

**PURSUANT TO SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS
OF SOUTH CAROLINA, 1976, AS AMENDED, THE TERMS AND
CONDITIONS OF THIS CONTRACT ARE SUBJECT TO BINDING
ARBITRATION UNDER PARAGRAPH 14.1 HEREIN**

CONSTRUCTION CONTRACT

This Construction Contract is effective this March ____, 2022 ("Effective Date") by and between Owner and Contractor as defined below.

CONTRACTOR: **company name**
 address
 office location

OWNER: **CITY OF SPARTANBURG**
 145 WEST BROAD STREET
 SPARTANBURG, SOUTH CAROLINA 29304

PROJECT: **FIRE STATION ONE RENOVATION**
 450 WOFFORD STREET
 SPARTANBURG, SOUTH CAROLINA

TOTAL CONTRACT AMOUNT \$ _____

DEADLINE FOR SUBSTANTIAL COMPLETION TBD

LIQUIDATED DAMAGES FOR DELAYS OF See Contract Paragraph 10.7

RETAINAGE PERCENTAGE ON ALL WORK UNTIL FINAL PAYMENT: See Contract Paragraph 8.4

PERFORMANCE AND PAYMENT BONDS: X Required _____ Not Required

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ADDITIONAL INSURED: **CITY OF SPARTANBURG**

This contract ("Contract") is entered into by and between the City of Spartanburg, South Carolina ("Owner") and _____ ("Contractor") a Corporation whose address is _____ for the construction of the Fire Station One Renovation ("Project") located 450 Wofford Street in the City of Spartanburg, South Carolina.

1. WORK TO BE PERFORMED. Contractor shall furnish at Contractor's own expense, labor, materials, supplies, equipment, tools, transportation and other items of expense necessary to complete in a workmanlike manner all Work in accordance with the terms and conditions of the Contract, except for the labor, materials, supplies, equipment, tools, transportation and other items of expense as identified in Appendix A that are to be required to be furnished by the Owner. The Work is defined in detail in the Contract Documents which govern the interpretation and performance of this Contract.

All prior negotiations or writings of every kind concerning the Work are superseded and supplanted by this Contract, unless specifically included in the Contract Documents.

2. PROJECT. The Project that is described in detail in the Contract Documents is fire station building of approximately 72,299 square feet with an administration office space, living quarters, fire apparatus space and amenities that includes site work is located at 450 Wofford Street in Spartanburg, South Carolina.

3. CONTRACT DOCUMENTS. This Contract consists of this Construction Contract and the following Contract Documents including all exhibits, manuals; appendices, addenda, drawings, specifications and documents therein and attachments thereto, all of which are by this reference incorporated herein and made part of this Contract:

4. ADMINISTRATION OFFICES. The facility is presently being used by the fire station management staff. These areas will continue to be in operation during the construction period. Contractor shall make any and all efforts to control construction staff and consultants from these areas and to minimize disruption to city staff. These areas will be blocked off with hard partitions until work in those area can control entry and egress for city staff and construction personnel.

5. PERFORMANCE PERIOD Contractor shall commence Work after execution of the Contract as provided in the Notice to Proceed, and shall complete all Work in accordance with the Project Construction Schedule set forth in the Contract Documents. The Work to be performed under this contract shall commence within ten (10) calendar days after the date of the Notice to Proceed. Contract time shall be determined on the calendar day basis. The work shall be completed within **270 calendar days after the date of such Notice to Proceed.**

6. PRE-BUY OUT NEGOTIATIONS The city is aware of the circumstances with the long lead time for product to this project. The city will Enter into negotiation with the selected bidder to arrange opportunities to buy out materials for the procuring long lead items (Steel) and etc. The city and contractor will discuss ways to procure these items prior to actual work on the project until such items have been given delivery dates or materials procured and are on site. The contractor will not be responsible for liquidated damages during the procurement process. There could be options to procure the needed product without the execution of the fully executed contract with a possible option to enter into an agreement with said contractor for the procurement prior to a Notice To Proceed. The procurement agreement would guarantee the contractor of a fully executed contract for the construction project.

