

# CONSTRUCTION CONTRACT

This Construction Contract is effective this \_\_\_\_\_ (“Effective Date”) day of 20\_\_\_\_ by and between Owner and Contractor as defined below.

CONTRACTOR:

OWNER:

ENGINEER:

PROJECT:

CONTRACT PRICE:

DEADLINE FOR SUBSTANTIAL COMPLETION:

LIQUIDATED DAMAGES IN THE AMOUNT OF \$ \_\_\_\_\_

RETAINAGE PERCENTAGE ON ALL WORK UNTIL FINAL PAYMENT: \_\_\_\_ ( ) Percent

PERFORMANCE AND PAYMENT BONDS:	_____ Required	_____ Not Required
Bond Premium:	_____ Included in Price	_____ Not Included

ADDITIONAL INSURED: \_\_\_\_\_

## ARTICLE 1 – DEFINITIONS

For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below. Other words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

### **1.1 Applicable Law**

Shall mean any law, statute, order, decree, injunction, license, permit, consent, approval, agreement or regulation of any Governmental Authority having jurisdiction over the matter in question, or other legislative or administrative action of a Governmental Authority, or a final decree, judgment or order of a court which relates to the performance of Work hereunder or the interpretation or application of this Contract.

### **1.2 Change Order**

Shall mean a written order signed by Owner or its authorized agent and by Contractor or its authorized agent which is issued after the execution of this Agreement and which authorizes a change in the Work and/or an adjustment in the Contract Price and/or the times for completion of the Work.

### **1.3 Contract Documents**

Shall include the following order of precedence:

- A. This contract all amendments or modifications thereto, and any Exhibits hereto; and
- B. All drawings and specifications relating to the Work

In case of a conflict between the Drawings and Specifications, the Specification shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings.

### **1.4 Engineer**

Shall mean the architect, engineer or other design professional which has a contract with Owner to provide professional services for the Project. Owner may delegate certain of its responsibilities for review and approval of certain documents to such Engineer(s) in its sole discretion.

### **1.5 Final Completion**

Shall mean the point in time when all Work, including Punchlist Work, has been completed in accordance with this Contract and Owner has accepted such Work as complete.

### **1.6 Force Majeure**

Shall mean any act or event that (a) renders the affected Party unable to perform its obligations under this Agreement, (b) is beyond the reasonable control of the affected Party and not due to its fault or negligence, and (c) could not have been prevented or avoided by the affected Party through the exercise of due diligence. Force Majeure may include catastrophic storms or floods, lightning, earthquakes and other acts of God, wars, civil disturbances, industry-wide strikes, revolts, insurrections, sabotage, commercial embargoes, fires, explosions, actions of a Governmental Instrumentality that were not requested, promoted or caused by the affected Party, and changes in applicable law. Force Majeure shall not include any of the following: (a) a product failure caused by such product not being Year 2000 Compliant, (b) economic hardship, (c) changes in market conditions, (d) late delivery or failure of equipment, unless otherwise caused by an event of Force Majeure, (e) strikes, other than industry-wide strikes, and (f) nonperformance or delay by

Subcontractors, unless otherwise caused by Force Majeure.

**1.7 Good Practices**

Shall mean those standards, practices, methods, level of skill and equipment, generally prevailing on the Effective Date, that are commonly and ordinarily used by firms in the United States which perform similar services as Contractor has agreed to perform pursuant to this Contract.

**1.8 Governmental Authority**

Shall mean any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the Project or its operations, or the health, safety or environmental conditions of the Project or the Site or otherwise over the parties hereto.

**1.9 Project**

Shall mean the \_\_\_\_\_ for the City of Spartanburg as defined in the Scope of Work (Exhibit A).

**1.10 Project Schedule**

Shall mean such schedule and any updates thereto approved by Owner.

**1.11 Punchlist**

Shall mean the list prepared by Owner prior to Substantial Completion, with the full assistance and cooperation of Contractor, which sets forth those items of Work that remain to be performed to ensure that the Work fully complies with all of the standards and requirements set forth in this Contract.

**1.12 Substantial Completion**

Shall mean the time at which (a) the Work has progressed to the point where it is sufficiently complete in accord with this Contract so that the Work can be utilized for the purposes for which it is intended; and (b) the only remaining Work to be completed is Punchlist Work.

**1.13 Subcontractor**

Shall mean a person or entity of any tier who has a contract either directly or indirectly with Contractor to perform any portion of the Work at the Site or to provide services, equipment or materials to Contractor for use in performance of the Work. Contractor shall submit in writing the name and such additional information as requested by Owner of any proposed subcontractors with whom Contractor intends to contract where the subcontract price is expected to exceed \$10,000.00.

**1.14 Work**

Shall mean the various parts of the Project to be performed by Contractor under this Agreement and shall include all services, labor, materials, equipment, and tests provided or to be provided to fulfill Contractor's obligations under this Agreement.

**ARTICLE 2 – CONTRACTOR'S RESPONSIBILITIES**

**2.1 Performance of the Work**

Contractor shall furnish all labor, materials, tools, equipment, supervision, and services necessary to prosecute and complete the Work as more fully described in the Scope of Work and the Drawings and Specifications. The Work shall be performed by Contractor in accordance with Good

Practices and in a good and workmanlike manner strictly in accordance with this Contract. The Work shall include any work, services, materials or equipment that may reasonably be inferred from prevailing custom or trade as being required to satisfy the requirements of this Contract.

## **2.2 Construction Means, Methods, Etc.**

Contractor is solely responsible for all construction means, methods, techniques, sequences, procedures, safety and security programs in connection with the performance of the Work, irrespective of approval by or consent of Owner.

## **2.3 Cutting and Patching**

Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly as approved by Contractor. Contractor shall not damage or endanger a portion of the Work or the work of others by cutting, patching, excavating, or otherwise altering such construction and shall repair any such damage caused by Contractor. Contractor shall not cut or otherwise alter such construction by others except with written consent of Contractor.

## **2.4 Quality of Equipment and Materials, Etc.**

Contractor shall ensure that all equipment and materials incorporated into the Work shall be new, unless otherwise agreed by Owner, and shall meet the requirements of this Contract. Upon written approval by Owner, Contractor may use equipment, materials, articles, or processes that are equal to that identified in the drawings and specifications. If the cost of such equipment, materials, articles or processes is less than that of the originally specified material, a deductive change order shall be executed. Contractor shall use equipment for which spare parts or replacements (or reasonable substitutes) are commercially available and obtainable as of the Effective Date.

## **2.5 Discrepancy In Contract Documents**

Contractor shall give Owner prompt written notice if Contractor observes any discrepancy in any of the Contract Documents.

## **2.6 Inspection of Site**

Prior to the Effective Date, Contractor shall ascertain the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface and subsurface ground and soil conditions, and other local conditions which might affect its performance of the Work or the cost thereof.

## **2.7 Submittals**

Contractor shall review, approve, and submit to Owner shop drawings, product data, samples, and other similar submittals required by this Contract. Contractor shall cooperate with Owner in coordination of the Contractor's shop drawings, product data, samples, and other similar materials with related documents submitted by other contractors. Submittals made by Contractor which are not required by this Contract may be returned without action. Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples, or similar submittal until the respective submittal has been approved. Such Work shall be in accordance with approved submittals. By approving and submitting shop drawings, product data, samples, and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements, specified performance and design criteria, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of this Contract.

## **2.8 Deviations**

Contractor shall not be relieved of responsibility for deviations from requirements of this Contract by Owner's approval of shop drawings, product data, samples, or similar submittals unless Contractor has specifically informed Owner in writing of such deviation at the time of submittal and Owner has given written approval of the specific deviation.

## **2.9 Verification**

Contractor shall verify all control lines and benchmarks and notify Owner of any discrepancy before proceeding with the Work; be responsible for all required layout, positioning and placement of all elements of the Work, familiarize itself with all Contract Documents and shop, fabrication and installation details of other trades and divisions of work, particularly those affecting or affected by the Work under this Contract; and verify all dimensions and take all measurements for any portion of the Work which is dependent for proper size or installation upon coordination or fit with other work or conditions without reliance on representations or indications of Owner, this Contract or other contractors.

## **2.10 Responsibility For Personnel**

Contractor shall be responsible to Owner for all acts and omissions of its personnel, agents, employees, subcontractors and their agents and employees. Contractor shall repair at its expense all damage to the work or property of others caused by any act or omission of Contractor, its subcontractors or their agents or employees. Should Contractor's Work be stopped or interfered with by reason of strikes, picketing or other disputes of any of Contractor's or its subcontractors' personnel, Contractor shall immediately resolve such dispute and terminate all such work stoppage and interference. Notwithstanding any other provision in this Contract, if Contractor fails to cure such stoppage and/or interference, Owner may immediately terminate this Contract.

