

**FORM OF AGREEMENT
BETWEEN CITY OF EDINA AND CONTRACTOR
FOR NON-BID CONTRACT
PROJECT ENG22104
AQUATIC CENTER PUMP ROOM MECH/ELECTRIC UPGRADES**

THIS AGREEMENT made this 7th day of February **2023**, by and between the **CITY OF EDINA**, a Minnesota municipal corporation (“Owner” or “City”) and **_EGAN COMPANIES_**, (“Contractor”). Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. CONTRACT DOCUMENTS. The following documents shall be referred to as the “Contract Documents”, all of which shall be taken together as a whole as the contract between the parties as if they were set verbatim and in full herein:

- A. This Agreement
- B. City of Edina AIA A201 General Conditions
- C. Study and Specifications Provided by HGA
- D. Responsible Contractor Verification of Compliance
- E. Contractor’s Quote

In the event of a conflict among the provisions of the Contract Documents, the order in which they are listed above shall control in resolving any such conflicts with Contract Document “A” having the first priority and Contract Document “F” having the last priority.

2. OBLIGATIONS OF THE CONTRACTOR. The Contractor shall provide the goods, services, and perform the work in accordance with the Contract Documents.

3. CONTRACT PRICE. Owner shall pay Contractor for completion of the Work, in accordance with the Contract \$ 72,497 inclusive of taxes, if any.

4. PAYMENT PROCEDURES.

- A. Contractor shall submit Applications for Payment. Applications for Payment will be processed by the City Engineer.
- B. Progress Payments; Retainage. Owner shall make 95% progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment during performance of the Work.
- C. Payments to Subcontractors.

- (1) Prompt Payment to Subcontractors. Pursuant to Minn. Stat. § 471.25, Subd. 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor’s receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of 1 ½ percent per month or any part of a month to the subcontractor on any undisputed amount not

paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor.

- (2) Form IC-134 (attached) required from general contractor. Minn. Stat. § 290.92 requires that the City of Edina obtain a Withholding Affidavit for Contractors, Form IC-134, before making final payments to Contractors. This form needs to be submitted by the Contractor to the Minnesota Department of Revenue for approval.

The form is used to receive certification from the state that the vendor has complied with the requirement to withhold and remit state withholding taxes for employee salaries paid.

- D. Final Payment. Final payment will not be made until the Contractor has filed with the Owner a fully and duly executed Affidavit, General Waiver and Indemnity Agreement, in the form attached hereto as Exhibit B and hereby made a part hereof, together with such other and additional evidence as Owner may request, in form and substance satisfactory to the Owner, that all labor, materials and services expended or used in the Work have been paid for in full and that no liens or other claims for such labor, materials or services can be made or claimed against Contractor, Owner or any other person or any property. In case such evidence is not furnished, the Owner may retain out of any amount due said Contractor a sum sufficient, in the reasonable discretion of Owner, but in any event not less than one and one-half times the sum determined by Owner to be necessary, to pay for all labor, material, services or other claims which are then unpaid or which are then believed by Owner, in its reasonable discretion, to be unpaid.

Upon final completion of the Work, Owner shall pay the remainder of the Contract Price as recommended by the City Engineer.

5. **COMPLETION DATE.** The Work must be completed by June 2nd, 2023
6. **CONTRACTOR'S REPRESENTATIONS.**

- A. Contractor has examined and carefully studied the Contract Documents and other related data identified in the Contract Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface

structures at or contiguous to the Site (except Underground Facilities) which have been identified in the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site.

- E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Responsible Contractor. This contract may be terminated by the City at any time upon discovery by the City that the prime contractor or subcontractor has submitted a false statement under oath verifying compliance with any of the minimum criteria set forth in Minn Stat. § 16C.285, subd. 3.
- K. Subcontracts:
 - (1) Unless otherwise specified in the Contract Documents, the Contractor shall, upon receipt of the executed Contract Documents, submit in writing to the Owner the names of the Subcontractors proposed for the work. Subcontractors may not be changed except at the request or with the consent of the Owner.
 - (2) The Contractor is responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of their direct

and indirect employees, to the same extent as the Contractor is responsible for the acts and omissions of the Contractor's employees.

- (3) The Contract Documents shall not be construed as creating any contractual relation between the Owner and any subcontractor.
- (4) The Contractor shall bind every subcontractor by the terms of the Contract Documents.

