes, permits and license fees, labor fringe benefits, insurance and bond premiums, and all other expenses and costs required to complete such work in accordance with this Agreement (collectively the "Work"). CONTRACTOR'S employees and personnel shall be qualified and experienced to perform the portions of the Work to which they have been assigned. In performing the Work hereunder, CONTRACTOR shall be an independent contractor, maintaining control over and having sole responsibility for CONTRACTOR'S employee and other personnel. Neither CONTRACTOR, nor any of CONTRACTOR's sub-contractors or sub-subcontractors, if any, nor any of their respective employees or personnel, shall be deemed servants, employees, or agents of the OWNER.
2. The CONTRACTOR will commence the Work required by the Contract Documents within ten (10) calendar days after the date of the NOTICE TO PROCEED to be issued by OWNER in writing within thirty (30) calendar days from the date of this Agreement and will achieve Substantial Completion of the Work within 90 days of the required commencement date, except to the extent the period for Substantial Completion is extended pursuant to the terms of the Contract Documents ("Contract Time"). Final Completion of the Work shall be achieved by CONTRACTOR within the time period set forth in the General Conditions.
3. The CONTRACTOR agrees to pay the OWNER, as liquidated damages, the sum of \$100 for each calendar day that expires after the Contract Time for Substantial Completion as more fully set forth in the General Conditions.
4. The CONTRACTOR agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$86,686.50 as shown in the BID SCHEDULE, included within the Bid Proposal Form, as said amount may be hereafter adjusted pursuant to the terms of the Contract Documents ("Contract Price").

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5. The term "Contract Documents" means and includes the following documents, all of which are incorporated into this Agreement by this reference:

ADVERTISEMENT FOR BIDS
INFORMATION FOR BIDDERS
BID PROPOSAL FORM
AGREEMENT
NOTICE OF AWARD
NOTICE TO PROCEED
CONFLICT OF INTEREST STATEMENT
DRUG-FREE WORKPLACE FORM
E-VERIFY AFFIDAVIT
NON-COLLUSION AFFIDAVIT
PUBLIC ENTITY CRIMES STATEMENT
W9
CERTIFICATE OF INSURANCE
GENERAL CONDITIONS
SUPPLEMENTAL CONDITIONS
SUBMISSION OF WORK SCHEDULE
CONTRACTOR QUALITY CONTROL
CONTRACT CLAIMS AND CHANGES
PROJECT REPRESENTATIVE
SALES TAX EXEMPTION

DRAWINGS prepared by Horizons Plans & Permits numbered:

S0.00, A1.00, A2.00, A3.00, S1.00, S3.00, S4.00 and S5.00, dated March 2023.

SPECIFICATIONS prepared or issued by Horizons Plans & Permits, dated March 2023.

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ADDENDA

No. 1, dated August 10, 2023

No. 2, dated August 14, 2023

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No. 3, dated August 15, 2023

No. _____, dated _____, 20 _____

The Contract Documents also includes any written amendments to any of the above signed by the party to be bound by such amendment. The Contract Documents are sometimes referred to herein as the "Agreement."

6. The OWNER will pay the Contract Price to the CONTRACTOR in the manner and at such times as set forth in Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
8. This Agreement shall be governed by the laws of the State of Florida.
9. All notices required or made pursuant to this Agreement shall be in writing and, unless otherwise required by the express terms of this Agreement, may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by Federal Express, Express Mail, Airborne, Emery, Purolator or other expediated mail or package delivery, or (iii) by hand delivery to the appropriate address as herein provided. Notices to OWNER required hereunder shall be directed to the following address:

If to Owner:

City of Panama City Beach
17007 Panama City Beach Parkway
Panama City Beach, FL 32413

ATTENTION: Drew Whitman City Manager
Fax No.: (850) 233-5108

If to Contractor:

CONTRACTOR: LAG Construction Company LLC.

ADDRESS: 1010 Arkansas Avenue, Lynn Haven,

FL. 32444

ATTENTION: (850)896-6377 Phone No.