## **2.11 Compliance with Applicable Laws**

Subject to the terms and conditions of this Contract, Contractor shall comply and shall cause all subcontractors, employees, agents and representatives to comply with all Applicable Laws promulgated by any Governmental Authority in connection with the performance of Contractor's obligations under the Contract Documents. Contractor shall comply with all Applicable Laws including, but not limited to, those relating to equal employment opportunity and affirmative action for disabled veterans, veterans of the Vietnam Era, handicapped persons and all other legally protected classes, the Americans with Disabilities Act, the Fair Labor Standards Act as amended, Title VII of the Civil Rights Act of 1964, and the Occupational Safety and Health Act. SEE BELOW:

### **Equal Employment Opportunity:**

- a. Activities and contracts not subject to Executive Order 11246 as amended. In carrying out the program, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to color, religion, sex and national origin. Such action shall include, but not be limited to, the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified

applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor shall incorporate the foregoing requirements of this paragraph (a) in all of its contracts for program work, except contracts governed by paragraph (b) of this section, and will require all of its contractors for such work to incorporate such requirements in subcontracts for program work.

- b. Contracts Subject to Executive Order 11246 as Amended: Such contracts shall be subject to the Equal Employment Opportunity regulations at 24 CFR Part 130 applicable to the assisted construction contracts.

The Contractor shall cause or require to be inserted in full in any non-exempt contract and subcontract for construction work, or modification thereof, as defined in said regulations, which is paid for in whole or in part with assistance provided under this Agreement, the following equal opportunity clause:

**During the perform of this contract, the contractor agrees as follows:**

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
2. The contractor will, in all solicitations or advertisements for employees by, or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The contractor will send to each labor union or representative of works with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City advising the said labor union or workers' representatives of the contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the City.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the City, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the City for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures

authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the City, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or order of the City issued pursuant to section 204 of regulations, or orders of the City issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the City may direct as means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a contractor may request the City to enter into such litigation to protect the interest of the City.

1. Federal Labor Standards Provisions: Except with respect to the rehabilitation of residential property designed for less than twelve dwelling units, the Contractor and all contractors engaged under contracts in excess of \$2,000 for the construction, completion, or repair of any building or work financed in whole or in part with assistance provided under this Agreement. The Contractor and all contractors engaged under contracts for the construction, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement shall comply with applicable federal legislation regarding or relating to the payment of wages and working conditions, including but not limited to the Davis-Bacon Act (40 U.S.C.27a-5) and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), provided, however, that if wage rates higher than those required by federal law or regulation are required by State or local law, nothing hereunder is intended to relieve the Contractor of its obligations to require payment of the higher rates. The Contractor, subcontractors and other participants must comply with any and all regulations issued under federal statutes pertaining to labor standards as well as with the provisions of HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Projects). The Grantee shall cause or require to be inserted in full, in all such tracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5.

No award of the contracts covered under this section of the Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulations of the City or the Federal Government to receive an award of such contract.

2. MWBE and WBE Obligation: The Contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financing whole or in part with federal funds provided under this Agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of HUD-related contracts.

**SECTION 3 CLAUSE -  
(for inclusion in all section 3-covered contracts)**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to



comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**2.12 Responsibility For Scheduling**

Contractor shall be responsible for scheduling and coordinating subcontractors and other personnel retained or hired by Contractor to perform the Work or any portion thereof. Contractor shall require subcontractors and other personnel hired or retained by Contractor to perform or furnish any of the Work to communicate with Owner only through Contractor.

**2.13 Coordination with Other Contractors**

Contractor shall permit other contractors employed by Owner at the Site to introduce and store materials and perform their respective services. Contractor shall cooperate with Owner and such other contractors to coordinate the Work with such other work.

**2.14 Contracts**

Contractor shall assure that all subcontractors who are engaged or retained by Contractor to perform Work on the Project do so under the terms of a contract which is consistent with the applicable provisions of this Contract and which binds the subcontractor to the material terms and conditions of the Contract Documents.

**2.15 Contractor's Representative**

Contractor shall designate in writing to Owner Contractor's Representative who shall be authorized to act on behalf of Contractor and who shall have full authority to bind Contractor. Contractor's Representative shall be present on the Site at all time as required to perform adequate supervision and coordination of the Work.

**2.16 Assistance to Contractor**

Contractor shall provide Owner information reasonably requested by Owner to enable it to fulfill its obligations under this Contract. This obligation shall include, but not be limited to, providing such assistance as is reasonably requested by Owner in dealing with any Governmental Authority in matters relating to the Work or the Project.

**2.17 Procurement of Equipment and Materials**

Except as set forth in the Scope of Work, all equipment and materials necessary to complete the Work shall be purchased by Contractor.

**2.18 Delivery Of Warranties**

Prior to Final Completion, Contractor shall collect all written warranties and equipment manuals and deliver them to Owner.

**2.19 Taxes**

Contractor shall pay all taxes of every kind now or hereafter imposed, levied, or assessed by any Governmental Authority with respect to the Work, including taxes for labor, materials, and equipment utilized in connection therewith and expressly including all sales, use, personal property, excise, income and payroll taxes. Upon request of Owner, Contractor shall furnish satisfactory evidence of such payments.

## **2.20 Permits**

Contractor shall obtain all necessary permits and licenses necessary for Contractor to perform the Work or conduct business in the applicable jurisdiction in accordance with Applicable Law and shall be responsible for and correct any violations thereof. Owner shall provide such permits as required of Owner in the Specifications.

## **2.21 Maintenance Of Books And Records**

As to any Work performed on a time and material basis, Contractor's books and records shall include time cards and other records relating to the time of Contractor personnel spent on the Work and any expenditures made by Contractor for which Contractor will request reimbursement from Owner hereunder.

## **2.22 Royalties and License Fees**

Contractor shall pay all required royalties and license fees and shall procure, as required, the appropriate proprietary rights, licenses, agreements, and permissions for materials, methods, processes and systems required for the performance of the Work.

## **2.23 Maintenance of Site**

Contractor shall at all times keep the Site free from waste materials or rubbish caused by its activities. As soon as practicable after the completion of all Punch list items, Contractor shall remove all of its equipment and materials not constituting part of the Project and remove all waste material and rubbish from the Site and restore the Site in accordance with all environmental permits and this Contract. In the event that Contractor fails to satisfactorily maintain the Site in accordance with this Section, Owner may perform such maintenance activities at Contractor's expense.

## **2.24 Safety and Security**

Contractor shall execute the Work under this Contract in a prudent, cautious and safe manner; continuously maintain a safe and secure workplace; employ at all times whatever means may be reasonably required to insure the safety and avoid the endangerment of all persons and property of itself and others.

Contractor represents that, for the purposes of the Occupational Safety and Health Act (OSHA) of 1970 (including any state counterparts in those states authorized to enforce OSHA laws) and including all standards and regulations which have been or shall be promulgated by any Governmental Authority which administers such Act, it is an 'employer' under the definition contained in such Act and, as an employer, is obligated to observe the requirements of that Act independent of any contractual relationship; and that, with respect to the Work and all activities associated in any manner with the Work or the Project, it will so comply with the requirements of that Act and all other requirements, standards, orders, regulations, or ordinances issued by any Governmental Authority having jurisdiction over the Work.

## **2.25 Restriction to Site**

Contractor shall confine the employees, agents and invitees of Contractor and its subcontractors to those portions of the Site necessary for the performance of the Work and prohibit such personnel from entering upon any other properties or facilities of Owner except as specifically authorized by Owner.

## **2.26 Emergencies**

In the event of any emergency endangering life or property, Contractor shall take such actions as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss and shall, as

soon as possible, report any incidents, including Contractor's response thereto, to Owner. If Contractor in good faith gratuitously renders emergency care at the scene of an accident or emergency to an employee or agent or Owner, Contractor shall not be liable for any civil damages for any personal injury as a result of any act or omission by Contractor in rendering the emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person.

### **2.27 Hazardous Materials**

Contractor shall not, nor shall it permit or allow any subcontractor to, bring any Hazardous Materials onto the Site and shall bear all responsibility and liability for such Hazardous Materials; provided, however, that Contractor may bring onto the Site such Hazardous Materials as are necessary to perform the Work so long as the same is done in compliance with Applicable Laws and Contractor shall remain responsible and strictly liable for all such Hazardous Materials.