7. WORKER'S COMPENSATION. The Contractor shall obtain and maintain for the duration of this Contract, statutory Worker's Compensation Insurance and Employer's Liability Insurance as required under the laws of the State of Minnesota.

8. COMPREHENSIVE GENERAL LIABILITY. Contractor shall obtain the following minimum insurance coverage and maintain it at all times throughout the life of the Contract, with the City included as an additional name insured on the general liability insurance on a primary and noncontributory basis. The Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

Bodily Injury:	\$1,000,000 each occurrence \$1,000,000 aggregate products and completed operations
Property Damage:	\$1,000,000 each occurrence \$1,000,000 aggregate

Contractual Liability (identifying the contract):

Bodily Injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence \$1,000,000 aggregate

Comprehensive Automobile Liability (owned, non-owned, hired):

Bodily Injury:	\$1,000,000 each occurrence \$1,000,000 each accident
Property Damage:	\$1,000,000 each occurrence

9. WARRANTY. The Contractor guarantees that all new equipment warranties as specified within the quote shall be in full force and transferred to the City upon payment by the City. The Contractor shall be held responsible for any and all defects in workmanship, materials, and equipment which may develop in any part of the contracted service, and upon proper notification by the City shall immediately replace, without cost to the City, any such faulty part or parts and damage done by reason of the same in accordance with the bid specifications.

10. INDEMNITY. The Contractor agrees to indemnify and hold the City harmless from any claim made by third parties as a result of the services performed by it. In addition, the

Contractor shall reimburse the City for any cost of reasonable attorney's fees it may incur as a result of any such claims.

11. PERFORMANCE AND PAYMENT BONDS. Performance and payment bonds are not required for the doing of any public work if the contract price is \$175,000 or less. On projects of more than \$175,000 for the doing of public work a payment bond and a performance bond each in the amount of the contract price must be furnished to the City prior to commencement of work. The form of the bonds must satisfy statutory requirements for such bonds.

12. MISCELLANEOUS.

- A. Terms used in this Agreement have the meanings stated in the General Conditions.
- B. Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- C. Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provisions.
- D. Data Practices/Records.
 - (1) All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy.
 - (2) All books, records, documents and accounting procedures and practices to the Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.
- E. Software License. If the equipment provided by the Contractor pursuant to this Contract contains software, including that which the manufacturer may have embedded into the hardware as an integral part of the equipment, the Contractor shall pay all software licensing fees. The Contractor shall also pay for all software updating fees for a period of one year following cutover. The Contractor shall have no obligation to pay for such fees thereafter. Nothing in the software license or licensing agreement shall obligate the City to pay any additional fees as a condition for continuing to use the software.

- F. Patented devices, materials and processes. If the Contract requires, or the Contractor desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the Owner. If no such agreement is made or filed as noted, the Contractor shall indemnify and hold harmless the Owner from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the Project agreed to be performed under the Contract, and shall indemnify and defend the Owner for any costs, liability, expenses and attorney's fees that result from any such infringement.
- G. Assignment. Neither party may assign, sublet, or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.
- H. Waiver. In the particular event that either party shall at any time or times waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.
- I. Governing Law/Venue. The laws of the State of Minnesota govern the interpretation of this Contract. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Hennepin County.
- J. Severability. If any provision, term or condition of this Contract is found to be or become unenforceable or invalid, it shall not effect the remaining provisions, terms and conditions of this Contract, unless such invalid or unenforceable provision, term or condition renders this Contract impossible to perform. Such remaining terms and conditions of the Contract shall continue in full force and effect and shall continue to operate as the parties' entire contract.
- K. Entire Agreement. This Contract represents the entire agreement of the parties and is a final, complete and all inclusive statement of the terms thereof, and supersedes and terminates any prior agreement(s), understandings or written or verbal representations made between the parties with respect thereto.
- L. Permits and Licenses; Rights-of-Way and Easements. The Contractor shall give all notices necessary and incidental to the construction and completion of the Project. The City will obtain all necessary rights-of-way and easements. The Contractor shall not be entitled to any additional compensation for any construction delay resulting from the City's not timely obtaining rights-of-way or easements.

- M. If the work is delayed or the sequencing of work is altered because of the action or inaction of the Owner, the Contractor shall be allowed a time extension to complete the work but shall not be entitled to any other compensation.

CITY OF EDINA

BY: _____
Its Mayor

AND _____
Its City Manager

CONTRACTOR

BY: _____
Its

AND _____
Its