



Construction Agreement **TEMPLATE**

Agreement Date: **March 22, 2013**

Wilbur-Ellis Company
P.O. Box 511
Yuba City, CA 95992

Construction Company, Inc.
123 Regal Street
City, State 10109

Project Location:

Wilbur-Ellis Company
21204 N. Reynolds Rd
Rio Hondo, TX 78583

Project Name and Description:

WILBUR-ELLIS – WAREHOUSE EXPANSION. – This project is for the construction of a new 3,000 SF Pre-Engineered Metal Building Expansion at the existing Wilbur-Ellis Facility in Rio Hondo, TX.

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Section A. Contract Documents:

1. Jones Construction "WILBUR-ELLIS PROJECT CONSTRUCTION ESTIMATE". Attachment #1.
2. Drawings by H.G.F.A. Architects Dated 1-30-13, Sheets T1, D1, and A1. Attachment #2.
3. Drawings by H.G.F.A Architects Dated 3-30-07, with red-line revisions, Sheets E1.1 and E2.1. Attachment #3.

Section B. Construction Schedule:

1. The date of commencement of the work shall be agreed upon.
2. The contract duration will be no later than 75 calendar days.

Section C. Contract Value and Start Date:

1. Subject to additions and deletions in accordance with Section N. Changes to Contract, the contract sum is _____ **Dollars and zero cents (\$000,000.00.)**
2. Commencement of work will be upon satisfactory weather conditions.

Section D. Payment:

1. Contractor shall submit an invoice for completed work and in accordance with the approved Schedule of Values. **See Submittals Section and Payments and Completion Section.**
2. The submitted invoice will be subject to owner's reasonable review and approval. Once approved the owner shall pay 95% of the invoice amount within 30 days, and the remaining 5% of each invoice shall be held as retention, which will be paid in full at Final Completion.
3. The owner reserves the right to reduce retention percentages at its discretion.
4. Contractor shall keep full and detailed accounts and records, and owner shall be afforded access to the contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this contract.

Section E. Insurance:

1. General Liability - Contractor shall maintain limits no less than \$2,000,000 per occurrence / \$2,000,000 aggregate for bodily injury and property damage including products/completed operations.
2. Automobile Liability - Contractor shall maintain limits of no less than \$1,000,000 combined single limit for bodily injury and property damage.
3. Workers' Compensation - Contractor shall provide statutory coverage for all employees including employers liability coverage with limits no less than \$1,000,000.
4. Other Insurance Provisions - The policy or policies must:
 - a. Name Wilbur-Ellis Company, its officers, officials and its employees as additional insureds on the general and automobile liability policies.
 - b. Be primary & non-contributory. Any insurance maintained by Wilbur-Ellis Company, its officers, officials, employees or volunteers, shall be excess of the Contractor's insurance.
 - c. Include blanket contractual liability and products-completed operations.
 - d. Not be canceled unless thirty (30) days prior written notice is provided to the Wilbur-Ellis Company.
 - e. Grant a waiver of any right to subrogation to Wilbur-Ellis Company, its officers, officials, employees or volunteers. Wilbur-Ellis Company also agrees to grant a waiver of subrogation to contractor.
 - f. Be placed with insurers with a current A.M. Best rating of no less than A:VII
5. Verification of Coverage - Contractor shall furnish us with original certificates of insurance and amendatory endorsements noting additional insured and waiver of subrogation provisions as noted above. Copies of the applicable policy language providing evidence of coverage are also acceptable. Failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.
6. The Wilbur-Ellis Company reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Section F. General Provisions:

1. This contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, whether written or oral. This contract may be amended or modified only by a written modification in accordance with the Changes Paragraph.