### **2.28 Discovery of Hazardous Materials**

If Contractor encounters any Hazardous Materials in or on the Site which create a safety or health hazard for Owner, Contractor, any subcontractor or their employees, agents or representatives, or the general public or the surrounding environment, Contractor shall suspend the performance of the Work to the extent required to avoid any such safety or health hazard until action sufficient to protect the interests of such parties is taken by the Owner. Contractor shall notify Owner immediately upon encountering any Hazardous Materials in or on the Site and shall thereafter suspend all Work in the impacted area and follow the directions of Owner.

### **2.29 Subsurface Conditions**

Contractor shall in no event later than five days after discovery and before such conditions are disturbed, except in the event of an emergency, notify Owner in writing of:

A. Subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract Documents;

B. Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided in the Contract Documents.

Upon such notice, Owner shall investigate the conditions and if Owner determines that such conditions do materially differ and cause an increase in the Contract Price or in the time required for performance of the Work, an adjustment shall be made in accordance with Article 7. Any claim by Contractor for such adjustment shall be made strictly in accordance with Article 7.

## **ARTICLE 3 - COMPLETION OF THE WORK**

### **3.1 Commencement of Work**

Contractor shall commence the Work upon its receipt of a written notice from Owner ("Notice to Proceed") authorizing Contractor to commence the Work, whereupon Contractor shall diligently pursue performance of the Work in accordance with this Contract and the Project Schedule.

### **3.2 Completion Dates**

The Work shall be Substantially Complete on or before the date set forth on the title page of this Contract.

### **3.3 Time is of the Essence**

Contractor acknowledges that achieving all events on or before the dates set forth therefore in the Project Schedule and achieving Substantial Completion on or before the dates set forth in the Project Schedule are of the essence of this Contract. Contractor shall perform the Work in an expeditious manner and in accordance with the Project Schedule to achieve such obligations.

### **3.4 Performance of the Work**

Contractor agrees: (a) to provide at the Site the materials, equipment, labor and supervision necessary to begin the Work upon such date set forth in the Notice to Proceed; (b) to perform the Work and all parts thereof promptly, diligently and in such order and sequence as Owner may direct to assure the efficient, expeditious and timely prosecution of the entire Work under the Contract; and (c) to furnish sufficient forces, supervision, equipment and materials, at such times and for such periods, as will result in progress according to the Project Schedule or any modification thereof. Owner reserves the right to modify any such Project Schedule with respect to the required sequence or duration of the Work or any portion thereof, and Owner makes no representation that Contractor will be able to commence, prosecute or complete the Work in accordance with any Project Schedule. Contractor shall furnish any information requested by Owner required for scheduling, monitoring, or expediting the Work. Contractor shall promptly let all subcontracts, contracts and purchase orders and shall immediately notify Owner of any inability of the subcontractors to meet the requirements of the Project Schedule. Contractor shall furnish to Owner all necessary information required for expediting and monitoring such activity, and shall provide Owner access to its subcontractors for the purpose of verifying or expediting their performance, and if the Work is, or will likely be, delayed by their nonperformance or delay, Contractor shall reimburse Owner for any expenses required to secure or remedy their performance.

### **3.5 Surveys, Permits, Regulations**

Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the Work together with a suitable number of bench marks adjacent to the Work as shown in the Contract Documents. From the information provided by Owner, unless otherwise specified in the Contract Documents, Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines elevations and cut sheets. Contractor shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, shall be charged with any resulting expense and shall be responsible for any mistakes that may be caused by their necessary loss or disturbance.

### **3.6 LIQUIDATED DAMAGES**

IN THE EVENT THAT THE PARTIES HAVE AGREED TO LIQUIDATED DAMAGES AS SET FORTH ON THE TITLE PAGE HEREOF AND CONTRACTOR FAILS TO PERFORM ON OR BEFORE THE REQUIRED DEADLINE AS SET FORTH, CONTRACTOR AGREES TO PAY TO OWNER LIQUIDATED DAMAGES AS SET FORTH FOR EACH DAY THAT PERFORMANCE IS DELAYED. THE PARTIES AGREE THAT OWNER'S DAMAGES FOR CONTRACTOR'S DELAYED PERFORMANCE WOULD BE EXTENSIVE AND ARE NOT EASILY CAPABLE OF BEING QUANTIFIED. THE PARTIES ACKNOWLEDGE THAT THE LIQUIDATED DAMAGES SET FORTH IN THIS CONTRACT DO NOT CONSTITUTE A PENALTY BUT RATHER CONSTITUTE REASONABLE COMPENSATION FOR THE DAMAGES THAT WOULD BE INCURRED BY OWNER.

## **ARTICLE 4 - CONTRACT PRICE**

#### **4.1 Contract Price**

Subject to all of the other provisions of this Contract, Owner shall pay to Contractor for the due and full performance of the Work the Contract Price set forth on the title page of this Contract, which includes allowances set forth. Unit prices shall not be subject to adjustment because of any variation in actual quantities from those estimated or approximated in this Contract regardless of the amount of variation. The Contract Price shall not be increased or decreased on account of any changes in costs of any materials or labor or on account of changes in any applicable law, including, but not limited to, those relating to the payment of taxes.

#### **4.2 Schedule of Values**

Within fifteen (15) Days after the Effective Date, Contractor shall submit to Owner a schedule of values of the various portions of the Work, including quantities if required by Owner. Contractor's schedule shall be prepared in such form and supported by such data as Owner may direct, and shall be subject to Owner's approval. The Schedule of Values will serve as the basis for progress payments and will be incorporated into the form of Application for Payment.

#### **4.3 Payment Procedure**

All payment requests shall follow the procedure as outlined below and MUST be submitted with the forms referenced and with all required information submitted in order to be processed for payment:

##### **Submittal by Contractor.**

In accordance with such schedule as directed by Owner, Contractor shall submit to Owner an Application for Payment in the form attached. Covering work completed through the end of the preceding month along with a Partial Release of Claims. The Owner shall, after deducting previous payments made, pay to the Contractor 90% of the amount of the estimate as approved by the Owner, as long as the gross value of completed work is less than 50% of the total Contract amount, or if the Contractor is not maintaining his construction schedule to the satisfaction of the Owner, the Owner shall retain 10% of the gross value of the completed work as indicated by the current approved estimate. After the gross value of completed work becomes equal to 50% of the total Contract amount within a time period satisfactory to the Owner, then the Owner will continue to retain the 10% of the first 50% of the work but will not require any additional retainage; provided, however, that if work is unsatisfactory or falls behind schedule, retention may be resumed at the previous level after notification to the contractor.

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Contractor has received the materials and equipment free and clear of all claims and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Contractor's and Owner's interest therein.

#### **4.4 Payment By Owner**

Owner shall pay Contractor, within thirty (30) days after receipt of a properly submitted Application for Payment the amount to which Contractor is entitled less the retainage percentage set forth on the title page of this Contract.

#### **4.5 Title To Work**

Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will upon receipt of such payment by Owner pass to the Owner free and clear of all liens, mechanic's liens, claims, security interests or encumbrances ("Liens").

#### **4.6 Not Acceptance Of Work**

No progress payment shall constitute an acceptance of any Work not in accord with the Contract Documents.

#### **4.7 Right to Withhold**

Owner shall have the right at any time to withhold all or part of any progress or final payment to Contractor, as determined in Owner's sole discretion, for any amounts due Contractor under this Contract, for defective Work that has not been remedied, or for any other breach of this Contract by Contractor. No payment, either progress or final, to Contractor by Owner shall be construed to be an acceptance of any defective work.

#### **4.8 Final Payment**

A final payment, consisting of the unpaid balance, less any amount withheld for defective work, of the Contract Price, including retainage, shall be made within forty-five (45) days after the last of the following to occur: (a) Final completion of the Work by Contractor; (b) the furnishing of satisfactory evidence by Contractor to Owner that the Contractor has paid in full all persons furnishing labor, materials or service in connection with the Work, including submission of a Final Release of Claims in the form attached and that neither Contractor nor any person claiming under or through Contractor has filed or has the right to maintain a claim against Owner or the Project premises; or (c) the delivery of all guaranties, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items with respect to the Work.

#### **4.9 Payment for Labor, Supplies and Material**

Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of any persons furnishing labor, materials, or services for the Work; and Contractor will so apply the payments from Owner before using any part thereof for any other purpose. Contractor shall, as often as requested by Owner, furnish an affidavit on such format as Owner may require showing the names and addresses of all persons who shall have furnished labor, materials or services for the Work and the amount due or to become due to each such person. Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to Contractor and such person. If Contractor shall fail to pay promptly when due, for all labor, services, and materials furnished in connection with the performance of the Work, Owner may after five (5) days written notice to Contractor, pay the amount of such liabilities and recover the amount thereof from Contractor, directly, or by the application of any portion of the Contract Price then or thereafter becoming due hereunder. Contractor will, at the request of Owner, provide affidavits on such forms or in such format as Contractor may require from all persons furnishing labor, materials or services to the effect that they have been paid in full.