Exhibits and Appendices

- Exhibit 1. Legal Notice for Construction Services for the Fire Station One Renovation.**
- Exhibit 2. Request for Proposal (RFP)for Construction Services for the Fire Station One Renovation**
- Exhibit 3. Insurance Requirements**
 - (A)Insurance Certificates**
- Exhibit 4. Bonds**
 - (A) Performance Bond**
 - (B) Payment Bond**
- Exhibit 5. Federal Equal Opportunity Provisions**
- Exhibit 6. Federal Labor Standards Provisions and Attachment to Federal Labor Standards Provisions**
- Exhibit 7. Notice to Proceed (to be inserted when executed)**

- Appendix A Project Manual and Detailed Construction Drawings**
 - (1) Specification Index**
 - (2) Design Drawing Index**
- Appendix B Project Construction Schedule (to be inserted)**
- Appendix C Schedule of Values (to be inserted)**
 - (1) Building**
- Appendix D Change Order Forms**
 - (1) Change Order Request Form**
 - (2) Change Order Form**
- Appendix E Change in Work**
- Appendix F Application for Payment**
- Appendix G Payment Forms**
 - (1) Partial Release of Claims**
 - (2) Final Release of Claims**
- Appendix I Compliance with South Carolina Eligible Immigration Reform Act**

ARTICLE 1 DEFINITIONS

For the purposes of the Contract Documents, the following words and terms 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 **Allowance** shall mean a fixed sum of money identified in the contract for a specific element of the Project that has not been specified or designed as of the execution date of the Contract.

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

1.3 **Architect/Engineer** shall mean the architect, engineer or other design professional of record which has a contract with the Owner to provide professional design services for the Project. The Architect/Engineer shall also include the structural, mechanical, electrical, civil and other engineers and all other consultants retained by the Architect/Engineer to design the elements and observe the construction of the Project.

1.4 **As-Built Drawings** shall mean the layout of the construction work as built showing location or documentation of any and all design changes. Shall also provide location and documentation of site, building and parking improvements for piping, sleeves, conduits and building components. As-built drawings shall be kept up to date from each contractor or sub-contractor (all trades) and shall be part of the Close-out Documents.

1.5 **Change Order** shall mean written order signed by the Owner or its authorized agent and by the Contractor or its authorized agent which is issued after the execution of this Contract and the approval of final project plans/specifications and acceptance of a Guaranteed Maximum Price which authorizes a modification in the Work and/or an adjustment in the in the Guaranteed Maximum Price and/or the schedule for the completion of the Work.

1.6 **Drawings** shall mean the graphic and pictorial portions of the Contract Documents detailing the design, location and dimensions of the Work, generally including plans, elevations, sections, shop drawings and diagrams.

1.7 **Final Completion** shall mean the point in time when all Work, including Work noted in the Contractor, Owner, and Architectural Punch-lists, has been completed in accordance with this Contract and the Owner has accepted such Work as complete.

1.8 **Force Majeure** shall mean any act or event that (a) renders the affected Party unable to perform its obligations under this Contract (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 though 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 the applicable law. Force Majeure shall not

include any of the following (a) economic hardship, (b) changes in market conditions, (c) late delivery of equipment, unless otherwise caused by an event of Force Majeure, (d) strikes, other than industry-wide strikes, and (e) nonperformance or delay by other contractors engaged by the Project Contractor, unless otherwise caused by Force Majeure.

1.9 **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.

1.10 **Project** shall mean the new Fire Station # 1 Renovation consisting of the existing Integral Solutions building located at 450 Wofford Street and includes will fire apparatus space, living quarters space, office space, locker room/restroom space, and concrete apron for fire vehicle parking and staging. Project also includes demolition of the building components, existing tree and site work.

1.11 **Project Manual** shall mean the volume assembled for the Work that includes the required specifications and material for Work, Work standards, descriptions and administrative procedures that are based on the Bid Price for the Project. Project Manual Index which is inclusive of the above mentioned attached as Appendix A

1.12 **Project Construction Schedule** shall mean the duration of time necessary to complete the Work and is included in the Contract Documents. Which is attached as Appendix B

1.13 **Punch-list** shall mean the list prepared by the Contractor (internal list) and Owner or its authorized representative prior to Substantial Completion of the Work, with the full assistance and cooperation of the Contractor, which sets for the those items of Work that remain to be performed to comply with all of the standards and requirements set forth in this Contract.

