



REPUBLIC OF LIBERIA
MINISTRY OF PUBLIC WORKS
MONROVIA, LIBERIA



CONTRACT NO: MPW-W-0034-19/20

BETWEEN THE MINISTRY OF
PUBLIC WORKS

&

DESIRE CONSTRUCTION COMPANY
FOR THE PERIODIC MAINTENANCE
OF PRIMARY LATERITE ROADS AS
LOT #2, ITI BRIDGE TO
GREENVILLE

(130KM)

FUNDED BY
THE NATIONAL ROAD FUND OF
LIBERIA (NRF)

This agreement is made and entered into this 12 day of April, A.D. 2020 between the Ministry of Public Works, represented by and through its Minister, Hon. Mobutu Vlah Nyenpan, (hereinafter, referred to as the MINISTRY), and Desire Construction Company, a company licensed and authorized to undertake construction works in Liberia (hereinafter, referred to as the CONTRACTOR), represented by and through, Mr. Dave Koomey, CEO/ General Manager.

WITNESSETH:

WHEREAS, sensitive of the deplorable condition of the existing road corridor designated in this instrument;

WHEREAS, convinced of the relevance of maintaining and keeping all roads in the Republic of Liberia a good and pliable condition;

WHEREAS, cognizant of the economic efficiency and social utility the rehabilitation of the aforesaid road shall have on residents of the communities around the road corridor and other road users;

WHEREAS, inspired by the Government of the Republic of Liberia desire to support and facilitate infrastructural development in every sector of the country;

WHEREAS, pursuant to submission of copies of the CONTRACTOR'S current business registration and tax clearance, and the Ministry of Public Works adherence to all Governmental regulations, finance, and procurement laws, in compliance with the award of said construction contract and its associated costs;

NOW THEREFORE, in consideration of the mutual promises, the Government of the Republic of Liberia, by and through the Ministry of Public Works, and Desire Construction Company for good and valuable consideration, mutually consent to the following terms set forth below:

General Definitions

1. Definitions

- Boldface type is used to identify defined terms.
- **Bill of Quantities** means the priced and completed Bill of Quantities forming part of this Contract
- **Completion Date** is the date of completion of the Works as certified by the Project Manager and the Contractor and signed as the agreed completion date of this Contract.
- **The Contract** is the Contract between the Employer, Ministry Of Public Works, and the Contractor to execute and complete, all Works. It includes documents listed in Section 1 as Contract Documents.
- **The Contract Price** is the price stated in this contract agreement as the agreed cost for carrying out all Works as required in the Bill of Quantities.

completed Work.

- The **Defects Liability Certificate** is the certificate issued by the Project Manager in consultation with the Project Consultant upon correction of defects by the Contractor.
- The **Defects Liability Period** is the period named in the Contract and calculated from the Completion Date.
- **Drawings** include sketches, figures and all other information provided or approved by the Project Manager in consultation with the Project Consultant for the execution of the Contract.
- The **Employer** means Ministry of Public Works of Liberia.
- **High Impact Special Infrastructure Project** a project designated under this Act, pre-financed through the acquisition of loan, which promotes national economic efficiency and social utility.
- **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- **Technical Specification** means the Specification of the Works included in the Agreement and any modification or addition made or approved by the Project Manager in consultation with the Project Consultant.
- The **Start Date** is given in the Agreement. It is the date when the Contractor shall take possession of the project site to commence execution of the Works.
- **Subcontractor** is a person or corporate body who has a Contract with the main financier to carry out a part of the work in the Contract, which includes work on the Site.
- **Variation** is an instruction given by the Project Manager in consultation with the Project Consultant submitted for approval to the Procurement Committee of the Ministry of Public Works, which varies the Works.
- The **Project Consultant** shall be an external consulting firm hired that is directly responsible for monitoring, supervising, and quality assurance of the design, construction, and defects liability of the works.
- The **Project Manager** for this Project shall be the Deputy Minister for Technical Services and shall be responsible for the administration of the Agreement in accordance with the Laws of the Republic of Liberia, and the Terms and Conditions agreed herewith between the parties signatory to this Contract.
- The **Project Engineer** shall be the Lead Engineer appointed by the Project Manager on behalf of the Employer and notified to the Contractor) who is responsible for supervising the execution of the Works and assist in the administering of the Contract.
- **Separate Agreement** means any agreement entered into by the Government of the Republic of Liberia and the Financier which

I. CONTRACT DOCUMENTS

The documents for this Contract consist of the following:

- A. Compilation of Required Procurement Documents (Appendix A);
- B. Contractor's Submissions / Bill of Quantities (Appendix B);
- C. Technical Specifications (Appendix C);
- D. Typical Drawings (Appendix D);
- E. Contractor's Business Registration (Appendix E)
- F. The Contractor's current Tax Clearance (Appendix F)
- G. The Contractor's CCCS certificate (Appendix G)
- H. The Contractor's ALCC Certificate (Appendix H)
- I. All other documents referenced heretofore, not specifically attached to this contract, by incorporation, constitute part of the contract documents.