### **ARTICLE 5 - WARRANTIES**

#### **5.1 No Liens**

Contractor warrants and guarantees that title to the Work and all materials, machinery, systems, supplies and equipment provided by Contractor in connection with the Project shall pass free and clear of all claims and that none of such Work, materials, machinery, systems, supplies or

equipment shall be acquired by Contractor subject to any agreement under which a claim is retained by any person. If any claim is made relating to the Work, Contractor shall immediately discharge same; provided, however, if such claim is contested in good faith by Contractor, Contractor shall notify Owner and Owner shall have the right to require that Contractor furnish a suitable bond, escrow, or other reasonable assurance of payment satisfactory to Owner.

## **5.2 General Warranties**

Contractor warrants that: (a) all machinery, equipment, materials, systems, supplies and other items comprising the Project that are supplied by Contractor shall be new (except as otherwise specified or agreed to in advance in writing by Owner) and of good quality; and (b) the Work shall: (i) be free from defects in design, material, and workmanship; (ii) be furnished in accordance with Applicable Law and Good Practices; (iii) strictly conform to this Contract; and (iv) be safe and suitable for the particular purpose for which it is to be used. Contractor also warrants that all documentation to be provided by Contractor and any subcontractors shall be complete and accurate and may be relied upon by Owner for such operation and maintenance as may be necessary.

## **5.3 Performance Warranties**

Contractor warrants and guarantees that it will perform all of its Work in a good and workmanlike manner and in accordance with all applicable law, Good Practices, any applicable safety standards, and the provisions of this Contract and that when complete the Work and its components shall (a) be free from all defects caused by errors or omissions in Contractor's Work, (b) comply in all respects with all requirements of this Contract, and (c) comply with, and be capable of use and operation in accordance with all applicable laws.

## **5.4 Warranty Period**

Unless otherwise set forth in the Scope of Work, the warranty of title has no expiration date and all other warranties shall expire twelve (12) months after Substantial Completion of Contractor's Work unless notice is given to Contractor prior to the end of such twelve (12) month period that a warranty claim exists or Contractor reasonably knows that a warranty claim may exist. Any corrective action taken by Contractor under these warranties shall be similarly warranted for twelve (12) months from the date corrective action is completed or the remainder of the normal warranty period, whichever is longer. If any defect or deficiency in the Work is covered by Contractor's warranties, Owner shall have the option to reject and return affected equipment or materials at Contractor's expense or require Contractor to perform all modification, adjustment, repair or replacement promptly that may be required to correct such non-conforming, defective Work, furnishing any parts required therefore, F.O.B. to the Site, together with services of Contractor's supervisor and such workmen as shall be required, all at Contractor's expense. Contractor shall be solely liable for and shall correct any defect or deficiency under warranty at its sole expense, including correction of any other part of the Work or any other equipment or property damaged or adversely affected or any services in progress adversely affected as a result of the failure. Contractor's corrective action shall be subject to Owner's approval and shall be performed in accordance with Good Practices. Contractor's actions shall include any necessary adjustments, modifications, change of design, removal, repair, replacement or installation, and Contractor shall provide all necessary parts, materials, tools, equipment, transportation and labor. Contractor shall perform the corrective Work at the Site so as to minimize the loss of use of the Project and Contractor shall not interfere with the conduct of the business or operations of Owner.

## **5.5 Testing**

Contractor at its sole expense shall perform any tests Owner may reasonably require to verify that Contractor's repair, replacement, or other corrective action complies with this Contract.

## **5.6 Contractor Corrective Action**

If Contractor fails to take prompt corrective action, as required by this Contract or if any emergency exists requiring it to do so, Owner may take corrective action which may include acquisition of replacement equipment or services. If Owner takes corrective action under this subsection, Contractor shall reimburse all expenses incurred by Owner, including costs for direct labor and applicable overhead, material, tools, equipment, Contracts and transportation. Such corrective action undertaken by Owner shall not void Contractor's warranties and shall not result in the waiver of any of Owner's other rights or remedies.

## **5.7 Subcontractor Warranties**

Contractor shall obtain warranties against defects in materials and workmanship from every Subcontractor furnishing labor, materials, or equipment for the Work in accordance with this Contract.

# **ARTICLE 6 - UNCOVERING OF THE WORK**

## **6.1 Access To Construction**

Owner, Owner's consultants, other representatives and personnel of Owner, independent testing laboratories, and Governmental Authorities will have access to the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper access to the Work and advise them of Contractor's safety procedures so that they can comply therewith.

## **6.2 Uncovering Of Work**

If a portion of the Work is covered contrary to Owner's request, it must, if required by Owner, be uncovered for Owner's observation and be replaced at the expense of Contractor without change in any Milestone or the time for Substantial Completion. If a portion of the Work has been covered which Owner has not specifically requested to observe prior to it being covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accord with this Contract, the costs of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work is not in accord with this Contract, Contractor shall pay such costs unless the condition was caused by Owner, its employees, consultants, or agents.

## **6.3 Work Rejected By Contractor**

Contractor shall promptly correct Work rejected by Owner which fails to conform to the requirements of this Contract, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear the costs of correcting such non-conforming Work. If Owner prefers to accept Work which is not in accord with the requirements of this Contract, Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **6.4 Removal Of Work**

Contractor shall remove from the Site portions of the Work which are not in accord with the requirements of this Contract and are neither corrected by the Contractor nor accepted by Owner.

## **6.5 Risk of Loss**

Unless otherwise agreed by the parties in writing, Contractor agrees that it is fully responsible for the protection of all Work hereunder until Final Completion and acceptance by Owner and that it



will make good or replace at no expense to Owner any damage to or loss of its Work from any cause whatsoever which occurs prior to Final Completion.

## **ARTICLE 7 - CHANGES**

### **7.1 Contractor May Request Changes**

Owner, without invalidating this Contract, may order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions. If changes are ordered, the Contract Price and the times for completion of the Work shall be adjusted accordingly. All such changes in the Work shall be authorized by a Change Order attached.

### **7.2 Request For Additional Cost Or Time**

If Contractor wishes to make a request for an increase in the Contract Price or for an extension of the times for completion of the Work (including, but not limited to, any claim for loss of production or impact upon the Project Schedule, any Milestone or other deadline), Contractor shall give Owner written notice thereof in the form attached, Change Order Request Form, no later than five (5) days after the occurrence of the event giving rise to such request. This notice shall be given by Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Requests arising from delay shall be made within five (5) days after the delay. Contractor shall not be entitled to a Change Order if it fails to submit a request for same in accordance with the time deadlines set forth above. Any change in the Contract Price or the times for completion of the Work resulting from such request shall be authorized by Change Order.

### **7.3 Changes To The Contract Price**

The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

- A. By mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- B. Where the Work involved is covered by Unit Prices, contained in this Contract by application of such Unit Prices to the quantities of the items involved. Unit Prices are inclusive of wage rates, equipment, and allowances.
- C. Where the Work involved is not covered by Unit Prices in this Contract and agreement to a lump sum is not reached, the value of the Change Order will be determined as set forth in "Change in the Work."

### **7.4 Documentation**

Whenever the cost of any Change Order Work is to be determined by Unit Prices or as set forth in paragraph C above, Contractor will maintain records thereof in accord with generally accepted accounting practices and submit, in a form acceptable to Owner, an itemized cost breakdown together with supporting data along with daily time sheets. At any time, the Owner may request documentation of Equipment Rates.

### **7.5 Extension of Time**

If for reasons beyond its control, including an event of Force Majeure, Contractor shall be materially delayed at any time in the progress of the Work under such circumstances as would entitle an adjustment of the contract times pursuant to the terms of this Contract, Contractor shall be entitled

to seek an extension of time for completion of the Work hereunder or other relief; provided that Contractor shall have filed with Owner written claim for such extension or relief within five (5) days of the initial date of the event giving rise to such request. In the event that Contractor's performance of this Contract is delayed or interfered with by acts or omissions of the Owner or other contractors, Contractor may request an extension of time for the performance of the Work in accordance with the deadlines set forth in this subsection, but shall not be entitled to any increase in the Contract Price or to damages or additional compensation as a consequence of such delays or interference.

