

CONSTRUCTION CONTRACT
RFP 24-ES-3
PAINTING SERVICES - ALAN R. THOMAS WATER TREATMENT PLANT
AGREEMENT
CITY OF EDGEWATER
VOLUSIA COUNTY, FLORIDA

THIS AGREEMENT is made and entered into this _____ day of _____, 2024, by and between FIVE12 PAINTING & REMODELING LLC duly authorized to conduct business in the State of Florida and whose address is 584 Peg Ct. Saint Cloud. FL 34772, hereinafter, called "CONTRACTOR" and the **CITY OF EDGEWATER**, a political subdivision of the State of Florida, whose address is 104 North Riverside Drive, Edgewater, FL 32132, hereinafter called "CITY".

WITNESSETH: The Owner and the Contractor, for the consideration stated herein, agree as follows:

ARTICLE I. SCOPE OF WORK. The Contractor shall perform all required work and shall provide and furnish all labor, materials, necessary tools, expendable equipment and all utility and transportation services required to complete the construction of and all appurtenant work thereto, as described in the **RFP 24-ES-3 – Painting Services – Alan R. Thomas Water Treatment Plant** project document.

All work shall be in strict compliance with the drawings and specifications, including any and all Addenda, and together with all Contract Documents hereinafter enumerated and made a part thereof.

It is understood and agreed that said labor, materials, tools, equipment and service shall be furnished and said work performed and completed subject to the approval of the Owner.

Contractor shall bear the risk of loss for goods delivered under this Contract from the time of shipping to the City until delivered at the destination specified by the City for delivery.

ARTICLE II. CONTRACT PRICE. The Owner shall pay the Contractor for performance of the work in accordance with the Contract Documents in current funds as follows:

\$ 160,635.00

Figures

One hundred sixty thousand six hundred thirty-five dollars

In Words

Payment will be made at the unit prices listed in the attached ITB for the actual completed quantity of each item, subject to additions and deductions as provided for in the ITB.

RETAINAGE. The City shall have the right to withhold retainage from Compensation paid to a Contractor Should the City decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Contractor shall be:

- A. _____ % of the total contract price.
- B. 5 % of each payment of a milestone payment based on a Project milestone schedule. (Per Florida Statue 218.735
- C. _____ No retainage will be taken.

The City shall have the right to withhold retainage from Compensation paid to a Contractor. Should the City decide that retainage shall be withheld from Compensation; the amount to be retained from each payment to the Contractor

shall be stated in the Work Order. The retainage shall be included with the final payment after all Work or Services for the Work Order have been approved and accepted by the City and all disputed invoices have been resolved by the parties. The City shall never be required to pay an amount that would leave unpaid from the contract price or Compensation an amount less than the amount City would need to have in order to pay another consultant to complete the Work or Services should Contractor fail to complete the Work in a Work Order remaining incomplete as of that date.

ARTICLE III. CONTRACT TIME. The Contractor agrees to commence work within **Thirty (30) DAYS** after the date of the Notice to Proceed letter (or issuance of a Purchase Order) and shall complete the work within **Ninety (90) DAYS** consecutive calendar days thereafter. (NTP to Final Completion = 120 days.)

ARTICLE IV. INSPECTION BY CONTRACTOR. The undersigned Contractor agrees that he has carefully inspected all Contract Documents and is familiar with same; the Contractor agrees that he is responsible for having heretofore examined the site, the location and route of all the proposed work and for having satisfied himself as to the character of the route, the location, surface and under- ground obstructions and nature thereof, the nature of the ground water conditions and other physical characteristics of the work and work area in order that he may include in the prices which he has bid and the prices of the Contract, all costs pertaining to the work and thereby provide for the satisfactory completion thereof and determination of the Contract prices herein agreed upon, and that this Contract price is based upon these inspections and examination.

ARTICLE V. LIQUIDATED DAMAGES. If the work is not completed within the time specified in Article III of this Contract, the Contractor shall pay the Owner, as liquidated damages, the sum of **Five Hundred (\$500.00) DOLLARS** for each consecutive calendar day thereafter until the work is completed, and as outlined in the Supplemental General Conditions.

ARTICLE VI. COMPONENT PARTS OF THE CONTRACT. This Contract consists of the following Contract Documents, all of which are hereby made a part hereof as if herein set out in full and all of which are familiar to the Contractor:

1. Invitation to Bid – ITB #24-ES-03 (including all required forms)
2. Bid Proposal
3. Bid Bond Form
4. Declaration Statement/Document Notification Affidavit
5. Construction Contract
6. Performance/Payment Bond
7. Certificate of Compliance - Insurance
8. Addenda
9. Any Modifications, including change orders, duly delivered after execution of this Agreement.

ARTICLE VII. SEVERABILITY. Should any term, covenant, condition, provision or sentence or part thereof of this Contract, including all Contract Documents which comprise the entire agreement, be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms and provisions shall nevertheless remain in full force and effect.

ARTICLE VIII. CONSTRUCTION. The headings and subheadings used throughout the Contract Documents are for convenience only and have no other significance in the interpretation of the body of the Contract Document.

ARTICLE IX. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipts requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For City:

Bonnie Zlotnik, City Clerk
City of Edgewater
104 N. Riverside Drive
Edgewater, FL 32132
(386)424-2400 #1101

For Contractor:

Luis Villalba, Director (Name, Title)
Five12 Painting & Remodeling LLC (Company)
584 Peg Ct (Address)
Saint Cloud, Florida, 34772 (City, State, Zip)
407-8819899 (Phone)

ARTICLE X. RIGHTS AT LAW RETAINED. The rights and remedies of City, provided for under this Contract, are in addition and supplemental to any other rights and remedies provided by law.