2. The intent of the contract documents is to include all items necessary for the proper execution and completion of the work by the contractor. The contract documents are complementary, and what is required by one shall be as binding as if required by all.
3. The owner has the right to stop work if the contractor fails to correct work which is not in accordance with the contract documents. The owner may suspend the work until the correction is made to the owner's satisfaction.
4. The owner has the right to carry out the work if the contractor defaults, or neglects to correct the work deficiencies in accordance with the contract documents within seven days after receipt of written notice of deficiency. In such case, the contract sum shall be adjusted to deduct the owner's cost of correction from payments due to the contractor.
5. The owner has the right, at any time, to terminate the work, the Project, and/or this Contract in part or in whole for its convenience by giving written notice thereof to the contractor. The contractor may recover from the owner payment for all work executed, including any actual costs incurred by the contractor in terminating subcontracts and purchase orders.

Section G. Contractor:

1. Execution of the contract by the contractor is a representation that the contractor has visited the site, become familiar with the local conditions under which the work is to be performed and correlated personal observations with the requirements of the contract documents.
2. The contractor will have sole responsibility for determining construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work.
3. The contractor will enforce strict discipline and good order among the contractor's employees, subcontractors, and other persons carrying out the contract work. The contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

Section H. Warranty:

1. The contractor warrants to the owner that: materials and equipment furnished under the contract will be new and of good quality unless otherwise required or permitted by the contract documents; the work will be free from defects not inherent in the quality required or permitted; the work will conform to the requirements of the contract documents, all applicable codes, standards and ordinances; title to all work covered by the submitted invoice will pass to the owner no later than the time of payment; upon submittal of an invoice for payment all work for which payments have

already been received from the owner shall be free and clear of liens, claims, security interests or encumbrances favor of the contractor, subcontractors, material suppliers, or equipment relating to the work; and upon Final Completion, there will be no liens, claims, security interests or encumbrances on the Project arising out of or in connection with the work.

Section I. Permits, Fees, and Notices:

1. The contractor shall comply with and give notices required by agencies having jurisdiction over the work. The contractor shall be fully responsible for ensuring all work complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

Section J. Submittals:

1. Schedule of Values two weeks prior to first payment request.
2. The contractor shall submit and receive owner's written approval for any applicable submittals called out within the contract documents, prior to their use on the Project.

Section K. Clean Up:

1. The contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the work. At the completion of the work, the contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

Section L. Indemnification:

1. To the fullest extent permitted by law, the contractor shall protect, defend, indemnify and hold harmless the owner and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), except to the extent caused by the intentional or negligent acts or omissions of the owner. The rights and obligations described in this paragraph shall survive the completion or termination of this Contract.

Section M. Changes to the Contract:

1. The owner, without invalidating the contract, may order changes in the work within the general scope of the contract consisting of additions, deletions or

revisions. These change orders will be done in writing and accepted by the owner and contractor prior to commencement of change work.

2. If the owner and the contractor can not agree to the appropriate change in the contract sum for any change order, the owner shall pay the contractor its actual cost plus reasonable overhead and profit for any additional work required.

Section N. Payments and Completion:

1. The contractor shall submit to the owner a "Schedule of Values" two weeks prior to the first payment request. The schedule of values shall be approved by the owner before any payment is made.
2. Payment of invoices does not constitute acceptance of work not in accordance with the requirements of the contract documents.
3. The contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

Section O. Substantial and Final Completion:

1. Substantial Completion is the stage in the progress of work when the work or designated portion thereof is sufficiently complete in accordance with the contract documents so the owner can occupy or utilize the work for its intended use.
2. Substantial Completion shall be a milestone indicated on the submitted construction schedule. The contractor must request from the owner a written approval for substantial completion.
3. Final Completion shall occur when the contract has been fully performed, and owner receives all releases and waivers of liens sufficient to show the Project is free and clear of liens, claims, security interests or encumbrances from the contractor, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the work.
4. Upon Final Completion, contractor shall submit the final payment request, and the owner will inspect the work. Once the owner finds the work acceptable and the contract fully performed, the owner will promptly issue final payment.

Section P. Correction of Work:

1. The contractor shall promptly correct work rejected by the owner as failing to conform to the requirements of the contract documents. The contractor

shall bear the costs of correcting such rejected work, including the cost of uncovering, replacement and additional testing.

2. In addition to the contractor's other obligations including warranties under the contract, the contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the contract documents.

Section Q. Other:

1. None

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