#### **7.6 Changes to the Contract Times**

Notwithstanding anything to the contrary in this Contract, Contractor shall only be entitled to an extension of any of the Contract times as shown in the Project Schedule or any milestone as a result of a delay, disruption, hindrance, or acceleration if such delay, disruption, hindrance, or acceleration or the aggregate of such delays, disruptions, hindrances and/or accelerations actually affects a critical path activity and delays achievement of any milestone or deadline set forth in the Project Schedule as determined based upon the following criteria, all of which must be established:

(a) Such delay, disruption, hindrance, or acceleration (or the aggregate thereof) in fact causes, and is responsible for, a change in the ability of Contractor to achieve a milestone by the milestone date or the applicable deadline;

(b) Contractor uses reasonable efforts to maintain the applicable deadline as if the delay, disruption, hindrance, or acceleration had not occurred; and

(c) Contractor demonstrates specific actions taken to work around or mitigate the impact of the delay, disruption, hindrance, or acceleration on the applicable deadline.

If a delay, disruption, hindrance, or acceleration causes a delay in any applicable deadline, as demonstrated as set forth herein, the affected deadline shall be extended only by the direct and immediate time impact associated with the act or event causing the delay.

### **ARTICLE 8 - INDEMNITY AND LIMITATION OF DAMAGES**

#### **8.1 Indemnity By Contractor**

Contractor shall, and shall require its subcontractors to, indemnify, defend, and hold Owner, and all of its other contractors and their respective affiliates, subsidiaries, assigns, successors, officers, directors, employees and agents, harmless from and against any and all claims, suits, demands, liabilities, losses, damages, costs, and expenses Owner or such other contractors or Contractors may suffer or pay out as a result of the negligence, gross negligence or willful misconduct of Contractor, its agents, employees or subcontractors in the performance of the Work or its duties under this Contract. The foregoing indemnity shall include reasonable costs and attorneys' fees incurred by the party indemnified in defending itself against a claim as to which Contractor owes a duty of indemnification. Contractor shall be entitled to (a) prompt written notice of a claim that gives rise to a claim for indemnification hereunder, and (b) an opportunity to defend the claim, suit, or demand through counsel of its choosing. Owner shall have the right to control the defense and to be the sole judge of the acceptability of any compromise or settlement.

#### **8.2 Intellectual Property Indemnity**

Contractor agrees to defend, indemnify and hold Owner and all of its other contractors and their respective affiliates, subsidiaries, assigns, successors, officers, directors, employees and agents

harmless from and against any and all claims whatsoever arising from or in any manner related to an infringement of patents or the improper use of other proprietary rights which may occur in connection with Contractor's or any subcontractor's performance of Work pursuant to this Contract and the ownership or use of any portion of the Project unless such infringement or improper use is at the direction of Contractor and not otherwise contemplated hereunder. Owner's acceptance of Contractor's engineering, design and/or proposed or supplied equipment and materials shall not be construed to relieve Contractor of any obligation hereunder. Should any such claim materially impair Contractor's performance of the Work or operation or use of the Project by Owner then Contractor shall, at its own expense, use commercially reasonable efforts to timely procure the right to continue its performance of the Work or the Project so as not to materially impair the schedule for completion of the Project or timely procure for Owner the right to continue operation of the Project.

### **8.3 Indemnity for Violation of Applicable Laws**

Contractor agrees to indemnify, defend and hold harmless Owner and all of its other contractors and their respective affiliates, subsidiaries, successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses and claims, fines, and penalties imposed by any Governmental Authority which arise from or result from Contractor's violation of any Applicable Law.

### **8.4 Indemnity for Hazardous Substances**

Contractor agrees to indemnify, defend and hold harmless Owner and all of its other contractors and their respective affiliates, subsidiaries, successors, assigns, officers, directors, employees, and agents, from and against any and all liabilities, losses, expenses and claims for personal injury or property damage that arise from or out of Contractor's use, handling, or disposal of Hazardous Materials.

### **8.5 Indemnity for Liens**

In the event that any person who has performed any portion of the Work files, claims or asserts any claim for payment for work performed on the Project, Contractor shall indemnify, defend and hold Owner harmless from any against claims, losses or expenses (including attorney's fees and costs) incurred in connection with any such claim.

### **8.6 LIMITATION OF DAMAGES**

**IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT, THE WORK OR THE PROJECT FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES WHETHER ANY CLAIM FOR SUCH DAMAGES ARISES IN CONTRACT, TORT (INCLUDING STRICT LIABILITY), NEGLIGENCE OR OTHERWISE.**

## **ARTICLE 9 - INSURANCE AND BONDS**

### **9.1 Contractor's Insurance**

Contractor shall maintain at its expense insurance coverage of the types and with the minimum limits set forth. See "Exhibit E – Insurance Requirements." Owner shall be named as additional insured under such policies of insurance. Such coverage shall be maintained in a form and with companies acceptable to Owner. The foregoing policies shall contain a provision that the coverages afforded under the policies will not be canceled, that a renewal will not be refused, and that the amount of coverage will not be reduced below the limits specified until at least thirty (30) days prior written notice has been given to Owner. A certificate of insurance showing such coverages to be in force shall be filed

with the Owner prior to commencement of the Work. Owner may at any time require Contractor to reaffirm maintenance of such coverage.

## **9.2 Other Insurance**

Owner shall determine the adequacy, scope, limits, terms and applicability to Contractor's Work of any builder's risk or fire insurance, if any, which may be provided or maintained by Owner. Contractor shall be responsible for providing any such insurance or supplemental insurance it may desire. In the event of a loss for which an Owner's builder's risk or fire insurance policy, if any, provides coverage for Contractor's Work, and a recovery from such insurance is subsequently secured, Owner shall have sole responsibility and discretion for the allocation of such recovery. The initiation or pendency of a claim or recovery under such insurance, if any, shall not be cause for Contractor to delay or suspend the performance of any obligation under this Contract. Except when and to the extent specifically covered by such insurance, if any, which the Owner may maintain, Contractor shall be responsible for any desired coverage against damage or loss to its own materials, facilities, tools, equipment, plant, scaffolds, bracing, and similar items.

## **9.3 Waiver of Subrogation**

Contractor shall obtain a waiver of subrogation in favor of Owner by endorsement or otherwise from any insurer who issues any policy of insurance required of Contractor pursuant to this Contract. Contractor will obtain similar waivers of rights and waivers of subrogation interests from its subcontractors and their insurers in favor of Owner.

## **9.4 Waiver For Perils Covered By Insurance**

Contractor and its insurers shall waive all rights against Owner for damages caused by perils covered by property insurance applicable to the Project, except such rights as it may have to the proceeds of such insurance. Contractor shall require similar waivers from all subcontractors and their insurers in favor of Owner. Contractor and its insurers shall waive all rights against Owner for loss or damage to any equipment used in connection with the Project which loss is covered by any property insurance. Contractor shall require similar waivers from all subcontractors and their insurers in favor of Owner.

## **9.5 Bonds**

Unless otherwise indicated on the cover page, Contractor shall, at its own expense, obtain from a commercial surety acceptable to Owner and in the form of separate bonds: (1) for the due and complete performance of Contractor's obligations hereunder (performance bond) and (2) for the timely payment of all charges for labor, services, and materials furnished for the prosecution of the Work (payment bond). Each such bond shall be for a sum equal to one hundred percent (100%) of the Contract Price. Such bonds shall be delivered to Owner within seven (7) days after the Effective Date. If the premium expense for such bonds is not included in the Contract Price as indicated above, Contractor shall submit to Owner the surety's invoice for such bonds. Upon presentation of satisfactory bonds, Owner shall pay the lesser of either the invoice amount or other such bond premium amount as set forth in this Contract. At Owner's option, such payment may be made to Contractor or directly to the surety. If Contractor performs Work prior to providing the bonds required of Owner pursuant to this Contract, Contractor warrants and represents to Owner that it has the ability to obtain such bonds and further that it will continue to perform the Work through the Final Completion without further payment from Owner until such bonds are provided or the Work is finally complete. Contractor will indemnify, defend and hold Owner harmless from any and all claims that arise out of or relate in any way to Contractor's failure to obtain the bonds required of Contractor pursuant to this Contract.

## **9.6 Financial Information**

If Contractor is not required to furnish performance and payment bonds, Contractor shall furnish reasonable evidence satisfactory to Owner that sufficient funds are available and committed for Contractor's performance of the Work, including performance of its warranty obligations hereunder. Owner reserves the right at any time to require Contractor to furnish such bonds.

## **ARTICLE 10 - TERMINATION**

### **10.1 Termination for Convenience**

Upon five (5) days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Agreement.

### **10.2 Contractor's Remedies**

In the event that this Contract is terminated by Owner for convenience in accordance with the preceding section, Contractor shall be paid for Work performed prior to the date of such termination plus Contractor's reasonable demobilization costs and costs reasonably incurred in terminating contracts with subcontractors but shall not include any lost anticipated profit. Recovery of such costs shall be Contractor's exclusive remedy in the event of a termination for convenience.