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Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

10. CONTRACTOR recognizes that OWNER is exempt from sales tax and may wish to generate sales tax savings for the Project. Accordingly, to the extent directed by and without additional charge to OWNER, CONTRACTOR shall comply with and fully implement the sales tax savings program as more fully described in the Sales Tax Exemption Addendum. If required by OWNER, the Sales Tax Exemption Addendum shall be made a part of the Contract Documents, the form of which is set forth in Section 00808.
11. The failure of OWNER to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a continuing waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
12. Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by this Agreement.
13. Should any provision of the Agreement be determined by a court with jurisdiction to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.
14. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
15. For this Project, OWNER has designated a Project Representative to assist OWNER with respect to the administration of this Agreement. The Project Representative to be utilized by OWNER for this Project, shall be Wyatt Rothwell, Civil Engineer, PE.
16. CONTRACTOR acknowledges and agrees that no interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever, including those for which the OWNER, PROJECT REPRESENTATIVE, or ENGINEER may be responsible, in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR expressly acknowledges and

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agrees that it shall receive no damages for delay. CONTRACTOR's sole remedy, if any, against OWNER will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of OWNER or anyone for whom OWNER is liable, and such delays have a cumulative total of more than 90 calendar days, CONTRACTOR may make a claim for its actual and direct delay damages accruing after said 90 calendar days as provided in Section 00805 Supplemental Conditions, Contract Claims and Changes. Except as expressly set forth in this section, in no event shall OWNER be liable to CONTRACTOR whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

17. INSURANCE - BASIC COVERAGES REQUIRED

The CONTRACTOR shall at its expense procure and maintain in force during the Term the insurance on policies and with insurers acceptable to the City as required by the City's Insurance Requirements attached hereto as Exhibit "A." These insurance requirements shall not limit the liability of the CONTRACTOR. The insurance coverages and limits required of CONTRACTOR under this Agreement are designed to meet the minimum requirements of OWNER and the OWNER does not represent these types or amounts of insurance to be sufficient or adequate to protect the CONTRACTOR'S interests or liabilities. CONTRACTOR alone shall be responsible to the sufficiency of its own insurance program.

Within thirty (30) days of the date of the Award, and thereafter upon the written request of the City, Bidder shall furnish to the City such certificates of coverage and certified copies of policies pursuant to the City's Insurance Requirements. In order to satisfy this provision, the documentation required by this part must be sent to the following address: Attn: Risk Manager, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413. The CONTRACTOR and the CONTRACTOR'S subcontractors and sub-subcontractors shall be solely responsible for all of their property, including but not limited to any materials, temporary facilities, equipment, and vehicles, and for obtaining adequate and appropriate insurance covering any damage or loss to such property. The CONTRACTOR and the CONTRACTOR'S sub-contractors and sub-subcontractors expressly waive any claim against OWNER arising out of or relating to any damage or loss of such property, even if such damage or loss is due to the fault or neglect of the OWNER or anyone for whom the OWNER is responsible. The CONTRACTOR is obligated to include, or cause to be included, provisions similar to this paragraph in all of the CONTRACTOR'S subcontracts and its subcontractors' contracts with their sub-subcontractors.

The CONTRACTOR'S deductibles/self-insured retentions shall be disclosed to OWNER and are subject to OWNER'S approval. They may be reduced or eliminated at the option of OWNER. The CONTRACTOR is responsible for the amount of any deductible or self-insured retention. Any deductible or retention applicable to any claim

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or loss shall be the responsibility of CONTRACTOR and shall not be greater than \$25,000, unless otherwise agreed to, in writing, by OWNER.

18. PUBLIC RECORDS:

The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Contractor is acting on behalf of City as provided under Section 119.011(2), Contractor agrees to also comply with that law, specifically including to:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- B. Upon request of the City, provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law, or provide the City with a copy of the requested records.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
- D. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.
- E. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, IT IS THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, AND TO CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-233-5100, LFASONE@PCBFL.GOV, 17007 PANAMA CITY BEACH PARKWAY, PANAMA CITY BEACH, FL 32413.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in two (2) copies each of which shall be deemed an original on the date first written above.

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(SEAL)

OWNER:

CITY OF PANAMA CITY BEACH, FLORIDA

BY: [Signature]

NAME: Drew Whitman
(Please type)

TITLE: City Manager

ATTEST:

[Signature]
City Clerk

[Signature]
City Attorney (as to form only)

CONTRACTOR:

BY: [Signature]

NAME: Kerry Odom
(Please type)

ADDRESS: 1010 Arkansas Ave
Lynn Haven FL 32444

ATTEST: [Signature]

NAME Marla Clark
(Please Type)



[END OF AGREEMENT]