II. PROJECT DURATION

The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Work Schedule submitted by the Financier according to the standards required in the Technical Specifications and drawings.

The Start Date of the Project shall be one calendar month (30 days) following the signing of this Agreement. The Financier shall be given the period between the signing of the Agreement and the Start Date to mobilize plant, equipment, and his key staff to the site.

The contractor agrees to complete all works under the agreement within (24) Calendar MONTHS, commencing from the Start Date of the Project.

The Contractor agrees that the period for Defects Liability of the Project shall be (12) months, commencing from the first month after the issuance of the Works Completion Certificate by the Project Manager. The Project Manager in collaboration with the Project Consultant shall issue a Defects Liability Certificate at the end of the Defects Liability period, indicating as to whether or not that all Works have been made good and the Government of Liberia accepts that the Project is completed

III. THE WORKS

A. PERFORMANCE OF WORKS

The CONTRACTOR shall perform the works and make available all of the materials and equipment required under this contract, which are to be consistent with the plans and specifications for REHABILITATION OF PRIMARY LATERITE ROAD AS LOT #2, ITI BRIDGE-GREENVILLE. All labor and materials shall meet, and be in conformity with acceptable road construction standards and labor laws of Liberia. No work shall be considered as

The details of the works to be undertaken by the CONTRACTOR are contained within in the Bill of Quantities (B.O.Q.) attached to this Contract as Appendix B, which shall also include all plans, specifications, and changes appurtenant thereto.

B. BILL OF QUANTITIES

The Bill of Quantities (BOQ) shall contain a detailed item listing and cost for all to be done by the CONTRACTOR. It shall be used to pay for Works completed by the CONTRACTOR at the rates provided therein.

C. VARIATIONS

The CONTRACTOR shall not adjust rates from changes in quantities except with the prior and final approval of the Procurement Committee of the Ministry of Public Works in consonance with Section 42 (3) of the Public Procurement and Concession Act. At no time however, shall the adjusted rates exceed ten percent (10%) of the total contract price. provided in an official communication. If requested by the Project consultant in consultation with the Project Director, the CONTRACTOR shall provide detailed cost breakdown of any rate in the Bill of Quantities that is to be adjusted which shall constitute a Variation.

All Variations shall be included in an updated Work Plan produced by the CONTRACTOR. If any work items have not been included in the BOQ, the CONTRACTOR shall provide the Project Manager and the Project Engineer with a quotation for carrying out the Variation when requested. The Project Manager in consultation with the Project Engineer shall assess the quotation, which shall be given within (5) days of the request or within any longer period stated by the Project Manager before the Variation is ordered. If the work in the Variation corresponds with an item description in the Bill of Quantities, then the Bill of Quantities shall be used to calculate the value of the Variation. If the cost does not correspond with items in the Bill of Quantities, then reasonable rate or price shall be agreed in writing and submitted to the Procurement Committee for its final approval. No variation of the Works shall be made by the Contractor without a written approval by the Procurement Committee of the Ministry of Public Works in consonance with Section 42 (3) of the Public Procurement and Concession Commission Act. At no time however, shall the adjusted rates exceed ten percent (10%) of the total contract price.

The details of the works to be undertaken by the CONTRACTOR are contained within the Technical Specifications, Technical Drawings and Bill of Quantities (B.O.Q.) attached to this Agreement as Appendices C, D, B.

IV. THE CONTRACT PRICE

The Ministry of Public Works shall pay or caused to be paid to the CONTRACTOR the total sum of One Million, Nine Hundred And Five Thousand, Two Hundred and Eighteen, Eighty cent United States Dollars (USD \$ 1,905,218.80)

V. PAYMENTS SCHEDULE & CONDITIONS

The MINISTRY shall pay or caused to be paid to the CONTRACTOR the total Contract sum in the following installments:

A. The Ministry of Public Works shall pay or cause to be paid to the Contractor, an advance payment constituting thirty percent (30%) of the Contract Price subsequent to the issuance of a Bank Guarantee from a Reputable Liberian Bank for an effective duration of not less than six calendar months. Payments shall be adjusted for deductions of 10% representing retention for works to be executed for the period.

B. The Ministry of Public Works shall pay or cause to be paid all subsequent payments other than the advance payment through the following terms:

- i. The Contractor shall submit to the Project Engineer, Interim Payment Request statements amounting to 15% of the estimated value of the work executed less the cumulative amount certified previously;
- ii. The Project Engineer shall check the Contractor's interim payment request and certify the amount to be paid to the Contractor following valuation of the works executed for the period;
- iii. The value of work executed shall be determined by the Project Engineer and payment request prepared shall not exceed 15% of the estimated completed value of works;
- iv. The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities;
- v. The value of work executed shall include the valuation of Variations to and claims approved by the Project Manager for the Works;

All Interim Payment Request prepared for each period shall be evidence by a signed request from the Project Engineer submitted to the office of the Project Manager and the issuance of a Certificate of Completion signed by the Project Manager from the Ministry of Public Works. Payments shall be adjusted for deductions of 10% representing retention for defects liability for each section of works completed.