1.14 **Photographic Documentation** shall mean the contractor shall produce photos of the work in place and deliver to the owner as part of the close-out documents.

1.15 **Specifications** shall mean that portion of the Contract Documents consisting of written requirements for materials, equipment construction systems, standards of workmanship for the Work, and performance of related services.

1.16 **Substantial Completion** shall mean the stage in the progress of the Work where the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

1.17 **Value Engineering** shall mean an organized effort directed at analyzing the function, equipment, facilities, procedures, and supplies for the purpose of achieving the required function at the lowest total cost of effective ownership, consistent with requirements for performance, reliability, quality, and maintainability.

1.18 **Work** shall mean the construction and related services required to construct the Project as specified by the Construction Documents and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

ARTICLE 2 RELATIONSHIP OF THE PARTIES

2.1 The Contractor accepts the relationship of trust and confidence established by this Contract and prior agreements and covenants with the Owner to cooperate with the Architect and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and material; and to perform the Work in an expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best and most expeditious manner by furnishing and approving in a timely manner, the information required by the Contractor and making payments to the Contractor in accordance with the requirements of the Contract Documents.

2.2 The Contractor shall designate in writing to the Owner, the name of the Contractor's Representative who shall be authorized to act on behalf of the Contractor and who shall have full authority to bind the Contractor. Contractor's Representative shall make regular site visits to assure that the Work is being completed in conformance with the Contract Documents.

2.3 The Contractor shall designate in writing to the Owner the name of Contractor's Project Supervisor who will have authority to direct the activities of the Contractor's employees and contract agents. The Project Supervisor will be assigned only to this project and will be on site sufficiently to provide adequate supervision and coordination of the work. At any time, owner has the right to have designated persons replaced if Owner deems work is not being performed at a reasonable rate or questions designated person's knowledge of construction.

2.4 The Owner shall designate its representatives with authority over the Project or elements of the Project. The Architect/Engineer of record will have responsibility for design conformance for the Project and will have the requisite authority to assure compliance with Project Design and Specifications.

ARTICLE 3 SCOPE OF WORK

3.1 Scope of Work is described provided in accordance with the Plans, Specifications, Drawings and Project Manual (Appendix A) dated February 17, 2022 and all revisions. Any Amendments to the plans, specifications, drawings and/or Project Manual that are approved by the Owner will become an amendment to the Contract. Project drawings contain 86+ sheets and the Project Manual contains _____ pages.

ARTICLE 4 GENERAL CONDITIONS

4.1 The Contractor shall be responsible for creating a graphic construction schedule (Gantt chart)based on the Critical Path Method(CPM) indicating the sequence of work in tasks or activities with no task exceeding 20 working days in duration and the dates of starting and finishing each. The schedule shall show the time required to perform the task and the work sequence, and, a listing of dependencies between all tasks listed in the schedule. Acceptable software which produces an acceptable graphical construction schedule and collaboration are; Procure, E-Builder, Microsoft Project, Primavera P3, Primavera Sure Track or Corel Time Line. The schedule will show the completion of the Project within the Project Construction Schedule. The Project Construction Schedule will be mutually agreed upon by the Owner, the Architect and the Contractor and will be included in the Contracts as Appendix B and shall be provided within 14 day from signing the Contract Documents. Changes to the Work schedule will be governed by Article 7 CHANGES IN WORK section of this Contract.

4.2 The Contractor shall be responsible for supervising, scheduling and coordinating the work of its employees and contract agents and other personnel retained or hired by the Contractor.

4.3 The Owner shall furnish all boundary surveys and establish all base lines for locating the principal elements of the Work as shown in the Contract Documents. From the information provided by the Owner, unless otherwise specified in the Contract Documents, the Contractor shall develop and make all detailed site surveys needed for the construction, such as but not limited to, slope stakes, batter boards, stakes for pile locations and other working points, line elevations and cut sheets. Contractor shall carefully preserve survey benchmarks, reference points and stakes.

4.4 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.

4.5 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 Construction Schedule or any modification thereof. Owner reserves the right to modify any such Project Construction 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 Construction Schedule.