### **10.3 Termination of Contractor for Cause**

If Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it fails to supply enough properly skilled workmen or proper materials, or if it fails to make proper payment to subcontractors or for materials or labor, or persistently disregards Applicable Law, or breaches a provision of this Contract, then Owner may, without prejudice to any right or remedy and after giving Contractor seven (7) days written notice, during which period Contractor fails to cure the violation, terminate this Contract and take possession of the Site and of all materials and may finish the Work by whatever reasonable method it may deem expedient. Owner shall be the assignee of and have a security interest in the property described above to the extent located on the Site and shall be the assignee of any contracts between Contractor and any subcontractor and Contractor may at any time file this Contract as a financing statement under Applicable law. In the event of a termination pursuant to this Section, Contractor shall be entitled to recover progress payments for Work performed prior to the date of such termination less (a) the costs incurred by Owner to complete Contractor's Work (including the costs of any replacement contractor and an allowance for administrative burden equal to fifteen percent (15%) of such costs) and (b) any other costs (including attorney costs) incurred by Owner as a result of the termination. In the event the costs to complete Contractor's Work and the other costs incurred by Owner exceed the balance due to Contractor, Contractor shall promptly pay Contractor such excess amount. Contractor shall not be entitled to receive any further payment for previously completed Work until the Project is finally completed.

### **10.4 Suspension of the Work**

At any time and without cause, Owner may suspend the Work or any portion thereof by notice in writing to Contractor. Contractor shall resume the Work on the date so fixed. Contractor shall continue to perform all Work that is not suspended. Contractor shall, where appropriate, be allowed an adjustment in the Contract Price or an extension of the Contract times, or both as provided in Article 7.

## **ARTICLE 11 - DISPUTE RESOLUTION**

**11.1 Dispute Resolution**

If any controversy or claim arises out of or relates to this Contract, or breach thereof, the parties agree to utilize the procedures set forth below:

**11.2 Direct Negotiation**

The parties shall initially attempt to resolve the dispute by direct negotiation in an amicable manner.

**11.3 Mediation**

If the parties fail to reach agreement by direct negotiation within sixty (60) days from the commencement of negotiation, the parties will submit the dispute to non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association. Such mediation shall be held in the county and state where the Project is located.

**11.4 Arbitration**

If the parties cannot settle the dispute by non-binding mediation within sixty (60) days from the commencement of mediation, the dispute shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. In any such arbitration proceeding, any party may join any party who participated in the Project who is or may be necessary to resolution of the dispute with whom such party has an agreement to arbitrate. Such arbitration proceeding shall be held in the county and state where the Project is located.

**11.5 Demand For Arbitration**

Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association within sixty (60) days after the parties fail to reach agreement by non-binding mediation.

**11.6 Discovery Before Arbitration**

Prior to any arbitration hearing, discovery shall be limited to: interrogatories; requests for production of documents; exchange of written reports prepared by expert witnesses retained by any party to the proceeding; depositions of such expert witnesses; and depositions of no more than ten (10) witnesses by each party. The parties shall be entitled to take such discovery from third parties as agreed to or as ordered or approved by the arbitrator(s).

**11.7 Judgment**

Judgment upon the award rendered by the arbitrators shall be final and may be entered in any court having lawful jurisdiction thereof.

**11.8 Performance Pending Resolution Of Dispute**

Unless otherwise agreed in writing, Contractor shall continue its services and maintain its progress during any dispute resolution proceedings, and Owner shall continue to make payments to the Contractor in accord with this Agreement.

**ARTICLE 12 - MISCELLANEOUS**

**12.1 Assignment Of Agreement**

Contractor shall not assign its interest in this Contract without the prior written consent of Owner.

## **12.2 Choice Of Law**

This Contract shall be governed by the laws of South Carolina without regard to choice of law rules.

## **12.3 Extent Of Contract**

This Contract represents the entire agreement between Owner and Contractor relating to the Project and supersedes all prior negotiations, representations, or agreements. All prior negotiations, representations and agreements concerning the Work and the Project are merged into this Contract. This Contract may be amended only by written instrument signed by both Owner and Contractor.

## **12.4 Confidential Information**

All information disclosed to Contractor by Owner or acquired by Contractor in connection with the performance of the Work shall be held in confidence by Contractor and shall not be disclosed to third parties without Owner's prior written consent unless Contractor can show to Owner's satisfaction that said information (a) is generally known to the public without breach hereof, (b) was known to Contractor or in its possession prior to disclosure by Owner, (c) was disclosed to Contractor, after disclosure by Owner, by a third party having the unrestricted legal rights to disclose the same, or (d) is required by law to be disclosed.

## **12.5 Ownership Of Documents**

All documents prepared by Contractor, including but not limited to sketches, drawings, plans, specifications, models, calculations, computer software, and electronic media are instruments of service for the Project and are the property of Contractor. If Owner requires, they will be transferred to its custody at completion of the Work, but shall not be used for purposes other than maintenance, repairs, or reference without permission of Contractor. Contractor reserves the right to retain reproducible media of all documents.

## **12.6 Waiver**

The failure of either party to enforce any of the provisions of this Contract at any time, or from time to time, shall not operate as a waiver with respect to future or other actions or claims.

## **12.7 Effect Of Agreement**

The rights and obligations of the parties under this Contract shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

## **12.8 Notices**

All notices, requests, demands, and other communications under this Contract shall be deemed to have been duly given if delivered in person or if mailed in the United States mail, certified mail, return receipt requested, and properly addressed as set forth on the title page of this Contract. If mailed, any such notice, request, demand, or other communication is effective on the date shown on the return receipt. From time to time either party may designate another person or address for all purposes of the Agreement by giving to the other party not less than fifteen (15) days advance written notice of such change of person or address in accord with the provisions hereof.

## **12.9 Invalidity**

If any of the provisions of this Contract shall contravene or be invalid, such contravention or invalidity shall not invalidate the whole Contract or any other provision thereof, but the contravening or invalid provision or portion of such provision shall be deemed amended to conform with the Applicable Law but in such a manner as to most nearly reflect the intent of the parties.

#### **12.10 Joint Responsibility for Drafting**

This Agreement was negotiated and prepared by both parties. The parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one party on the ground that such party is the author of this Agreement or any part hereof.

#### **12.11 Compliance with Employment Laws**

Contractor warrants that it will comply with the requirements of the Fair Labor Standards Act of 1938, as amended. (See Attachment A – FEDERAL LABOR STANDARDS PROVISIONS and Attachment B General Decision No. SC130055 which are incorporated herein and made a part thereof.)

Unless otherwise exempted by Executive Order 11246 or by rules, regulations or orders issued pursuant thereto, Contractor shall comply with all applicable rules and regulations pertaining to equal opportunity and non-segregated facilities.

Unless otherwise exempted by the rules, regulations or orders issued pursuant thereto, Contractor shall comply with the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended and the rules and regulations promulgated thereto.

Unless otherwise exempted by the rules, regulations or orders issued pursuant thereto, Contractor shall comply with the Rehabilitation Act of 1973, as amended and the rules and regulations promulgated thereto.

Contractor agrees to verify the hiring eligibility of its employees as required under South Carolina's Eligible Immigration Reform Act, S.C. Code Ann., § 41-8-10, et seq. by either registering and participating in the Federal Work Authorization Program (E-Verify) pursuant to the Statute or employ only workers who at the time of their employment possess a valid South Carolina Driver's License or Identification Card or are eligible to obtain same or possess a valid Driver's License or Identification Card from another state deemed by the Director of the Department of Motor Vehicles to have requirements at least as strict as those in South Carolina. Contractor certifies that it will comply with the Statute in its entirety and agrees to provide the Owner with documentation to establish applicability of the Statute to the Contractor and compliance by same. Exhibit L.



IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above written.