VI. DEFECTS LIABILITY

The Ministry of Public Works shall retain Ten Percent (10%) of the Contract Price in the amount of (USD \$190,521.80) One Hundred Ninety Thousand, Five hundred and Twenty One dollars, Eighty cent after (12) months Subsequent to the completion of all works to ensure that the Contracts maintain the corridor and cure any defects arising during this period.

VII. MONITORING & SUPERVISION

The parties agree that the Ministry of Public Works shall designate a Project Engineer for the duration of the project that shall be responsible for the Monitoring and Supervision of the project to ensure that the works under this agreement are in conformity with the technical specifications as well as the designs and drawings contained in the Bill of Quantity (B.O.Q.). The Project Engineer shall submit monthly reports to the Assistant Minister for Operations and serve copies to the office of the Deputy Minister for Technical Services.

The CONTRACTOR shall maintain a daily record on all work performed and submit a periodic report on progress of work activities to the Project Engineer and serve copies to the office of the Deputy Minister for Technical Services. These reports shall include but not be limited to the estimated value of the Works executed up to the end of that period.

The CONTRACTOR shall employ the key personnel named in the List of Key Staff, as provided in its Proposal. The Project Engineer shall be responsible to approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Proposal. The Project manager and Project Engineer reserves the right to instruct the CONTRACTOR to remove from site any personnel who is found to be unsuitable for the Project or disrupts the Project Engineer's ability to perform his Monitoring and Supervision responsibilities.

VIII. LICENSE-WARRANTY

The CONTRACTOR shall ensure those at all times during the terms of this Contract, its operation license shall be in full force and effect.

IX. PLANS

The Ministry of Public Works shall give prior approval to any alterations or adjustments to the Scope of Works, Bill of Quantities (B.O.Q.), Plans and Specifications.

X. INDEMNITY

CONTRACTOR accepts to and does hereby hold the Ministry of Public Works and the Government of the Republic of Liberia (GOL), free from any and all claims, events, costs,

XI. TERMINATION

The MINISTRY may terminate this CONTRACT for cause, if the MINISTRY determines that the CONTRACTOR is failing to timely execute scheduled work, or perform works inconsistent with the materials and specifications contained in the scope of work, or is in breach of any term or terms of this contract. Additionally, the contract may be terminated by either the MINISTRY or CONTRACTOR upon the issuance of NINETY (90) days prior notice to the other party. If this Contract is terminated for cause, pursuant to the notice of the NINETY (90) days provision as stated herein, the CONTRACTOR shall be bound to the conditions of this contract as to the completion of all unfinished works prior to the issuance of the NINETY (90) days' notice.

XII. HOLD BACK AND COMPLETION

Upon the termination of this contract for cause, the MINISTRY may hold back all equivalent sums, until works required for the payment of said sum are completed. If Contractor is required to complete work or subcontract the remaining portion of said works, the CONTRACTOR shall be fully responsible to pay the full cost for the completion of the portion of said works.

XIII. SEVERABILITY AND SURVIVABILITY

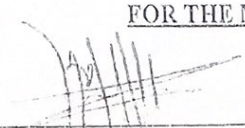
If any term or clause of this Contract is nullified by a court of law, the remnants of the Contract shall remain enforceable. The terms and conditions of the Contract shall be binding upon the parties hereto, their legal representatives, assigns, and successors-in-interest as if they were specifically mentioned herein by name.

XIV. ENTIRE AGREEMENT

This contract with all its incorporated documents represent and constitute the entire agreement between the parties and shall not be explained, modified or contradicted by any prior or contemporaneous negotiations, representation or agreements, either written or oral. The Contract shall be construed under the laws of the Republic of Liberia.

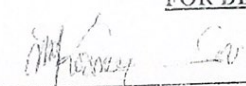
IN WITNESS WHEREOF, the parties hereto have set their hands and signatures on the day and year written below:

FOR THE MINISTRY OF PUBLIC WORKS:


Sen. Mobutu Vlah Nyenpan
MINISTER


Date: April 15, 2020

FOR DESIRE CONSTRUCTION COMPANY:

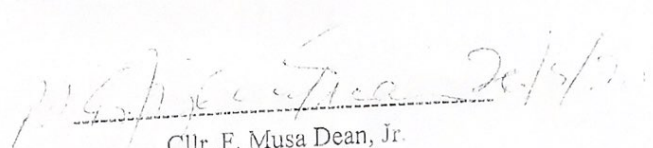

Mr. Dave Koomey
General Manager

Date: April 15, 2020

APPROVED BY THE MINISTRY OF FINANCE AND DEVELOPMENT PLANNING:


Hon. Samuel D. Tweah
MINISTER, LIBERIA

ATTESTED TO BY THE MINISTRY OF JUSTICE:


Cllr. F. Musa Dean, Jr.
MINISTER