4.6 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. Contractor shall submit within 7 days of signing of the Contract and before the Notice to Proceed, a Safety Plan for review to the Owner. No work on site shall be permitted until the Plan is approved.

4.7 Contractor shall review, approve, and submit to Architect, shop drawings, product data, samples, and other similar submittals required by this Contract. Contractor shall cooperate with Architect 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.

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

4.9 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 promptly 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, Pursuant to Article 13, promptly terminate this Contract.

4.10 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.

4.11 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, to the extent caused or resulting from the contractors failure to protect its work which occurs prior to Final Completion.

4.12 The Owner shall have the right to inspect any material used. Material furnished shall be, unless otherwise specified in the Contract Documents, new, complete, ready-to-use and of the latest model, shall not have been used in demonstration or other services and shall have all the usual equipment as shown by its manufacturer's current specifications and catalogs. Equipment, supplies or services that fail to comply with the Contract requirements regarding design, material or workmanship may be rejected at the option of the Owner.

4.13 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 affected whether or not final payment has been made.

4.14 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.

ARTICLE 5 SPECIAL PROVISIONS

5.1 Work activities that create excessive noise, vibrations, fumes or similar disruptions which are in the opinion of the Owner's Representative may be stopped and rescheduled as approved by the Owner.

5.2 The Contractor will supply the Owner with a list of employees, contractors and suppliers who will be accessing the site during the construction phase. The Contractor certifies that its employees, contracted employees and its supplier's employees who have access to the site during the construction phase are not listed on any sexual offender list or site. The Owner reserves the right, for good cause, to exclude any employee of the Contractor from performing services for the Owner under this Contract, provided such exclusion is not exercised in violation of any federal, state or local law or regulation.

5.3 Storage will be limited to the project area unless approved by the Owner's Representative. The Contractor is responsible for the safety and security of all equipment and material stored on the site.

5.4 Contractor staff parking will be on the site and to legal parking on the adjacent streets is prohibited unless approved by the Owner's Representative.

5.5 Staging of delivery vehicles is prohibited on the adjacent residential streets unless approved by the Owner's Representative. Material delivery schedules will be discussed at weekly Project meetings.

5.6 All utility service and building system connections or required interruptions shall be coordinated in advance with the Owner's Representative and the appropriate utility representative.

5.7 Rubbish, debris, waste, dust and surplus materials shall not be allowed to accumulate and shall be removed continuously and disposed of by the Contractor as the work progresses. Housekeeping complaints from adjacent property owners will be forwarded to the Contractor for prompt cleanup.

5.8 The Contractor, Owner's Representative and/or Architect shall meet by-weekly for site visits and monthly OAC meeting to discuss the progress of work, schedule cost and other items related to completing the Project as required by the Contract Documents. Minutes of the meeting will be created by the Architect or Owner and will note any substantial issues affecting the Project. The Contractor is required to provide a weekly summary of work accomplished prior to the weekly meeting. The Contractor is also required to provide daily logs of persons on site, deliveries, rental equipment, weather conditions and other project information.

5.9 Contractor may be required to attend meetings with City staff or the City Council to discuss the progress of the Project.

5.10 Contractor shall provide Owner with blank copies of reports that the Contractor uses to measure Project cost and schedule for review. During the duration of the Project, the Contractor will provide copies of the information in these reports and other relevant information as is required by the Owner's Representative.

ARTICLE 6 CONSTRUCTION PRICE

6.1 Both parties agree that the Construction Price is \$ _____ and is based on the revised drawings, specifications, project manuals dated February _____, 2022. (Appendix C)

6.2 To achieve the budgetary goals of the Project, both parties agree to continue with value engineering efforts with the Architect to make changes to the Project that reduce the cost of the Work without compromising Project goals.

6.3 The Owner will provide the Contractor with five (5) complete sets of plans and specifications. The Contractor is solely responsible to provide final plans, drawings, specifications and other necessary information to its employees, contract agents and suppliers based on the Contractor Bid Price.

6.4 The Contractor shall provide One (1) set of drawings in the office trailer for sole purpose of accounting for inspections of trades that are stamped for construction and reviewed by the City of Spartanburg Building Inspection Office.

6.5 The Contractor shall provide One (1) set of drawings in the office trailer for sole purpose of accounting for As-Built for each trade.