ARTICLE XI. CONTROLLING LAW, VENUE, ATTORNEY'S FEES. This Contract is to be governed, construed, and interpreted by, through and under the laws of Florida. Venue for any litigation between the parties to this Contract shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Contract.

ARTICLE XII. MODIFICATIONS TO AGREEMENT. This Contract and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.

ARTICLE XIII. WAIVER OF JURY TRIAL. THE CITY AND CONTRACTOR HAVE SPECIFICALLY WAIVED THE RIGHT TO A JURY TRIAL CONCERNING ANY DISPUTES WHICH MAY ARISE CONCERNING THIS AGREEMENT.

ARTICLE XIV. NON-WAIVER. No indulgence, waiver, election or non-election by City under this Contract shall affect Contractor's duties and obligations hereunder.

ARTICLE XV. ASSIGNMENT. This Contract, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith. However, this Contract shall run to the Edgewater City Government and its successors.

ARTICLE XVI. INDEPENDENT CONTRACTOR. It is the intent of the parties hereto that Contractor shall be legally considered an independent contractor and that neither Contractor nor its employees shall under any circumstances be considered employees or agents of the City and that the City shall be at no time legally responsible for any negligence on the part of Contractor, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, Contractor or corporation.

ARTICLE XVII. NO THIRD-PARTY BENEFICIARIES. The agreements contained herein are for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Contract or to rely upon the provisions of this Contract.

ARTICLE XVIII. WARRANTY OF TITLE OF CONTRACTOR. Contractor warrants to the City that all goods and materials furnished under the Contract will be new unless otherwise specified and that Contractor possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If at any time there shall be evidence of any claim for which, if established, the City might become liable, and which may be chargeable to the Contractor, or if the Contractor shall incur any liability to the City, or the City shall have any claim or demand against the Contractor, of any kind or for any reason, whether related to or arising out of this Agreement or any other agreement between the Contractor and the City, and whether or not reduced to judgment or award, the City shall have the right to retain out of any payment due the Contractor, or which may become due to the Contractor, under this Contract or any other Contract between the Contractor and the City, an amount sufficient to indemnify the City against such claim, and/or to compensate the City for, and fully satisfy, such liability, claim or demand, and to charge or deduct all cost of defense or collection with respect thereto, including, but not limited to, reasonable attorneys' fees, expert consultant fees, and expert

witness fees. Should any claim develop after final payment has been made, the Contractor shall refund to the City all monies that the latter may be compelled to pay in discharging such claims, or that the latter may have incurred in collecting said monies from the Contractor.

ARTICLE XIX. TERMINATION FOR CONVENIENCE OF THE CITY. (a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Edgewater shall determine that such termination is in the best interest of the City. (b) Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination. (c) Upon receipt of such Notice, the Contractor shall: (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice; (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice; (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice; (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Edgewater; and (v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause. (d) After complying with the provisions of subparagraph (c), above, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director. (e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. (f) In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Finance Director shall pay the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause: (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of: (1) the cost of work performed or supplies delivered; (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above; (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable. (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated. (g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 24 of this contract concerning disputes.

ARTICLE XX. TERMINATION FOR CONVENIENCE OF THE SUBCONTRACTORS. In accordance with the termination for the convenience of the City provision of this contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the City whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

ARTICLE XXI. TERMINATION FOR DEFAULT. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the Contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result.

ARTICLE XXII. EXAMINATION OF RECORDS. (a) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the FEMA grant, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract. (b) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after closeout of the FEMA grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this Contract. The term

subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public. (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

ARTICLE XXIII. MODIFICATIONS OR CHANGES TO THIS CONTRACT. (a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract. (b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change. (c) Contractor need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes. (d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

ARTICLE XXIV. SOVEREIGN IMMUNITY. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

ARTICLE XXV. LIABILITY FOR LOSS OR DAMAGE. (a) Contractor shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Contractor, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the Contract by Contractor, his/its agents, servants and employees. Contractor shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury. (b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

ARTICLE XXVI. NON-DISCRIMINATION. During the performance of this Contract, Contractor agrees as follows: (a) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Contractor agrees and fully supports and complies with the Americans with Disabilities Act of 1990. (b) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor is an equal opportunity employer. (c) Notices, advertisements and solicitations placed in

accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Contractor shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

ARTICLE XXVII. DISPUTES. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Contractor, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk, Robin Matusick. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

ARTICLE XXVIII. FORCE MAJEURE. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

ARTICLE XXIX. CONTROLLING LAW. This agreement contains important matters affecting legal rights and is accepted and entered into in Florida and any question regarding its validity, construction, enforcement of performance shall be governed by Florida Law. Any legal proceeding arising from or in any way regarding the agreement shall have its venue located exclusively in the Circuit Court of Volusia County, Florida and the parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the court.

ARTICLE XXX. E-VERIFY

The contractor and its subcontractors performing work and providing services under a resulting agreement will utilize the US Department of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the agreement term. All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the contractor. Failure to meet this requirement may result in termination of the agreement by the City.

ARTICLE XXXI. AUTHORITY TO SIGN. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date written above for execution by CITY.

CITY OF EDGEWATER

Glenn A. Irby, City Manager

Bonnie Zlotnik, City Clerk

Dated: _____

WITNESSES:

Mirna Velasquez

Cristian Gonzalez

FIVE12 PAINTING & REMODE

(Firm Name)

By:

Luis Villalba

(Authorized Officer)

Five12
Painting & Remodeling

Dated: 04/10/2024

Approved by the City Council of the City of
Edgewater at a meeting held on this _____
day of _____, 2024 under
Agenda Item No. _____.