IN THE PRESENCE OF:

CONTRACTOR:

\_\_\_\_\_  
(Witness)

By\_\_\_\_\_

\_\_\_\_\_  
(Witness)

Its\_\_\_\_\_

Date \_\_\_\_\_

CITY OF SPARTANBURG

\_\_\_\_\_  
(Witness)

By\_\_\_\_\_

Ed Memmott

\_\_\_\_\_  
(Witness)

Its City Manager

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Date\_\_\_\_\_

# EXHIBIT A

## SCOPE OF WORK

EXHIBIT A  
SCOPE OF WORK  
(BY OWNER)

This project will consist of:

# EXHIBIT B

## PROJECT SCHEDULE (BY CONTRACTOR)

EXHIBIT C

PERFORMANCE BOND

(BY CONTRACTOR)

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

A \_\_\_\_\_,  
(Corporation, Partnership or Individual)

hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto \_\_\_\_\_

**CITY OF SPARTANBURG**

\_\_\_\_\_  
(Name of Owner)

**145 WEST BROAD STREET, SPARTANBURG, SOUTH CAROLINA 29306**

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_

Dollars, \$\_\_\_\_\_ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOW, THEREFORE**, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and may extensions thereof which may be granted by the OWNER, with or without notice to the Surety during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expenses which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

**PROVIDED, FURTHER**, that the said surety, for value received hereby stipulate and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive

notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

**PROVIDED FURTHER**, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

**IN WITNESS WHEREOF**, this instrument is executed in \_\_\_\_\_ counterparts, each one of  
(number)  
which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**ATTEST:**

\_\_\_\_\_  
**Principal**

\_\_\_\_\_  
**(Principal Secretary)**

**(SEAL)** **BY** \_\_\_\_\_ **( s )**

\_\_\_\_\_  
**(Address)**

\_\_\_\_\_  
**(Witness as to Principal)**

\_\_\_\_\_  
**(Address)**

\_\_\_\_\_  
**(Surety)**

**ATTEST:** **BY** \_\_\_\_\_  
**Attorney-in-Fact**

\_\_\_\_\_  
**Witness as to Surety**

\_\_\_\_\_  
**(Address)**

\_\_\_\_\_  
**Address**

**NOTE: Date of BOND must not be prior to date of Contract.**  
**If CONTRACTOR in Partnership, all partners should execute BOND.**

**IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.**

EXHIBIT D

PAYMENT BOND

(BY CONTRACTOR)



**PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:** that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_  
(Corporation, Partnership or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto \_\_\_\_\_

**CITY OF SPARTANBURG**

\_\_\_\_\_  
(Name of Owner)

**145 WEST BROAD STREET, SPARTANBURG, SOUTH CAROLINA 29306**

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_

Dollars, \$\_\_\_\_\_ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**NOW, THEREOF**, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs or machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise then this obligation shall be void; otherwise to remain in full force and effect.

**PROVIDED, FURTHER**, that the said surety, for value received hereby stipulate and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

**PROVIDED FURTHER**, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts,  
(number)  
each one of which shall be deemed an original, this the \_\_\_\_\_ of  
\_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Principal  
BY \_\_\_\_\_ (s)  
(Principal Secretary)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Address) \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Surety) Secretary  
(SEAL)  
\_\_\_\_\_  
Witness to Surety BY \_\_\_\_\_  
Attorney-in-Fact  
\_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Address) \_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract.  
If CONTRACTOR in Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

**EXHIBIT E**

**INSURANCE REQUIREMENTS**

**INSURANCE REQUIREMENTS**

## **CONTRACTOR INSURANCE REQUIREMENTS**

Contractor shall provide, pay for and maintain in full force and effect, all insurance outlined herein with limits of liability not less than the limits of liability shown covering Contractor's activities, those of any subcontractors or anyone directly or employed by any of them, or by anyone for whose acts any of them might be liable.

### **Insurer Qualifications**

All insurance should be provided through insurance companies authorized to do business in South Carolina with an A M Best's Rating of no less than A and shall be approved by and acceptable to Owner.

### **Certificates of Insurance**

Within **5 (five) days** of execution of Contract but **PRIOR** to commencing Work, Contractor's insurer shall provide to Owner a Certificate of Insurance issued by an authorized representative of its insurer certifying that the insurance as required in this Exhibit is in full force and effect. Certificates should be sent via fax or mail to the following:

Risk Coordinator  
City of Spartanburg  
P. O. Box 1749  
Spartanburg, SC 29304  
Fax:# 864-596-2262  
Email: kbooker@cityofspartanburg.org

The original of the Certificate is to be sent as well. The Certificate shall include a statement that the policies will not be canceled or non-renewed without 30 days advance written notice to Owner.

### **Primary Insurance**

All insurance coverage required of the Contractor shall be primary over any insurance or self-insurance carried by City of Spartanburg.

### **Duration of Coverage**

All required insurance coverage shall be maintained without interruption during the entire term of the Contract plus an additional 3 years for Products and Completed Operations Coverage following final acceptance of the Work by Owner.

### **Subcontractor's Insurance**

The Contractor shall require any Subcontractor to purchase and maintain insurance of same types and limits required herein.

### **Waiver of Subrogation**

The Contractor shall require all policies of insurance as required herein to be endorsed to provide that the insurance company shall waive all of its right of recovery or subrogation against Owner. The Contractor shall require similar waivers from any Sub-contractors.

#### **Additional Insured**

The Contractor's insurance policies as required herein with the exception of Workers Compensation shall be endorsed to name Owner as an additional insured.

#### **Insurance Coverage and Limits**

**Workers' Compensation:** The Contractor shall provide and maintain Workers Compensation insurance in each jurisdiction in which the Work is located.

##### Limits:

Coverage A – State Statutory Benefits	
Coverage B - Employers Liability	\$1,000,000

##### Specific Coverage:

- United States Longshoremen and Harbor Workers Act
- Coverage endorsement must be provided if any work is to be performed on or around navigable water.

**Automobile Liability:** Contractor shall provide and maintain Business Auto Liability insurance covering bodily injury and/or property damage liability arising out of the use of any auto (including owned, hired, and non-owned autos).

##### Limits:

Combined Single Limit Each Accident:	\$1,000,000
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**Commercial General Liability:** Contractor shall provide and maintain in full force and effect Commercial General Liability Insurance covering all operations by or on behalf of Contractor on an occurrence basis against claims for bodily injury, personal in-jury, and/or property damage (including loss of use).

##### Limits:

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations	\$2,000,000

##### Specific Coverage:

- Occurrence Form
- Blanket Contractual Liability
- Underground Explosion and Collapse

**Umbrella/Excess Liability:** Contractor shall provide and maintain Umbrella/Excess Liability Insurance on an occurrence basis with coverage as broad as underlying policies.

Limits:

Each occurrence:	\$2,000,000
Annual Aggregate:	\$2,000,000

Specific Coverage:

Blanket Contractual Liability  
Follow Form Primary

**Other Insurance:** Any other insurance as specified by Owner in the Contract Documents. Also, Errors and Omissions coverage satisfactory to the City.

**Changes:** Exceptions to specified insurance requirements shall be submitted at time of any bid.

EXHIBIT F

CHANGE ORDER REQUEST FORM

## CHANGE ORDER REQUEST FORM

### CHANGE ORDER REQUEST (COR)

**COR No.:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Description of Change:**

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**Reason for Change:**

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**Drawing and Specification References:**

**Drawing Numbers**

**Section Numbers**

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OWNER	CONTRACTOR
By:	By:
Date:	Date:

Contractor hereby warrants that this COR represents any and all amounts Contractor claims for the change referred to herein (including any claim for delay or impact upon the Project Schedule, milestone, or any other contract time).



EXHIBIT G

CHANGE ORDER

## CHANGE ORDER FORM

### CHANGE ORDER (CO)

CO No.: \_\_\_\_\_ Date: \_\_\_\_\_

Project No.: \_\_\_\_\_

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Except as otherwise expressly provided herein, Contractor agrees to perform the Work described herein in accordance with the Contract Documents.

**Description of CO:**

**See attachment for details** \_\_\_\_\_

**ORIGINAL CONTRACT PRICE WAS  
PREVIOUS ADJUSTMENTS BY CHANGE ORDER  
AMOUNT OF THIS CO**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**NEW CONTRACT PRICE IS**

\$ \_\_\_\_\_

**CONTRACT DURATION WILL BE CHANGE BY \_\_\_\_\_ DAYS**

**THE REVISED DATE OF SUBSTANTIAL COMPLETION \_\_\_\_\_**

This CO represents final adjustment for any and all amounts due or to become due Contractor for changes referred to herein. Contractor further release all claims, if any (except those claims previously submitted in accordance with the Contract), for additional compensation under the Contract, including, without limitation any rights Contractor may have for additional compensation arising out of delays or disruption or impact upon Contractor's schedule, any milestones or other contract time as may have arisen prior to the date of this CO. Unless otherwise provided herein the time completion and other terms and conditions of the Contract remain unchanged

CONTRACTOR	OWNER
By:	By:
Title:	Title:
Date:	Date:

**EXHIBIT H**

**CHANGES IN THE WORK**

**CHANGES IN THE WORK**

## **(TIME AND MATERIAL – BY CONTRACTOR)**

- I. Actual cost of changes in Work or additional Work is as follows (percentages for mark-up are all inclusive of profit and overhead including superintendence, main and field office overhead and expense, and the use and depreciation of small tools):
  - A. Actual cost of direct hourly labor per the wage rates. This wage rate schedule shall include base hourly wages including all labor burden covering payroll taxes, worker's compensation, insurance, employee benefits, small tools, consumables and expendables, overhead and profit.
  - B. Actual substantiated invoice cost of materials, (excluding consumables and expendables) incorporated in the Work, including sales taxes, applicable discounts, and rebates due Contractor plus a markup of 12% .
  - C. Contractor-owned construction equipment/machinery (excluding small tools) inclusive of fuel, sales taxes, maintenance, and transportation to and from the Project Site plus a markup of 12%.
  - D. Third party rental costs of construction equipment machinery (excluding small tools) inclusive of fuel, sales taxes, maintenance, and transportation to and from the Project Site shall be at actual incurred cost plus a markup of 12%.
  - E. Costs of premiums for all bonds and insurance, permits, and fees directly related to the Work.
  - F. Cost for any necessary subcontractor Work shall be at the actual cost thereof plus a markup of 12%.
  - G. Additional costs of supervision and field personnel directly attributable to the change shall be compensated at actual labor burden covering payroll taxes, worker's compensation, insurance, employee benefits, overhead, and profit.