6.6 The Contractor shall assure that all its contract agents retained to perform any part of the Work on the Project do so under the terms of the Contract and is in conformance with the approved plans and specifications. (Appendix A)

6.7 The Contractor is responsible to pay taxes and fees of every kind that are imposed, levied or assessed by any Governmental Authority that arises from the Work except for those taxes and fees that the Owner has agreed to pay and are noted in the plans and specifications for the Project. Taxes and fees include sales, use, personal property, excise, income, payroll, and utility connections.

6.8 The Contractor shall obtain all necessary permits and licenses necessary for the Contractor to perform the Work or conduct work 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 the Owner in the plans and specifications.

6.9 The parties agree that the value engineering effort will continue for the duration of the Work to identify cost reduction opportunities. The parties agree that cost reductions will be shared on the following formula. The Contractor will retain the "Overhead and Fee" (6%) related to original value and receive 20% of any new value reduction resulting from Value Engineering during the construction. The Owner shall have the option to add any Alternates listed in the supplemental to the Schedule of Value. Appendix C-1 and C-2. The Owner agrees to provide the Contractor sufficient amount of time for any Alternate item added by the Owner.

ARTICLE 7 CHANGES TO THE WORK

7.1 Owner and Contractor agree that the Project development process has lessened the potential for significant changes to the Scope of Work and Schedule of Values.

7.2 The Construction Price is the basis for the Work. The Contractor will include alternate items in the Additional Value Engineering Items, Appendix A-2, that have a finite cost which the Owner may select to add to the Project at its sole discretion. Any alternate item from Appendix A-2 shall be added by Change Order at price provided in Appendix A-2 and also listed in Schedule of Values in Appendix C-1 and C-2.

7.3 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 as Exhibit E.

7.4 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 as Exhibit D-1, Change Order Request Form, no later than seven (7) calendar 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 seven (7) calendar 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, Exhibit D-2.

7.5 When the Contractor foresees a delay in the prosecution of the work and in the event, promptly upon the occurrence of a delay which the Contractor regards as unavoidable, he shall notify the Owner Representative in writing of the probability of the occurrence of such delay, and the extent of the delay, and its possible cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. If this cannot be done, the Contractor shall estimate the extent of the delay and to what extent the prosecution and completion of the work are being impacted. The Contractor shall submit a proposed schedule revision for review by the Owner. The Owner shall determine whether the delay is to be considered avoidable or unavoidable.

7.6 The value of any Work covered by a Change Order or of any claim for an adjustment in the Construction 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 wages 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 Exhibit E "Change in the Work".

7.7 Total Contractor markup percentage, defined as "Overhead and Fee", for change orders will not exceed the overhead and fee (6 %) agreed to in the Construction Price.

7.8 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.

7.9 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 seven (7) calendar 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, and shall be entitled to any increase in the Contract Price or to damages or additional compensation as a consequence of such delays or interference only after mutually agreed upon by the Owner and Contractor through the Change Order process.

7.10 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 Construction Schedule as determined based upon the following criteria, all of which must be established:

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

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

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

7.11 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.

7.12 Request for extension of time on calendar day projects, caused by inclement weather, shall be supported with the National Weather Bureau data showing the actual amount of inclement weather exceeding which could normally be expected during the contract period.

ARTICLE 8 PAYMENT

8.1 Payments shall be made by Owner to Contractor according to the following procedure:

In accordance with such schedule as directed by Owner, Contractor shall submit to Owner an Application for Payment in the form attached Exhibit G. (AIA A703 & A704 optional) Covering work completed through the end of the preceding month along with a Partial Release of Claims Exhibit G-1.

The period covered by each Application for Payment shall be one calendar month.

Each Application for Payment shall be based upon the approved Schedule of Values submitted by the Contractor as Appendix C of the Contract Documents. The Schedule of Values shall allocate the entire Construction Price among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as may be required.

8.2 The Contractor is to submit within the first week a "Schedule of Values" Appendix C to the Owner and Architect for approval. The Contractor is also to submit before the first Application for Payment, a "Final Schedule of Value" for approval by the Owner and Architect. The Final Schedule of Value will be inserted into the contract as an amendment to the original "Schedule of Value" Appendix C.

Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Completion percentages must be verified and approved by the Owner.

The Payment shall be calculated by multiplying the percentage of completion of each portion of the Work by the share of the Construction Price allocated to that portion of the Work in the Schedule of Values, less retention of ten percent (10%). Billing by the

Contractor for a percentage completion shall constitute a declaration that the remaining portion of the Construction Price is sufficient to complete the Work.

Add that portion of the Construction Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or if approved in advance by the Owner, suitable stored off the site at a location agreed upon in writing), less retention of ten percent (10%).

Subtract the aggregate of previous payments made by the Owner.

8.3 City shall make payment to the Contractor within 30 days after receipt of a proper Application for Payment. The Contractor shall submit a Partial Release of Claims for each pay period. Appendix G-1

8.4 Not later than the 30th day after submitting an accepted, approved and correct estimate along with all required documentation as per the Contract Documents, 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 the 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 the work is unsatisfactory or falls behind schedule, retention may be resumed at the previous level after notification to the Contractor. Reduction or limitation of retention, if any, shall be upon written request by the Contractor

8.5 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").

8.6 All work must be approved by the Owner. For unsatisfactory Work not corrected, the Owner may, at it is option, withhold payment for the unsatisfactory Work, deduct the amount from the invoiced amount, have the Work corrected by another contractor at the Contractor's cost and expense

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

8.8 A final payment, consisting of the unpaid balance of the Contract Price, including retention 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 as Appendix H-2 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. Application for Final Payment shall also be accompanied by a notarized lien waiver from each sub-contractor and supplier who furnished labor or material for the job.

8.9 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 seven (7) calendar 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.

8.10 The Contractor shall keep full and detailed accounts and exercise controls as may be necessary for proper financial management under this Contract and the accounting control systems shall be satisfactory to the Owner. The Owner, Owner's accountants shall be afforded access to the Contractor's records. Books, correspondence, instructions, drawings, receipts, subordinate contracts, purchase orders, vouchers, memoranda and other data relating to the Contract and the Contractor shall preserve these for a period of three years after the final payment.

ARTICLE 9 HEALTH AND SAFETY

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 If any work under this Contract involves digging trenches or other excavations that extend deeper than three feet below the surface:

The Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing, of any:

Material that the Contractor believes may be a material that is hazardous waste as defined by federal or state law and requires special removal and disposal methods.

Subsurface or latent physical conditions at the site differing from those indicated in the Contract Documents

Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided in the Contract

9.8 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.

9.9 In the event that a dispute arises between the Owner and the Contractor, whether the conditions materially differ, or involve hazardous material, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between contracting parties.

ARTICLE 10 INDEMNIFICATION AND LIMITATION OF DAMAGES

10.1 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. Contractor shall have the right to control the defense and to be the sole judge of the acceptability of any compromise or settlement.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 IF THE CONTRACTOR HAS NOT COMPLETED THE PROJECT WITHIN THE PERFORMANCE PERIOD, IT WILL BE GRANTED A THIRTY DAY (30) GRACE PERIOD FOR COMPLETION. AFTER WHICH THE CONTRACTOR WILL BE ASSESSED LIQUIDATED DAMAGE OF \$ 500.00 (FIVE HUNDRED DOLLARS) PER DAY UNTIL THE PROJECT IS COMPLETED.

- **Deadline for Substantial Completion – 240 days from the executed Notice to Proceed (Exhibit 8)**
- **Deadline for Final Completion – 270 days Notice to Proceed (Exhibit 8)**
- **Grace Period – 30 day from Final Completion per the Notice to Proceed (Exhibit 8)**
- **Liquidated Damage for Delays inforce at the end of the Grace period until completion**

ARTICLE 11 INSURANCE AND BONDS

11.1 Contractor shall maintain at its expense insurance coverage of the types and with the minimum limits set forth in the Insurance Requirements Exhibit 4. 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 renewal will not be refused, and that the amount of coverage will not be reduced below the limits specified in Exhibit 4 until at least thirty (30) days prior written notice has been given to Owner. A Certificate of Insurance, Exhibit 4-A showing such coverages to be in force, shall be filed with the Owner prior to the Notice to Proceed and the commencement of the Work. Owner may at any time require Contractor to reaffirm maintenance of such coverage.