# EXHIBIT I

## PARTIAL RELEASE OF CLAIM/LIEN

**PARTIAL RELEASE OF CLAIMS  
(INCLUDE WITH ALL PAY REQUESTS)**

WHEREAS, \_\_\_\_\_ as Contractor has entered into a Contract with Owner dated \_\_\_\_\_ relating to the furnishing of labor, materials, supplies, and/or equipment in connection with \_\_\_\_\_ (the Work).

NOW, THEREFORE, in consideration of the sum of \$ \_\_\_\_\_ and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, which sum represents the total amount due to Contractor through \_\_\_\_\_ under the terms of the Contract Agreement between Owner and Contractor, Contractor does hereby:

1. Certify, represent and warrant that (a) all persons, firms, associations, corporations or other entities furnishing labor, materials, equipment, or supplies to Contractor with respect to the Work have been paid in full, including any and all applicable Federal, State and Local sales, use, excise, or similar taxes or import duties, licenses and royalties, through the date stated above and (b) that as of the date herein above written, there are no outstanding claims by or on behalf of Contractor against Owner for any additional money, costs or damages or claims arising from delay, from the denial or the granting any Change Order, or from claims of any other kind or nature except for the remaining balance to be due under the Contract, if any.
2. Remise, release, waive, relinquish, discharge and forever quit claim unto Owner its heirs, executors, administrators, successors, affiliates, assigns, employers, employees, bailees, agents and servants of and from all and all manner of claims, demands, and causes of action whatsoever against any of them, which Contractor ever had, now has, or which it or its successors or assigns hereafter can, shall or may have, upon or by reason of any matter cause of thing whatsoever, arising out of, or in any way connected with, the furnishing of labor, services, materials, equipment, freight, and/or supplies under the Contract through the date stated above.
3. Agree to indemnify, defend and save harmless Owner, its heirs, executors, administrators, successors, affiliates, assigns, employers, employees, bailees, agents and servants against all loss, cost, damage or expense, including attorney's fees, by reason of any and any manner of claims or demands which anyone may have for labor performed, or for material, supplies, or equipment furnished under the Contract through the date stated above.

IN WITNESS WHEREOF, Contractor has duly caused this Partial Release of Claims to be signed and attested by its duly authorized agent this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CONTRACTOR

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public for the state of \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

# EXHIBIT J-1

## APPLICATION FOR PAYMENT

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### APPLICATION FOR PAYMENT

Contract Number \_\_\_\_\_

Application No.: \_\_\_\_\_

**Project:** \_\_\_\_\_

**Period To:** \_\_\_\_\_

**To:** City of Spartanburg

**From:** \_\_\_\_\_

**APPLICATION FOR PAYMENT – SUBCONTRACTOR**

Application is made for payment, as shown below, in connection with the above-referenced Project.

**ORIGINAL CONTRACT PRICE** \$ \_\_\_\_\_

**Net change by Change Orders (Thru Change Order No. \_\_\_\_)** \$ \_\_\_\_\_

**SUBCONTRACT PRICE TO DATE** \$ \_\_\_\_\_

**TOTAL COMPLETED AND STORED TO DATE** \$ \_\_\_\_\_

**LESS RETAINAGE (10%)** \$ 0.00

**TOTAL LESS RETAINAGE** \$ \_\_\_\_\_

**LESS PREVIOUS CERTIFICATES FOR PAYMENT** \$ \_\_\_\_\_

**CURRENT PAYMENT DUE** \$ \_\_\_\_\_

**BALANCE TO FINISH, INCLUDING RETAINAGE** \$ 0.00

The undersigned Contractor certifies that to the best of Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by Contractor for Work for which previous Applications for Payment were issued and payments received from Owner, that current payment shown herein is now due, and that as of this date there are no outstanding claims by Contractor against Owner.

**CONTRACTOR:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_ County of: \_\_\_\_\_

SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public for the state of \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public



## EXHIBIT J-2

### SCHEDULE OF VALUES (BY CONTRACTOR)

# EXHIBIT K

## FINAL RELEASE OF CLAIM/LIEN

**EXHIBIT K**  
**FINAL RELEASE OF CLAIMS**

WHEREAS, \_\_\_\_\_, Contractor has entered into a Construction Agreement with Owner dated \_\_\_\_\_ relating to the furnishing of services in connection with \_\_\_\_\_ (the Work).

NOW, THEREFORE, in consideration of the sum of \$ \_\_\_\_\_ and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, which sum represents full and final payment amount due to Contractor through Final Completion of the Work, under the terms of the Agreement between Contractor and Owner, Contractor does hereby:

1. Certify, represent and warrant that (a) all persons, firms, associations, corporations or other entities furnishing labor, materials, equipment, or supplies to Contractor with respect to the Project have been paid in full, including any and all applicable Federal, State and Local sales, use, excise or similar taxes or import duties, licenses and royalties, through the date stated above; and (b) that as of the date herein above written, there are no outstanding claims by or on behalf of Contractor against Owner for any additional money, costs, or damages or claims arising from delay, from the denial or the granting of any Change Order, or from claims of any other kind or nature except for the remaining balance to be due under the Contract, if any.
2. Remise, release, waive, relinquish, discharge and forever quit claim unto Owner, its heirs, executors, administrators, successors, affiliates, assigns, employers, employees, bailees, agents and servants of and from all and all manner of claims, demands, and causes of action for payment for Work performed on the Project whatsoever, which Contractor ever had, now has, or which it or its successors or assigns hereafter can, shall or may have, upon or by reason of any matter cause of thing whatsoever, arising out of, or in any way connected with, the furnishing of labor, services, materials, equipment, freight, and/or supplies under the Contract through the date stated above.
3. Agree to indemnify, defend and save harmless Owner, its heirs, executors, administrators, successors, affiliates, assigns, employers, employees, bailees, agents and servants against all loss, cost, damage or expense, including attorney's fees, by reason of any and any manner of claims or demands which anyone may have for labor performed, or for material, supplies, or equipment furnished under the Contract through the date stated above.

IN WITNESS WHEREOF, Contractor has duly caused this Final Release of Claims to be signed and attested by its duly authorized agent this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

CONTRACTOR

BY:\_\_\_\_\_

TITLE:\_\_\_\_\_

SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public for the state of \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires:\_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

EXHIBIT L

COMPLIANCE WITH THE S.C.  
IMMIGRATION REFORM ACT

**EXHIBIT L**

**COMPLIANCE WITH THE SOUTH CAROLINA  
ELIGIBLE IMMIGRATION REFORM ACT**

\_\_\_\_\_ Contractor

\_\_\_\_\_ Subcontractor

certifies that it is compliant with the South Carolina Eligible Immigration Reform Act by either registering and participating in the Federal Work Authorization Program (E-Verify) pursuant to the Statute or employing only workers who at the time of their employment possess a valid South Carolina Driver's License or Identification Card or are eligible to obtain same or possess a valid Driver's License or Identification Card from another state which has been deemed by the Director of the Department of Motor Vehicles to have requirements at least as strict as South Carolina. By the signature below, the Contractor (Subcontractor, etc.) agrees to provide the City with documentation to establish the applicability of the Statute to the Contractor and by the signature below, certifies that it is compliant with the Statute with all regards. This certification and the requirements of this Statute require that the Contractor verify the hiring eligibility of its employees before and during the Project.

\_\_\_\_\_  
Name of Contractor (Subcontractor, etc.)

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_