11.2 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.

11.3 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.

11.4 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.

11.5 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) Exhibit 5-A, and (2) for the timely payment of all charges for labor, services, and materials furnished for the prosecution of the Work (payment bond) Exhibit 5-B. Each such bond shall be for a sum equal to one hundred percent (100%) of the Contract Price. Such bonds shall be delivered to Contractor within seven (7) days after the Contract Execution Date.

ARTICLE 12 WARRANTIES

12.1 For purposes of this section of the Contract the term Contractor shall include the Contractor and any entity in his employ or under contract to provide service. 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 Contractor shall obtain warranties against defect in materials and workmanship from subcontractor furnishing labor, materials, or equipment for Work in accordance with this contract.

ARTICLE 13 TERMINATION

13.1 Upon seven (7) calendar days, written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract.

13.2 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.

13.3 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.

13.4 At any time and without cause, Owner may suspend the Work or any portion thereof by notice in writing to Contractor. Contractor may suspend the work due to non-payment by owner of undisputed amounts owed by unpaid to contractor after seven (7) days written notice. 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 14 DISPUTE RESOLUTION

14.1 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:

Direct Negotiation

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

Mediation

If the parties fail to reach agreement by direct negotiation within thirty (30) 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.

ARBITRATION

If the parties cannot settle the dispute by non-binding mediation within sixty (60) days from the commencement of mediation, all parties to this contract agree that dispute shall be resolved through arbitration pursuant to the construction industry Arbitration rules of American Arbitration Association (AAA) and the Federal Arbitration Act (Title 9 of the United States Code annotated); and judgement rendered by the arbitrator(s) may be confirmed, entered and enforced in any court having jurisdiction. The parties agree that jurisdiction and venue for any

dispute resolution hereunder shall be Spartanburg County, South Carolina. 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.

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

14.3 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).

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

14.5 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 Contract.

ARTICLE 15 MISCELLANEOUS

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

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

15.3 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.

15.4 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.

15.5 All documents prepared by Contractor, including but not limited to sketches, drawings, plans, specifications, models, calculations, and electronic copies of the same type 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, or instruments of service.

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

15.7 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.

15.8 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 Contract 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.

15.9 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.

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

15.11 The Contractor agrees to assign to the Owner all rights, title and interest in all causes of action it may have under Section 4 of the Clayton Act (15U.S.C. Sec.15) arises from the purchases of goods services, or materials pursuant to this Contract. The assignment shall be

made and become effective at the time the Owner tenders final payment to the Contractor, without further acknowledgment by the parties.

15.12 The Federal Government and State of South Carolina prohibit the hiring, employment, or use of persons without legal status in the United States. Any Contractor or Sub Contractor hiring or using illegal Aliens/Workers is not eligible to participate in contractual work with the City of Spartanburg. All Contractors or Sub Contractors working contractually with the City of Spartanburg are required to use the E-Verify Program or Federal Work Authorization Program. The City of Spartanburg will have the right to request and receive legal status verification within five working days of any person working under Contract with Contractor or Sub Contractor. Failure to comply can result in the immediate cancellation of the contract.

15.13 The Owner retains the right to assign this Contract as set forth on page 2 of this agreement within the limitations of state and federal law

ARTICLE 16 NON DISCRIMINATION AND MINORITY BUSINESS OWNER OUTREACH

16.1 The City of Spartanburg is an equal opportunity employer. Contractor attests that qualified firms owned by women, minorities and disabled persons were encouraged to submit bids to the Contractor. Contractor expressly agrees to continue comply with the City’s ordinances, regulations and policies concerning Equal Opportunity Employment and Affirmative Action principles. Contractor and every supplier of materials and services provided under this Contract shall be an Equal Opportunity Employer as defined by Section 2000(E) of Chapter 21 if Title 42 of the United States Code and Federal Executive Order #11375 and as such shall not discriminate against any person by reason of race, creed, color, religion, age, sex or physical handicap with respect to the application for employment, hiring, tenure, or terms or conditions of employment of any person. See Exhibit 6 “Federal Equal Opportunity Provisions”

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

OWNER

Witnesses

By: _____

Its: _____

Date: _____

CONTRACTOR

Witnesses

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

City Attorney